



CONTEXTS OF JUSTICE

Political Philosophy beyond Liberalism and Communitarianism

Rainer Forst

Translated by John M. M. Farrell

PHILOSOPHY, SOCIAL THEORY, AND THE RULE OF LAW

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Contexts of Justice

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*Political Philosophy beyond Liberalism
and Communitarianism*

Rainer Forst

TRANSLATED BY

John M. M. Farrell

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To Mechthild

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PREFACE

The concept of “justice” is frequently symbolized in a particular way—as Justitia, blindfolded, with a scales in one hand and a sword in the other.¹ The blindfold symbolizes impartiality, which is her principal feature; the scales represent the idea of balanced judgment and of equal considerations guaranteeing “to each his/her own”; the sword underscores the conclusiveness and authority of her judgment. Justice is the highest political-moral virtue by which legal, political, and social conditions as a whole—the basic structure of society—can be measured.

On closer inspection, however, doubt about this presentation of the idea of justice makes itself felt. On what is its normative authority founded if divine and natural law have lost their validity? Doesn’t “justice” mean something different depending on the period and the culture in which one refers to it? Imagine Justitia in a completely different religious and political society—does it still appeal to common, universalist conceptions of morality?

The blindfold also gives rise to questions. What notion of impartiality assumes that, “without distinction of person,” it does “justice” to individual persons? Isn’t a conception of judgment and reason that isolates itself from concrete human experiences itself in danger of becoming blind to the various needs of human beings? How can justice, we ask, turning to the symbol of the scales, find a single standard for the complexity of conflicting claims? And doesn’t the employment of the sword presuppose a humanly unattainable, definitive, and infallible judgment on the basis of norms enjoying absolute validity?

These are some of the questions that reverberate in what follows. I explore the possibility of a conception of morally justified political and social justice that avoids both the criticism of context blindness and a contex-

tualism that fails to recognize the universalist core of the call for “justice.” In differentiating “contexts of justice,” I try to clarify the normative conditions on which the basic structure of society can be called just.

Here I would like to thank the persons and institutions that have helped me in numerous ways in preparing this study. It is the revised version of my dissertation at the Department of Philosophy of the Johann Wolfgang Goethe University in Frankfurt am Main, Germany. I am especially grateful to Jürgen Habermas for his always encouraging and willing furtherance of my work and—not least—for all I have learned from him. In the interdisciplinary research group “Legal Theory,” which he supervised and which was financed by the Deutsche Forschungsgemeinschaft (German research council), I had the possibility of getting to know the various dimensions of the connection between law, democracy, and morality. I owe a great deal to the discussions with the members and guests of the research group, in particular Kenneth Baynes, James Bohman, Klaus Günther, Ingeborg Maus, Bernhard Peters, and Lutz Wingert.

I thank the Studienwerk Villigst for a grant to complete my dissertation and in particular for enabling a research stay at the Department of Philosophy of Harvard University (1991–92). With regard to this period in the United States, which was very important to me, I would especially like to thank John Rawls for being so accommodating and for valuable and instructive discussions.

For numerous helpful suggestions and clarifications I am indebted to discussions of papers on different parts of my work. In the course of the text I have tried to mark some of the places at which I have especially profited from criticisms raised by particular individuals. I would like however to single out Axel Honneth, with whom I have discussed many of the questions I deal with in what follows.

Finally, a very special thanks to Mechthild for all of her encouragement and support. The book is dedicated to her, my first reader.

The welcome publication of my book in English gives me additional reason to be grateful: to the editors of the series “Philosophy, Social Theory, and the Rule of Law” for including my study; and especially to John Farrell for his excellent translation. Apart from occasional and minor clarifications, the text has remained unchanged.²

Introduction: Liberalism, Communitarianism, and the Question of Justice

The question of justice has been at the core of political philosophy ever since Plato's *Republic*. It is an old but still current question that has to be answered each time anew—and indeed not only in respect of normative content but also with regard to the methodological justification of a philosophical theory of political and social justice. What norms legitimate the legal, political, and social relations within a political community, and how can these norms be justified?

My study is guided by the conviction that a critical analysis of the controversy between liberalism and communitarianism offers the possibility of making a systematic contribution to the clarification of the basic concepts of a theory of justice. The title *Contexts of Justice* refers (a) to the central *problem* of such a theory; (b) to the chosen *mode of access* to this problem; and (c) to the proposed conceptual *solution*.

(a) At the center of the discussion between liberalism and communitarianism lies the classic problem of a morally justified theory of political and social justice: the norms that are to be designated as just must be both context-immanent and context-transcending; they have to claim validity for a particular community and for its specific self-understandings and institutions but at the same time hold up a moral-critical mirror to the latter. How abstract may such a theory be and yet remain adequately concrete? How can it be simultaneously related to a specific society and yet not be relativistic? This is not just a methodological question, for different answers have different normative, substantive consequences for the theory of a just society.

“Communitarianism” and “liberalism” are vague generic concepts for positions in a controversy that, during the 1980s, unfolded around this problem and developed—even beyond its original Anglo-American context

of emergence—as a productive debate on the fundamental normative questions of political communities. This controversy was sparked primarily by John Rawls’s study *A Theory of Justice* (first published in 1971), a work that put an end to the eulogies on the bygone, great tradition of normative political philosophy; a work whose contemporary reformulation of Kantian arguments within the framework of a liberal contract theory proved to be not only an effective counterproject to utilitarian theories but also an impetus for the development of alternative liberal approaches to combining individual freedom and social equality (if one thinks of the work of Ronald Dworkin and Bruce Ackerman, for instance).¹ What especially drew criticism was the character of the justification of Rawls’s theory, one that abstracted from concrete social contexts, as well as the theory’s emphasis on the priority of equal individual liberties over substantive conceptions of the good. This criticism—inspired in varying ways by Aristotle, classical republicanism, Rousseau, Hegel, or Tocqueville—emphasized the embeddedness of justice in communally constituted self-understandings and traditions. Yet the objections raised in this connection by such theorists as Charles Taylor, Michael Sandel, Alasdair MacIntyre, or Michael Walzer (just to mention the most important ones) exhibit fundamental methodological and normative differences. Hence, I avoid speaking of *the* communitarian or *the* liberal theory in what follows; rather, what is important is to do justice to the complexity of the debate by considering individual positions—and their development—in a differentiated manner.² Not only is it wrong to assume homogeneity on the part of the two sides in the controversy, it is also inaccurate to assert the incompatibility, in principle, of individual liberal and communitarian arguments. For unlike *Gemeinschaft* in the German language, “community” in the United States has a primarily democratic, participatory meaning;³ and the “liberalism” that is being debated here is a kind of “social liberalism,” which is to be distinguished from “libertarian” positions (Robert Nozick’s, for instance).

Formulated at a sufficiently general level, however, one communitarian thesis that justifies the use of this label can be regarded as central. It states that the “context of justice” has to be a community that, in its historically evolved values, practices, and institutions—in its identity, in short—forms the normative horizons that are constitutive of the identity of its members and thus of the norms of justice. Only *within* these horizons of value is it possible to pose questions of justice and answer them with reference to what is good and valid for the community against the background of its evaluations and its self-understanding. Principles of justice grow out of such a community context, are valid only there, and can be realized solely within this context; all attempts at a liberal-deontological justification of norms stressing the priority of individual rights or formal procedures remain external and foreign to this context; they presuppose contextless “nonper-

sons” who are supposed to decide matters of justice in an “impersonal” and “impartial” manner, independently of their communally constituted identities. Such theories of the priority of the “just” or the “right” over the “good” are *forgetful of context*. Opposing this diametrically is the liberal response, which criticizes communitarian theory for being *obsessed with context*.

(b) The first four chapters of my study serve the purpose of reconstructing and disentangling this general complex of critique and countercritique, which contains both descriptive and normative assertions. In the process, they distinguish four conceptual levels, four theoretical “problem contexts.” *First*, the critique of the atomistic conception of the person that liberal theories put forward; *second*, the critique of the claim to neutrality of liberal principles of justice and law and the critique of the priority of individual rights over the communal good; *third*, the critique of the insufficiently integrative *sittlich* (ethical) force of liberal accounts of the political community; *fourth*, and finally, the critique of universalist theories of morality.⁴

Though these problems are linked with one another in a complex way, they nonetheless require their own conceptual responses. Questions concerning the theory of the person, legal theory, political theory, and moral theory should not be confounded or connected in the wrong way, as has occasionally happened in the controversy; to draw conclusions for a conception of law, democracy, or morality from an intersubjectivist conception of the person, it is necessary to have arguments located at each of these theoretical levels. The concept of the “good,” for instance, has in each case a different meaning and a different relation to the problem of justice when it refers to (i) the good life of a person, (ii) shared conceptions of the good within a political community, or (iii) a higher good, in a culture-specific or objectivist sense; in the last case, a value such as individual autonomy (and distance from communal conceptions of the good) can, for example, be considered a “good.”

The levels distinguished by this mode of access to the debate enable not only a clearer analysis of its philosophical dimensions and distinct issues but, taken together, constitute—and that is what is special about this controversy—the domain within which a theory of justice has to prove itself.

(c) The fourfold differentiation of theoretical problems and levels serves as the key to a systematic proposal for conceptual clarification. If the communitarian thesis, according to which persons are always community-bound and principles of justice always context-bound, is queried as to *what* conceptions of *person* and *community* are at the center of discussion at each of these particular levels, then it becomes evident that four different conceptions of person and community can be distinguished, which in turn correspond to four different *normative contexts*. Thus the discussion of the constitution of the self revolves around the conception of the *ethical person*

(as a member of an identity-constituting *ethical community*), which is to be distinguished from the conception of the *legal person* (as a bearer of individual rights and a member of a *legal community*)—a conception of central importance to the issue of legal neutrality. Problems of political legitimation and integration refer, however, to the correct understanding of *citizenship* (as membership in a *political community* of politically responsible citizens), whereas in the controversy about moral universalism and contextualism the conception of the *moral person* (and the *moral community* of all morally autonomous actors) plays an essential part.

In distinguishing these conceptual-normative levels, one secures the possibility of appropriately discussing liberal and communitarian arguments—also with the help of other, in particular, feminist or discourse-theoretic approaches—in order to be able to contribute (*horizontally*, on one specific level) to a clarification of the particular problems. Thereby one can ascertain which normative context is addressed in a particular question, and which conception of person and community is understood in a specific way by the opposing positions (e.g., the various understandings of citizenship), or how moral autonomy is explained in each case. In this way, it is possible to determine more precisely, first, what the real points of difference are (and thereby avoid misinterpretations that arise from confounding different questions); second, what criteria ought to be applied in the individual contexts; and, third, how these contexts, whose conceptual differentiation is not to be understood in the sense of a disjunction, are to be linked to one another. What thus unfolds in four stages (*vertically*, in working through the individual issues) is the outline of a theory of justice that takes these four *contexts of justice* adequately into account without reducing them to one another—this being the central thesis of the book. The basic structure of society can be considered just(-ified) to the extent that it does “justice” to persons in all these dimensions.

The proposal to differentiate various normative community contexts of an ethical, legal, political, and moral kind, and attempt to analyze the manner in which they cohere, makes it possible to scrutinize the compatibility of individual rights and the common good, of political generality and ethical difference, of moral universalism and contextualism, and to avoid false opposites. The resulting critical-constructive position “beyond liberalism and communitarianism”⁵ is developed in the discussions of the first four chapters, the central results of which are brought together in chapter 5 (in the section “Justice and the Good”) and then in a further step consolidated from a moral-theoretic perspective. The latter is based on a principle of practical reason according to which justification for the validity of values or norms is sought *in the particular* intersubjective “contexts of justification” within which validity is claimed. Located in the Kantian tradition, this non-metaphysical conception of practical reason does not turn out to be an

authoritarian source of context-insensitive norms; rather, in the absence of “ultimate” substantive reasons, it is founded on the necessity of “good” reasons and reflects the different meanings and criteria of normatively good reasons in these contexts. Correspondingly, the concept of “autonomy” must also be differentiated (in a fourfold manner) according to these contexts. The reconstruction of the logic of normative justification is augmented in a final step by a theory of “contexts of recognition,” where it will be seen that the proposed conception presents a meaningful account of interpersonal relationships that is not exposed to the critique of abstractness.⁶

The analysis of the debate between supposedly “context-forgetful” liberal-deontological theories and “context-obsessed” communitarian theories thus leads to a differentiation of four normative contexts in which persons are “situated” as members of various communities; that is to say, they are intersubjectively recognized and are authors and addressees of validity claims in various communities: communities of ethical, constitutive bonds and obligations; a legal community that protects this “ethical identity” of a person as a free and equal legal person; a political community in which persons are the authors of law and mutually responsible citizens; finally, the moral community of all human beings as moral persons with the right to moral respect. A *theory* of justice is at the same time context-bound and context-transcending insofar as it takes these normative dimensions into consideration, without absolutizing any particular one. According to this theory, the *society* that unites these contexts in the appropriate manner can be called just.

The Constitution of the Self

The critique of the “image of the human being” on which liberal political theory is based is as old as this political theory itself. Ever since Thomas Hobbes conceived of human beings “as if but even now sprung out of the earth, and suddenly, like mushrooms, come to full maturity, without all kind of engagement to each other” (Hobbes 1962, 109); ever since he wrenched the human being from the ethical universe of Aristotelianism and scholasticism and thereby prepared the way for liberalism, the latter has been confronted with the objection of atomism. This critique is directed especially at the liberal contract theory of the state. To imagine social and political institutions as the outcome of a contract among free, equal, and independent persons would be to misunderstand the historical character of these institutions and persons as if “only an agglomeration of atomistic individuals” (Hegel 1967, 178 [§ 273]) had come together to enact a constitution. Of course, what this historical character misread by liberalism is actually composed of is determined differently by Aristotelian, republican, Hegelian, and Marxist critics. Whether the human being has to be conceived of as a *zoon politikon* within an ethically comprehensive “polis” or as a virtuous political *citoyen*; whether as part of the “objective Spirit” of the ethical life of a people or as a member of a social class in a particular historical situation, depends on the various directions taken by the critique of liberalism. But what all these critiques have in common is their understanding of the “liberal self” as an abstract artificial product of a theory that is concerned with the defense of individual rights and, to this end, makes the independent individual the normative focus of attention. “Atomism represents a view about human nature and the human condition which (among other things) makes a doctrine of the primacy of rights plausible” (Taylor 1979, 189).

It is not surprising that John Rawls's attempt to use the theory of social contract in a modified form for a theory of justice was soon confronted by a range of objections that linked up with the critique of atomistic individualism.¹ It was in particular Rawls's central notion of an "original position" that was predestined to generate reservations. This is the conception of a position in which persons come together behind a "veil of ignorance"—that is, without knowledge of their particular capabilities, weaknesses, or of the social status they would assume in a future society—in order to decide upon a distribution of social primary goods that is in their view just.² Yet weren't the persons too individualistically oriented in their struggle for primary goods (basic rights and liberties, social opportunities, income and wealth, the social basis of self-respect), and had they not also been abstracted from contexts without which we cannot speak meaningfully about justice? Weren't the resulting principles of justice therefore both too individualistic and too abstract? What some people considered the greatest achievement of Rawls's theory seemed to others to be this theory's greatest shortcoming—namely, to have reformulated the Kantian moral standpoint of impartiality and universalization in such a way that fair principles of formal and material equality follow from a fair starting point. Wasn't Rawls's model the clearest proof of Hegel's thesis of the internal connection between abstract individualism and universalism? For critics of deontological theories like Bernard Williams (1981a), it is therefore obvious that the universalist and impartial moral point of view can be reached only by means of a contextless understanding of "detached" individuals. For this kind of critique, liberal individualism and Kantian universalism constitute two sides of the same contextless understanding of morality (cf. MacIntyre 1984a).

In particular Michael Sandel's book *Liberalism and the Limits of Justice* (1982) saw to it that the problem of the understanding of the self became the main topic of controversy. However, his critique must be seen against the background of Charles Taylor's work. In his book on Hegel, Taylor interpreted the latter's critique of the modern concept of liberty as a critique of an empty, "situationless" concept of the subject (Taylor 1979, 157). He opposed this naturalistically curtailed view of subjectivity with an alternative version of linguistically, historically, culturally, and communally "situated" identity—an identity that is part of a community's "comprehensive life" that absorbs individuals (1979, 87, 153–66). Taylor's thesis that liberal deontological theories are based on a "situationless," "punctual," and "atomistic" theory of the person is taken up by Sandel and effectuated (in a particular manner) in a critique of Rawls's theory of justice.³ An analysis of this critique and its counter-critique will constitute the first step toward a differentiation of conceptions of community and person and will explain why the question of the constitution of the self is, as Michael Walzer (1990a,

21) remarks, a “battlefield” on which there is little to be won as far as political theory is concerned. Even Taylor warns against construing a one-dimensional connection between atomism and liberalism (1989b, 176)—“ontological” issues of the constitution of the self have to be distinguished from “questions of advocacy” for particular political-theoretical positions.

1.1. THE CRITIQUE OF THE “UNENCUMBERED SELF”

Sandel’s critique of Rawls can be divided into five principal steps.

(1) He attempts to show that Rawls’s theory is based on a “philosophical anthropology” (Sandel 1982, 50) that can be read from the description of the parties of the original position. Rawls’s assertion that the description of persons in the original position as rational individuals looking out for their own interests and not interested in one another does not at all match the description of human beings “in everyday life” (Rawls 1971, 148) is rejected by Sandel with the argument that, in order to justify the original position in the “reflective equilibrium,” Rawls has to make certain individualistic anthropological assumptions that legitimate the description of the rational parties. Since Rawls assumes that the description of the original position is justified to the degree to which the principles decided upon in this position match our “considered judgments” (Rawls 1971, 20), the necessarily general and weak assumptions upon which he would like to rely must, says Sandel, correspond to “our” understanding of the essence of moral subjects. Thus he concludes: “We must be prepared to live with the vision contained in the original position, mutual disinterest and all, prepared to live with it in the sense of accepting its description as an accurate reflection of human moral circumstance, consistent with our understanding of ourselves” (Sandel 1982, 48).

(2) In addition, Sandel attempts to show that Rawls’s moral subject is an “unencumbered self” that does not do justice to the ethical experience of being a self. In this context, “self” designates the basic condition of the possibility of personal identity: the possibility of self-understanding and self-consciousness. Being a “self” implies the ability to speak in the first person, to identify oneself, to see oneself recognized by others as having an identity. Sandel does not in fact determine the concept of the self explicitly but rather also employs the concepts of “identity,” “person,” and “moral subject” (50). Nevertheless, in his critique of Rawls with respect to the self, he is essentially concerned with what it means to have a qualitative identity that offers the possibility of self-identification and, in particular, with the kind of relation that persists between the self and its ends and conceptions of the good.⁴

Rawls’s conception of the self is, according to Sandel, profoundly voluntaristic: all qualitative determinations of the self’s identity are freely cho-

sen and thereby in a certain sense external to the self like other things and objects we choose. Rawls's self is a "subject of possession" that "has" ends, values, and conceptions of the good and "is" not identical with these (55), it is an antecedently individuated self whose identity is not connected in a constitutive way with its surrounding world, in particular with other subjects. The good is simply a pure preference of an independently defined subject.

In order to prove this Sandel quotes statements by Rawls such as the following:

It is not our aims that primarily reveal our nature but rather the principles that we would acknowledge to govern the background conditions under which these aims are to be formed and the manner in which they are to be pursued. For the self is prior to the ends which are affirmed by it; even a dominant end must be chosen from among numerous possibilities. (Rawls 1971, 560)

This remark is to be found at a point where Rawls criticizes hedonism—that is, the theory that pleasure represents the only and highest standard for human ends—on the grounds, first, that the heterogeneity of human ends precludes finding, even within the framework of pleasure, an unequivocal standard that would rank ends; and, second, that all ends cannot be subsumed under the yardstick of pleasure in the first place. Rawls therefore insists on the heterogeneity of ends with regard to a person's ends and, all the more so, with regard to the ends of various persons; he argues that only a deontological concept of the right that is not justified on the basis of a "common denominator" in various ends can provide a standard for the life plans and ends that are permissible in a moral sense. These moral "background conditions" express the "nature" of practically reasonable beings who would like to act in accordance with principles of justice. That the self is there "prior to" its ends must therefore be understood *normatively* and *not ontologically* (as Sandel believes): there is no ethical value that has, objectively and in a universally binding sense, primacy over deontological norms; these norms therefore constitute the moral framework for conceptions of the good. The primacy of these norms—for example, those expressed in individual liberty rights⁵—corresponds to a moral "higher order desire" (561) to formulate within the principles of right one's own plan of life, to revise it if necessary, and to follow it rationally. Fundamental interests and primary ends, Rawls says, are not so fundamental that they are in principle beyond the possibility of change. That is why it is in the interest of persons to have the freedom to make these changes when necessary. If that were not the case, Rawls says (1975a, 96), it would not make sense to say that persons are responsible for their plans of life.

Sandel's conception of the self emphasizes the constitution of personal identity—and the possibility of self-definition—through membership in communities to a far greater degree than Rawls's theory. The latter does indeed insist on the fact that there must not be any barriers to the pursuit of "communitarian" life plans in a society ordered according to principles of fairness (1975c, 540–42), but such values, argues Sandel, would be merely preferences the subject chooses. His conception of the "constituted self" that owes its identity to a "constitutive community" denies the possibility of an identity that is perceptible as being separate from the shared vocabulary of a community and a background of common practices and beliefs: "And in so far as our constitutive self-understandings comprehend a wider subject than the individual alone, whether a family or tribe or city or class or nation or people, to this extent they define a community in the constitutive sense" (1982, 172). The normative components and beliefs necessary for an identity are not chosen, as in the voluntarist model, but are *found* by the self in a life shared with others, within a "larger life," to use Taylor's (1979, 125) term. Here, Sandel follows Taylor's critique of a "simple weigher" who weighs his or her preferences according to interests but, in so doing, does not delve into the "depths" of his or her identity as a "strong evaluator" does (Taylor 1985b, 23–27). Here, the question is not what one wants to have but who one is; questions of personal identity compel us to reflect on the "strong evaluations" that are discernible only within a life as part of a larger community—and can perhaps be better recognized here by others, for example, by a friend.⁶

Since both Rawls and Sandel disassociate themselves from an extreme understanding of the self, there is a spectrum of four conceptions of the self and its relation to community. In section 79 of *A Theory of Justice* Rawls demarcates his ideal of a "well-ordered society" as a "social union of social unions" from a mere "private society." In a private society, on the one hand—he refers here to Hegel's concept of civil society—citizens do not have any common ends and assess social arrangements solely from the viewpoint of personal advantage. In a "well-ordered society," on the other hand, the "social nature of man" can be seen in the existence of common ends. What this means, Rawls says, is not "the truism that social life is a condition for our developing the ability to speak and think, and to take part in the common activities of society and culture" (1971, 522); rather, it means the idea—borrowed from Humboldt—of numerous communities within a society that have the common end of social cooperation within the framework of a publicly shared conception of justice. "Thus the public realization of justice is a value of community" (529). Social cooperation is understood here not instrumentally but as a system of mutual supplementation and realization, like an orchestra in which the abilities of individuals lead to a general accomplishment. Since this comes about within the frame-

work of justice, it is a constitutive component of this communal achievement.

Though Sandel recognizes this distinction in Rawls, both conceptions of community remain bound to the image of the antecedently individuated self, according to his interpretation. He describes "private society" as an "instrumental" conception of community; the idea of a "social union of social unions" is for him a "sentimental" conception. Indeed, community here is neither external to the subject nor constitutive of it, just connected to it through feelings of and inclinations toward community (Sandel 1982, 149). Even if the subject here can have "communitarian" motives, these have nonetheless been chosen by a self and are not from the outset indispensable components of its identity. The sense of community, Sandel argues, is not however a feeling or a preference; rather, it is constitutive of a self. This argument does of course compel him to determine the particular kind of "constitution" more specifically, and he therefore distinguishes between a "situated" and a "radically situated subject," which in direct contrast to a "radically disembodied" self does not have any possibility of distinguishing between itself and its "situation" (its communal identity), or of being able to distance itself reflectively if needs be. Thus Sandel emphasizes the fact that the subject "participates" in the constitution of its identity (1982, 153). "As a self-interpreting being, I am able to reflect on my history and in this sense to distance myself from it" (179). Sandel does not however give any indication as to how the self, which is only "partly" (*ibid.*) defined by "attachments and commitments" to the community, establishes this distance or as to how a "revision" (180) of identity is possible if after all the self-understanding of the community is constitutive of the self-understanding of the subject. If the self has become a self as part of a "wider subject," how can it then distinguish itself from this? Here is a point that many critics have taken up (and to which I return).

(3) Sandel's third step, after having attempted to show that Rawls's conception of the self is implausible, consists in the thesis that every deontological theory of morality presupposes such a conception of the self. The deontological priority of individual rights over the communal good serves primarily the purpose of securing the freedom of the "unencumbered" self to be able to choose its conception of the good according to its own criteria (157). "As the right is prior to the good, so the subject is prior to its ends" (7). According to Sandel, the pure capacity of choice is the foundation and end of deontological morality.

In order to prove this thesis not just in relation to Rawls's theory, Sandel discusses the Kantian concept of the moral subject. Following this interpretation, Immanuel Kant's "intelligible ego" (Sandel speaks misleadingly of the "transcendental subject") as the foundation of deontological morality (i.e., of the priority of rights) displays the same structure as Rawls's

“unencumbered self.” Free of empirical and constitutive determinations, it chooses principles of justice that enable the free as well as indefinite choice of ends and goods. “On the deontological view, what matters above all is not the ends we choose but our capacity to choose them” (1982, 6). Rawls’s empirical and proceduralist reformulation of Kant’s theory merely avoids the “Germanic obscurities” of transcendental idealism; at heart both of them present the same: an unencumbered, radically liberated self (Sandel 1984a, 24). Accordingly, autonomy means for Kant that I am “free to pursue my own ends consistent with a similar freedom for all” (Sandel 1982, 6). A “worldless” subject and a morality that asserts the priority of individual rights over the good entail each other. Rights secure the freedom of the subject to choose its ends free of all communal determinations. Here, the following assumptions are made in respect of Kant’s theory of morality: moral autonomy is basically freedom of choice and action (*Willkürfreiheit*); the moral law is the same as the Kantian principle of law that regulates the exercise of that freedom of choice; and, furthermore, the “intelligible ego” is a construction that not only explains moral freedom but refers to the conduct of every free subject concerning its ends and values of the good.

These three assumptions, which contradict fundamental Kantian concepts, are not however argumentatively proven by Sandel. Kant explicitly distinguishes moral autonomy—acting according to general, self-given, universalizable laws—from the freedom of choice and action of legal subjects whose external relations are regulated by law.⁷ Sandel, however, misunderstands freedom from empirical determinations in the characterization of moral autonomy—which serves to ensure that particular and self-interested considerations do not suppress moral ones—as the description of the human freedom to choose the personal good. The issue is thus a completely different one: Kant is concerned with the morally right, Sandel with the personally good. Hence, Sandel does not at all mention the categorical imperative in his discussion of Kant; instead, he tacitly assumes that the priority of the freedom of being able to choose in the form of personal liberties follows automatically for Kant from the description of the (ethical) subject of the freedom of choice. Such an argument cannot however be found in Kant’s moral philosophy. Sandel thus connects an ethical thesis about choosing the personally good—a thesis he ascribes to Kant—with the assumption of a resulting normative consequence for the regulation of freedom of choice (i.e., the freedom to choose the good)—which is basically an assumption concerning relations in law; and this he does in order to criticize Kant’s theory of morality. Moral autonomy is therefore misunderstood at times as ethical choice and at other times as the freedom of legal subjects.

Sandel’s decisive thesis, which he attempts to justify in his interpretation

both of Kant and of Rawls, thus assumes that there is a correspondence between the “epistemological priority” of the empirically un-conditioned self and the “moral priority” (1982, 156) of individual rights with deontological validity—and that the connecting link between the two is the conception of the ethical freedom to choose the good on the part of the unencumbered and atomistic self, which leads to a moral notion of the individual right of the freedom of choice. Just as the self is determined independently of the constitutive good, so too is morality.

(4) From the three preceding arguments—that Rawls’s theory is based on a conception of the “unencumbered” self; that this conception is implausible; and finally that every deontological notion of morality has a structurally equivalent notion of the self as its foundation—Sandel draws the conclusion that every deontological conception of morality has to fail: “Justice cannot be primary in the deontological sense, because we cannot coherently regard ourselves as the kind of beings the deontological ethic—whether Kantian or Rawlsian—requires us to be” (1982, 14). Since persons cannot be meaningfully conceived of without constitutive and communal conceptions of the good, principles of living together cannot be conceived of either without notions of the good. Deontological justice meets its limit in the self-understandings, attachments, and values of communities, which are integrated not through deontological norms but through shared beliefs. Every constitutive community—be it a family, tribe, city, class, nation, or people (1982, 172)—encompasses in its collective identity the identity of its members; the deontological view does not do justice theoretically to these communal bonds, and if it becomes social practice it even destroys these “personal and political attachments.” In these communities—and Sandel does not distinguish here between familial, associative, or political communities—there are attachments, loyalties, and commitments that demand more than what justice in the deontological view calls for. The self, Sandel says, takes up these commitments not according to viewpoints of justice; rather, identity is impossible without them; subjects cannot conceive of themselves independently of them (179). Justice, he argues, separates persons from one another, the good unites them. The “deontological republic” is a community of strangers without character, without attachments, without identity; the form of political community suggested in contrast by Sandel is one in which the public and the private good mutually constitute each other (183). This conclusion—to develop a fundamental critique of deontological conceptions of morality from the argument against an atomistic view of the self—is central not only to Sandel’s critique of Rawls but also *mutatis mutandis* to Taylor’s or Alasdair MacIntyre’s communitarianism.

(5) Finally, Sandel attempts to show that the atomistic premises of Rawls’s (and Dworkin’s) deontological theories necessarily lead to internal

contradictions wherever, as in the case of Rawls's difference principle (or of affirmative action),⁸ questions of social justice are concerned.

In order to justify the difference principle—the principle that social and economic inequalities have to be such that they grant the least advantaged the greatest possible benefit (Rawls 1971, 302)—Rawls attempted, with the help of the veil of ignorance within the framework of his Kantian theory of equality, to make the choice of principles of justice independent of natural and social contingencies. Here he includes in particular persons' natural talents and the position acquired through birth in a particular social class. This information is therefore not available to the parties of the original position. Thus they are compelled to put themselves in the role of those disadvantaged by natural or historical circumstances and who have not had the same social opportunities at the outset. The difference principle compensates to a certain extent inequalities of this kind—within a framework that is compatible with economic efficiency. In this context, Rawls argues that “inequalities of birth and natural endowment are undeserved” (1971, 100) and even that we are “to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be” (101). Benefits that persons have as a result of special talents have to be justified socially and are subject to distributive justice.

Sandel's critique of this argument makes use of an objection raised by Robert Nozick. Whereas Rawls regards the fact that the difference principle improves opportunities in the life of everyone socially less favored as an expression of the Kantian respect for persons and of the principle of treating persons not as means but as ends, Nozick criticizes the argument of regarding natural talents as common assets as un-Kantian and in essence utilitarian. For, in accordance with this principle, persons with certain special talents are treated as a means to the end of social equality. According to Nozick's theory of individuals' legitimate claims to their legally acquired property, this treatment violates these persons' rights (Nozick 1974, 228).

Moreover, Nozick argues, this treatment introduces a fissure between the person him- or herself and his or her attributes and talents, a fissure that contradicts the historicity and particularity of individuals, just as Rawls's abstract distribution principle runs counter to the historicity of entitlements: the rights to property that an individual has acquired in the course of his or her life history (and that of his or her forebears). “Why we, thick with particular traits, should be cheered that (only) the thus purified men within us are not regarded as means is also unclear” (ibid.). In this way, Sandel argues, Nozick identifies the presupposition of the “unencumbered self” to which Rawls's separation of the person and his or her talents and attributes refers. If, therefore, the choice were between Rawls's

atomistic person who is essentially without attributes and Nozick's concept of the person as being characterized constitutively by attributes that, like property acquired by virtue of these attributes, cannot be separated from the person, then Nozick would be right.

Rawls, Sandel argues, does have another line of defense against Nozick, but it contradicts Rawls's own assumptions about the antecedently individuated self. According to this view, considering natural talents as common assets would not be an illegitimate treatment of persons as means only if the distinction between the attributes and normative claims of a person and those of a community were abandoned. Since the self is constitutively connected with a community, the community's claims to the fruits of persons' attributes are legitimate. It is not the individual person but the community that is the subject that may lay claim to possessions.

If the difference principle is to avoid using some as means to others' ends, it can only be possible under circumstances where the subject of possession is a 'we' rather than an 'I,' which circumstances imply in turn the existence of a community in the constitutive sense. (Sandel 1982, 80)

Only if the community does indeed have an antecedent rights claim to the self's attributes is Rawls's talk of common assets and thus the difference principle justified. Sandel therefore concludes that to defend his redistributive justice Rawls has to rely upon a strong, "organic" (101) conception of community that contradicts his other individualistic premises.

Nozick's and Sandel's critique proceeds, however, from too strong an interpretation of Rawls's reference to "the distribution of natural talents as a common asset." By this phrase Rawls does not want to say that natural attributes are "contingent" (1975a, 96) in the sense that they are not part of the identity of persons; rather that they are contingent from a *normative* perspective in the sense that we cannot deduce from the (legitimate) fact of *natural* inequality the legitimacy of a *social* inequality for the benefit of those favored by nature. Hence, it is not persons' natural endowments that are the object of social (re-)distribution but the fruits and advantages obtained as a result of these endowments. For the question is—and it is one that arises in connection with Nozick too—what regulations apply in a society in order to judge the legitimacy of claims to social goods (cf. Pogge 1989, ch. 2). And here it is Nozick who can be criticized for atomism because he assumes that persons have, by nature, rights claims to everything that they can appropriate within the framework of minimal law—as if there were essentially no distinction between social circumstances and natural (Robinson-like) circumstances of the acquisition of property; as if the individual were entitled by nature to what is acquired in a society. This assumption, Rawls (1978, 52–55) argues, fails to appreciate both the social character of the formation and development of individual abilities and

talents as well as the social character of the production and acquisition of property—the latter concerning the social cooperation and general social conditions necessary for production as well as the problem of existing inequalities in these social relations, ones that make it impossible to speak of “free” or “fair” transactions. It is not until the “background conditions” of a society are rendered just by means of a fair distribution of basic social goods, Rawls argues, that one can regard the individual appropriation and transfer of property as fair. “We have a right to our natural abilities and a right to whatever we become entitled to by taking part in a fair social process” (Rawls 1975a, 98).

Since Sandel adopts Nozick’s interpretation of the expression “common assets,” he misses the Rawlsian differentiation between, on the one hand, what determines, partly by nature and partly by society, the constitution of a person as an individual with special talents and abilities and, on the other, what it means in a society to acquire rights to goods produced and distributed within this society. Since for Sandel the only alternative to atomism is social monism, he proposes, as a counterconception to an atomistic self without attributes, a communal self as a macrosubject in which all individual attributes are essentially communal attributes. Thus, as in Nozick, “common asset” is to be understood quite literally, only this time in an affirmative sense: individuals are simply the “guardians” of the community’s ownership of goods and the abilities leading to the production of these goods (see Sandel 1982, 97, 102). On this understanding of the relation between self and community Sandel cannot however explain why such an organically integrated community would at all consist of individuals who raise independent (and potentially conflicting) claims to primary social goods, since the relation of constitution between self and community (and here this must mean the political community) is determined not reciprocally but unilaterally. The discussion can therefore be summarized as follows. Whereas Rawls attempts to appraise the normative claims individuals raise vis-à-vis society according to principles of justice to which all could agree from a fair perspective, Nozick absolutizes the (“natural”) claims of individuals against the viewpoint of social equality, and Sandel absolutizes, as a mirror reflection to this, the antecedent claim of a community vis-à-vis its members.

1.2. ETHICAL PERSON AND LEGAL PERSON

In this reconstruction of Sandel’s theses, a number of important counterarguments have already been advanced, especially concerning the last point, the problem of internal contradictions in Rawls’s theory. This fifth point is based on the theses of the preceding four, but it is not constitutive of these (as the similarity to Nozick’s critique of Rawls shows). The argu-

ments leveled at Sandel's conclusion (i.e., at the fourth point) must therefore set in at one of the first three points. What I want to show is that this conclusion is a *communitarian fallacy*, that is, that the attempt to develop an argument against the possibility of a deontological morality from the argument for an intersubjectivist conception of the self fails.

The critique of the third point—the thesis that every theory, even the Kantian deontological theory, presupposes a concept of the “unencumbered self”—has already been conducted above insofar as Sandel's attempt to prove Kant guilty of atomism was criticized as a misinterpretation of Kant's concept of moral autonomy as ethical freedom of choice (the choice of the good), on the one hand, and the legal freedom of action (the freedom to choose the good), on the other. Furthermore, his claim to have refuted all forms and justifications of deontological concepts of morality with his critique of Kant and his critique of Rawls—even if they were successful—has not been demonstrated.⁹

The responses to the second and first points are however more fundamental: they criticize Sandel's own proposal of a “constituted self” (second point) and—that is Rawls's own response—they already contest the validity of the first step, the thesis that *A Theory of Justice* is in fact founded on an atomistic conception of the self.

On Sandel's second point: at the center of critique here are Sandel's conceptions of community and self, and the relation between them. Four main points can be analytically isolated here (a–d) but nevertheless remain very closely related.

(a) What first occasions some questions is Sandel's theory concerning the possibility for the self to “codetermine” its own identity and to relate to itself reflexively. How is the process of “constitution” in Sandel to be understood precisely? He often speaks of a “constitutive community” as a “wider subject” or macrosubject whose identity cannot be separated from the identity of this community's members and indeed determines it to a high degree. Individuals do not “choose” their identity, they “find” it; similarly, their normative obligations to the community are not chosen by them and go beyond what the abstract norms of justice demand (see Sandel 1982, 179). It therefore seems that the process is to be understood not bilaterally but unilaterally: the community constitutes the identity of its members, gives them their self-understanding. Individuals thus appear as accidents of a communal substance. Nonetheless, Sandel does attempt to preclude such an interpretation in terms of unilateral constitution by explicitly objecting to the concept of a “radically situated subject” (21). Thus he explains that there is a difference between the self and its “situation” or embeddedness in a community (20); that the subject's identity is determined by the community only “to some extent” (150); that the self “participate[s]” in the constitution of its identity; and that there is therefore

the possibility for distancing reflection (179) and revision (180) of a given identity.

Sandel does not however provide any precise criteria according to which this distancing reflection would be possible. Moreover, his presentation seems contradictory insofar as, on the one hand, he says that this reflection is possible only within the intersubjectively constituted identity in which one finds oneself—hence the distancing is “precarious” (179); on the other hand, however, he considers subjective introspection possible (“the capacity for reflection enables the self to turn its lights inward upon itself, to inquire into its constituent nature, to survey its various attachments and acknowledge their respective claims” [153])—an introspection that makes of the self an observer of itself, allowing its identity to become a distanced object in a manner that an intersubjectivist theory precludes (cf. Sher 1989, 151–57). To be able to conceptually grasp the possibility of distancing reflection, Sandel would have to envision a distinction like the one made by George Herbert Mead between the “me” of the “generalized other” and the reflective “I” that keeps the communally constituted self in critical dialogue with itself and its social environment.¹⁰ This self-reflection is explained in Mead neither as self-objectification nor as the reproduction of social role expectations, but as communicative self-determination within communal contexts. In Sandel, on the other hand, it remains open as to whether and how a revision of certain personal conceptions of the good or personal ends is possible—for instance, in the light of “second-order desires” (Frankfurt 1988). That a self is intersubjectively constituted does not imply that persons do not relate to themselves critically or cannot question their values and attachments. Ethical questions of orientation require an answer not only to the question who I am but also to the question who I want to be against the background of my “strong evaluations” that, though tied to personal identity via “constitutive communities,” have to be consciously accepted and upheld by me. A theory of *ethical autonomy* must be able to state how talk of “my” identity and of personal responsibility for the life decisions made by “situated persons” can be meaningful (see chapter 5.3). In this respect, Sandel’s theory is insufficient.

(b) This unclarity concerning the nature of the self-reflective process is mirrored in the problem Sandel has in providing for the possibility of criticizing a community by a self whose identity is constituted by this very community. If the obligations that a self has to a community are so much a part of its identity that they demand more than just fulfilling reciprocal norms of justice and noncompliance with them means a loss of self (see 1982, 179), how then is it possible that not simply the limits of justice are set by the forms of community that determine identity (see 182) but, inversely, that a community can be criticized according to standards of justice? This case is not envisioned by the theory of the priority of the good that Sandel

defends. Are, for instance, family traditions, gender relations, religious self-understandings—not to mention national traditions—beyond normative critique?¹¹ From the fact of the constitution of identity in community Sandel incorrectly infers the normative obligation to maintain this identity as a part of the community. Aspects of genesis cannot however prejudice normative questions of validity in this way—that would not be compatible with ethical autonomy (reflection on one's own life), as mentioned above, or with *moral autonomy* (practical self-responsibility toward others). Here too, Mead's distinction between the "I" and the "me" would be relevant since the "I" possesses the moral capability of referring to a "larger" community and therefore of criticizing particular communities (Mead 1962, 199, 272).

(c) Moreover, Sandel does not indicate—even in a descriptive sense—how his conception of self relates to the fact that in modern societies persons have to assume and fulfill different roles in different social settings, roles that can come into conflict with one another (Feinberg 1988, 105–13). Sandel leaves undecided the question of how persons' identity is formed "between" different communities, of how a person who feels he or she belongs to a familial, a religious, and a political community can remain one and the same person when these affiliations raise contrary demands. In this case, does a person's identity disintegrate into contradictory fragments?¹²

(d) Thus far I have spoken of "community" or "communities" whenever there has been mention of Sandel's "constitutive community." Under this term he subsumes various communities such as "family or tribe or city or class or nation or people" (172). And it is in this nondifferentiation that one finds one of the roots of the cited problems of reflection, critique, and integration. By subsuming these "communities" in a one-dimensional manner under the concept of identity-determining, "wider" subjects, Sandel loses sight of the various normative structures of such dissimilar community forms as the family or the nation. His nondifferentiation leads to an organic account of all these communities as homogeneous, value-determined macrosystems in which a synthesis of collective and individual identity predominates. Susan Moller Okin (1989, 29) remarks that not only is the family in the traditional sense idealized in this manner, but also all other forms of social life appear as communities in which an idea of the good preforms everything and the absence of normative conflicts renders a concept of justice unnecessary indeed. This account misses not only the particular character of such social forms and the conflicts therein but also the differences between them. That a nation exhibits a completely different normative infrastructure than a family or a class is obvious. Here there are different notions of the common end and of the roles individuals play for this purpose, different affiliations, different intensities of affiliation, different kinds of obligation (as a member of a family or as a citizen, for in-

stance). Sandel makes it too easy for himself in his critique of liberalism when he interprets the political community as a “constitutive community.” For what has to be determined is *how* this community itself is constituted and legitimated, what it may and may not expect of its members. At this point, the question of justice first arises.

What is therefore missing is a differentiated account of the various forms of community to which persons belong, of the different values and norms by means of which these communities are integrated, and of the question of the degree to which the identity of subjects is thereby affected. Such a differentiated depiction would have to provide an understanding of the reciprocal relation between individuation and socialization that is more dialectical than the one found in Sandel, a model of the relation of self and community that is located beyond the alternative between atomism and social monism.

Comparing Sandel’s thematization of the relation of self and community with the few points at which Rawls thematizes this relation in *A Theory of Justice* (particularly in part 3) is elucidating (cf. Flanagan 1991, ch. 5). Rawls attempts to strike a balance between the social constitution of individuals and the possibility for individuals to form (and revise) their plans of life independently in order to make the priority of justice clear in both respects. According to his understanding it is indisputable that the speaking, thinking, and acting of individuals is socially constituted and that human beings realize themselves in intersubjective relationships; however, it does not follow from this that there is no possibility to revise and change particular ends, interests, and conceptions of the good. The right to personal freedom, he concludes, thus corresponds to individuals’ “higher order desire” (1971, 561) to retain this possibility.

The principles of justice, Rawls argues, are compatible with the “social nature of mankind” (522) in another respect. They make the existence of a “social union of social unions” possible inasmuch as they form a framework for societal cooperation within which individuals realize themselves in various forms of life and communities while, in accordance with universally recognized rules, all these communities collaborate to the general advantage of society as a whole. In this vision of a well-ordered society, he says, the conceptions of the good possible—individualistic, communitarian, or religious—are left open in an ethical respect, as long as they remain within the frame of justice (1975c).

Justice is still however connected to individuals in a closer sense, namely, through one’s sense of justice and the interest in living in a just society as a just human being. Rawls even speaks of the “congruence” (1971, 577) of the good and the just, that is, of the good and the just life. Acting justly is based on the desire “to express our nature as free moral persons” (572). Living in a just society enables individual self-realization, life in commu-

nities, acting according to just principles, and finally, all in all, a life that makes self-respect through the recognition of others possible (440–41).

For two reasons, however, it would be inadequate to present Rawls's answer on this level. First, even if Rawls's conceptions of person and community in part 3 of *A Theory of Justice* could explain ethical and moral autonomy in a nonatomistic way, it could turn out that this view is in contradiction to the justification program of the original position (an argument that Sandel tries with regard to the difference principle); second, the later Rawls drew back from the strong thesis of the "congruence" of the right and the good. In his opinion, and contrary to what Sandel argues for, the principles of justice have to be distinguished even more clearly from ethical conceptions of the good life. In this distinction one finds the key to his response to Sandel, which has to begin with the latter's first thesis, the reconstruction of Rawls's theory.

On Sandel's first point: Rawls's (for the most part, implicit) response to Sandel's first thesis consists of two parts. First, though he does not call into question that a particular conception of the "moral person" is at the center of his theory, he does however dispute that this can be read off the description of the parties of the original position. Rather, it is to be found in the description of this initial situation as a whole. And, second, this conception of the moral person is not synonymous with a theory of personal identity; instead, it is a "political" conception inasmuch as it refers solely to the more abstract level of political justice and not that of the constitution of the self. It is therefore not itself an intersubjectivist ethical concept of the self; nor is it by no means incompatible with such a concept, for that matter. Rawls underscores this especially in his later writings; the core of this fundamental distinction of conceptions of the person can however be found already in *A Theory of Justice*.

Here, Rawls makes it quite clear "that embedded in the principles of justice there is an ideal of the person that provides an Archimedean point for judging the basic structure of society" (Rawls 1971, 584). This ideal is *not* however to be found in the description of the rational and self-interested parties of the original position, as Sandel assumes, but in the whole construction that, by means of the veil of ignorance, places the rational parties under moral conditions. Rawls's ideal of the person is at the center of his attempt to provide a procedural interpretation of Kant's conception of autonomy. The specification of the original position has, Rawls says, the task of conceptualizing the moral point of view of autonomous, that is, free and equal reasonable persons: "Kant supposes that this moral legislation [acceptable to all] is to be agreed to under conditions that characterize men as free and equal rational beings. The description of the original position is an attempt to interpret this conception" (252). The original position compels the parties to put themselves in the perspective of every

possible member of society and to recognize as moral the principles that all could agree to as free and equal persons. The original position thus formulates the viewpoint of intelligible beings in the Kantian sense: the persons here, especially because of the veil of ignorance, are free from self-interested empirical considerations in their judgment inasmuch as empirical interests in securing the best possible distribution of primary goods are not influenced by knowledge of special natural or social advantages or disadvantages that concern their person. The principles that thereby appear rational are, by way of the initial situation of fairness, in the interest of all. The original position *as a whole* therefore expresses the “nature” (580) of a human being as a free and equal reasonable being who acts autonomously. This moral autonomy of persons as represented in the original position does not mean that they have a contingent and external relation to ethical conceptions of the good; it does however require of persons that these different conceptions not serve them as the foundation of principles of justice that are to be universally valid.

Accordingly, Rawls’s Kantian conception of equality is based on a morally substantive conception of the person, which is however detached from the “metaphysical surroundings” of Kant’s theory (264). The original position stands for persons’ rational interests in acquiring the best possible share of social primary goods as well as for the moral point of view that this distribution be conducted according to principles that can be accepted by all free and equal reasonable beings. For that reason, the person to whom the original position corresponds is characterized by two fundamental capacities: that of having a conception of the good and that of having a sense of justice (505, 561). The first, Rawls says, is realized in a rational plan of life—its conception, possible revision, and best conceivable fulfillment—and the second in the desire to act according to just principles. The good is therefore under the constraint of the right but is not predetermined in content by the latter.

In his writings after *A Theory of Justice*, especially in the Dewey lectures on Kantian constructivism (1980), Rawls places this conception of the moral person more clearly at the center of his theory, avoiding however—even more so in later articles (see Rawls 1985)—the thesis of a concordance of the good and the right in determining the “well-being” and “nature” of the human being. The moral person is now regarded more strongly as a “second-order” concept and no longer extends substantively into the determination of what constitutes the good for the human being. The “higher-order interest” (1980, 525) of being capable of pursuing one’s own conception of the good is distinguished from “highest-order interests” in being able to exercise the two moral capacities. The moral person is comprehended on the one hand more formally and less ethically, and on the other more “politically” in the sense of the logic of his justification, because

Rawls characterizes this conception of the person as the leading conception within a democratic political culture (1980, 518–19)—even though his theory continues to claim to rest on a “Kantian” conception of person and reason. Attempts to provide a “metaphysical” justification for this conception of the person or to interpret this conception as a substantive determination of the good life are, according to Rawls, in danger of making the theory of justice into a “comprehensive moral doctrine” and of deviating from the real task of a “political” theory of justice, namely, that of formulating a theory referring solely to the basic structure of society, and doing so on the basis of universal moral, “nonmetaphysical” concepts. In this sense, Rawls stands in contrast to Kant’s moral theory, which is “comprehensive” insofar as it is metaphysically justified and refers to the moral virtuousness of persons as such (see chapter 4.2).

The two capacities of a moral person, to have a rational plan of life and to have a sense of justice, are connected by Rawls with the concepts of “rational” and “reasonable” in order to explain to what degree they are distinguished from each other and how they enter the description of the original position. The concept of the “rational” corresponds to the first “moral power” of the person, namely, the capacity to form, revise, and pursue a conception of the good, whereas the concept of the “reasonable” corresponds to the second moral power, the capacity to have an effective sense of justice (1980, 525). The interest in having sufficient “primary goods” for pursuing one’s own conception of the good is, Rawls says, rational; on the other hand, a person’s interest that the conditions of social cooperation be fair and universally acceptable is reasonable in the moral sense.¹³

The two sides of the “rational” and the “reasonable” are represented in the original position, on the one hand—in the case of the rational—by characterizing the parties as rationally calculating beings not interested in one another, and on the other—in the case of the reasonable—by the constraints imposed upon the parties by the veil of ignorance (1980, 520–21; 1982a, 86). The person’s two fundamental moral features are reflected not only, as Sandel assumes, in the description of the parties but in the whole construction of the initial situation. The “rational” autonomy of the parties of the original position must not be confused with the “full autonomy” (1980, 521, 533–34) of free and equal citizens. The moral point of view of the reasonable must not only not be overlooked in comparison to the rationality of the parties, it even has priority over this rationality: “The Reasonable subordinates the Rational because its principles limit, and in a Kantian doctrine limit absolutely, the final ends that can be pursued” (530). The “priority of the deontologically right” (or the just) is therefore—contrary to Sandel—synonymous not with the priority of a rational subject of free choice, but with the priority of the standpoint of fair

social cooperation over subjective freedom of choice. The original position expresses a conception of the person that consists of the two moral powers of the good and the right. Rawls therefore retracts his assertion that the theory of justice was “a part . . . of the theory of rational choice” (1971, 16):

What I should have said is that the conception of justice as fairness uses an account of rational choice subject to reasonable conditions to characterize the deliberations of the parties as representatives of free and equal persons; and all of this within a political conception of justice, which is, of course, a moral conception. (1985, 237n. 20)

The original position is simply a “device of representation” (236–37) of the moral person and of the latter’s two moral powers—which, as has been seen, are represented in the description of the parties and the constraints they are subject to. “When, in this way, we simulate being in this position, our reasoning no more commits us to a metaphysical doctrine about the nature of the self than our playing a game like Monopoly commits us to thinking that we are landlords engaged in a desperate rivalry, winner take all.”¹⁴ Thus, by differentiating conceptions of the person according to contexts of normative questions, Rawls answers Williams’s (1981a) objection that the Kantian view of persons “in abstraction from character” is a false presentation of what it means to be a person and to be confronted by practical problems: “Within different contexts we can assume diverse points of view toward our person without contradiction so long as these points of view cohere together when circumstances require” (Rawls 1980, 545).

The two components of Rawls’s response to Sandel’s first thesis thus become apparent. *First*, it is not the purposive rationality of the parties in the original position that distinguishes the conception of the person on which Rawls’s theory is based but the whole construction of this initial situation: the rational parties *and* (in the moral sense) the reasonable fairness of the constraints imposed upon the parties. In this sense, the moral person with his or her two highest-order interests corresponds not to a notion of subjective freedom of choice but to one of moral autonomy. *Second*, this conception of the moral person is not a conception of the ethical self; rather it is located at a more abstract, political-moral level (see Rawls 1985, 232n. 15). Thus (a) the leading conception of the person with the two moral powers leaves open how the ethical identity of a person is constituted. Moral autonomy does not mean that a person cannot be determined in his or her identity by “constitutive” values and attachments; it does however mean that a person has, first, the capacity to examine these critically (if necessary) and, second, a sense of justice in compliance with which he or she is willing to act toward others according to principles that can be endorsed publicly (1993a, 19, 49). In this sense, the person is mor-

ally “reasonable.”¹⁵ Rawls argues furthermore (b) that this is a “political conception of the person” (1985, 240), and this in the sense that it explicates moral powers that can (and must) be expected of citizens as responsible members of a fair system of social cooperation.¹⁶ And finally (c) this conception of the person, mediated via the original position, serves the justification of principles of justice that relate to the “political,” “public,”

“institutional” identity of persons—to their identity “as a matter of basic law” (1985, 241–42; 1993a, 30). This dimension of the person is different but not separate from, as Rawls says, the “nonpublic” or, better (because this identity is also a public one), “noninstitutional” identity of persons with their “enduring attachments and loyalties,” their lived conceptions of the good in “constitutive” communities. The identity of the *legal person* presents, as it were, the *external abstract cover* for the *ethical person*; it protects the particular identity of a person and at the same time constrains it according to universal moral principles of justice. It is not of significance to his political-legal identity, which is constituted by these principles (and their translation into positive law), that Saul of Tarsus becomes Paul the Apostle on the road to Damascus. To take a normative standpoint that promotes the equality of basic individual rights for all persons does not therefore mean assuming that all persons in their ethical existence are individuals whose good life *consists in* having rights that grant them a free choice of values. There is a central conceptual difference between the normative, rights-justifying perspective and the ontological perspective.

Rawls’s conception of the person is thus “political not metaphysical” (1985) in the following sense: in terms of the logic of justification, it does not obligate him to decide for or against a particular theory of personal identity,¹⁷ and it is sufficient to make those assumptions about the moral person that are indispensable for the justification of principles that refer to the foundations of persons’ legal-political identity. This conception characterizes the person and his or her freedom in a threefold manner, that is, as a person with particular conceptions of the good and with equal rights to pursuing his or her own ends and to their possible revision; furthermore, as a person who raises certain (legal) claims in his or her own interest; and as a person who assumes practical responsibility for his or her ends (see 1985, 240–44). It can therefore also be characterized as “legal identity” because here the person is regarded as a subject of law, as a person with legal status.

Just as the abstract conception of the person as a legal person¹⁸—the person as a bearer of individual rights and a subject of law—is to be distinguished from the conception of ethical person, a conception of political community has also to be distinguished from that of an ethical community. This distinction can already be found in *A Theory of Justice*, where Rawls underscores “that the primary concern is that there are many types of social

union and from the perspective of political justice we are not to try to rank them in value. Moreover these unions have no definite size; they range from families and friendships to much larger associations" (1971, 527). He thus distinguishes between the political and various social (or ethical) communities: in the former the person is a subject of law, in the latter a member of particular communities with which the identity of the self is connected in manifold ways.¹⁹ Whereas the political community is normatively integrated via a political and public understanding of justice, particular communities are integrated via different kinds of conceptions of the good, especially to the extent that they are determined by "comprehensive moral doctrines." The state, Rawls concludes, is therefore not an ethical community of the good:

Justice as fairness assumes, as other liberal political views do also, that the values of community are not only essential but realizable, first in the various associations that carry on their life within the framework of the basic structure, and second in those associations that extend across the boundaries of nation-states, such as churches and scientific societies. Liberalism rejects the state as a community because, among other things, it leads to the systematic denial of basic liberties and to the oppressive use of the state's monopoly of (legal) force. (Rawls 1987, 1 on. 17)

The distinction between state and community (or communities) protects the individual liberty of persons as subjects of law and also enables them to share as citizens the *common* end of political justice. This common end must not however endanger the basic liberties of legal persons, nor does it apply as a conception of the good that determines the identity of the ethical person. Ethical identity and legal-political identity have to be kept apart just as ethical communities and political communities have to be distinguished (which are not however to be understood as merely instrumental legal communities; see chapter 3.1).

Sandel does not distinguish sufficiently between these conceptions of community and person. By regarding "family," "tribe," and "nation" or "people" in a single series as "constitutive communities," he loses sight of the fact that the conception of the person as "rights-bearer," as Taylor (1985i, 274) says, is located at a more abstract level than the conception of self he discusses. The highest-order interests of the moral person lead to a theory of justice that determines the rights and duties of citizens as persons of law but does not specify particular conceptions of the good for individuals (or groups). Rather, these rights and duties form a *protective cover* for ethical conceptions of the good. Individual rights grant the ethical self constituted in the community the latitude to develop and the formal possibility to examine critically and revise this identity. This possibility does not have any direct ethical implications in the sense of particular individualistic ideals of the good life.²⁰

This analysis thus shows that in the debate between liberals and communitarians it is necessary to differentiate between different conceptions of the person, to which different conceptions of community correspond. To the relations between person and community discussed here there correspond various kinds of relations of recognition—of an ethical or a legal-political nature. These dimensions must not be reduced to one another: legal relations cannot replace ethical ones or substitute for them, or vice versa. “Legal person” is an abstract conception that must not be understood ontologically; in legal relations it is fundamental rights and duties that form the basis of the legally regulated basic structure of society; in ethical ones it is “comprehensive” ethical doctrines that determine the good life of individuals and the “strong evaluations” (Taylor) of their identity. To recognize a person as an equal bearer of rights is one thing; it is quite another to recognize this person as the person who he or she is in all his or her attributes. In this distinction, a starting point has been found for the critical analysis of the discussion of the “atomistic” conception of the human being: inasmuch as the reproach of atomism implies that the idea of equal legal persons entails a “liberal self” to which a particular conception of the good life and of freedom *from* communities corresponds, it rests on a conceptual confusion. It is important to see that legal-“negative” (personal freedom to act) and ethical-“positive” freedom (in the sense of self-realization) are connected to each other in a complex relation (yet to be analyzed), but that they are not located at the same conceptual levels. Arguing for individual rights does not mean arguing for the individualistic plans of life of “unencumbered” persons.

Thus, as a systematic outcome of the Rawls–Sandel debate there emerges a first differentiation between the ethical person and the legal person (the person as a bearer of rights and a subject of law)—without this outcome implying that the Rawlsian model of the original position is the only or best possibility to justify principles of a society’s basic structure on the basis of a conception of practical reason, that is, principles that do justice to this differentiation. This possibility will be the object of further analyses that will reveal the necessity to go beyond Rawls’s theory (without thereby affecting the outcome of the controversy with Sandel, however). But what matters first of all in the current context is the question of how the distinction between ethical person and legal person is to be understood precisely. If the legal person forms a normative framework for the ethical person, one that both formally *enables* ethical identities and *limits* them in content, is this conception of the legal person ethically *neutral*? Aren’t the highest-order interests of the moral person themselves part of a particular, albeit “thin,” liberal theory of the good, and isn’t the distinction between ethics and law therefore willfully misleading?

The answer to this question is of central significance not only to the

possibility of liberal political theory, but also to a deontological comprehension of morality as a whole. The latter's thesis is that universally valid norms and principles, in contrast to ethical values and conceptions of the good, have to be *universally* justifiable, without recourse to particular conceptions of the good. In contrast to ethical values, legal norms and, to a different degree, moral norms raise a claim to justified general validity "for all," whatever ethical conceptions persons may have. *Legal norms* demand observance by all legal persons as members of a particular legal community and are the outcome of a legislative process within a political community; whereas *moral norms* claim universal validity, that is, are binding for all human beings as members of the human community (without applying in positive law). *Ethical values*, on the other hand, have a different validity claim: they are valid only for individuals who can identify with these values, that is, who can affirm them as part of their identities in view of their life histories (as histories within communities and particular contexts). Ethical values and conceptions of the good answer the question concerning one's own identity and the good life "for me"; general norms answer the question of how persons' action toward other persons can be generally legitimated, that is, in consideration of the justified interests and needs of all those affected. Here, it is not principally a question of who I am or who I want to be, but how I ought to act toward others. Legal norms concern not primarily the question of morally justified action but that of action according to laws that apply within a legal community. They regulate "external" conduct and specify how a person has to act toward others according to the prescripts of law (hence the question of the legal person as the subject of law), as well as how relations between citizens are to be regulated in the general interest (hence the question of the citizen as the author of law). Ethical values and universally binding norms represent *different answers* to *different practical questions* that correspond to *different validity criteria*.²¹

It is important to recognize that this provisionally introduced distinction of contexts in which persons are confronted by different practical questions is a criteriological distinction that does not isolate particular value realms as belonging, in an a priori manner, to one or the other context. Thus ethical values frequently raise general, unconditional claims to validity (and are accepted as such by persons), and ethical questions are posed to persons as members of particular communities (and are therefore not in the narrow sense of the term "private" questions). What is essential in this distinction is the fact that different *reasons* count as answers in one or the other context—that, for instance, moral questions have to be answered by "sharable" reasons. However, this analytical differentiation will not become productive until the complex connection between these contexts has been examined—and hence, in addition to

the conceptions of ethical person and legal person, which have been mentioned so far (but not yet clarified), the conceptions of citizenship and moral person will be discussed.

The problem of the distinction between ethical values and general norms is, as will be seen, at the center of the communitarian critique of the separation of *ethics and law*—thereby raising the question of the ethical neutrality of law (chapter 2)—the separation of *ethics and politics*—with reference to questions of the integration of the political community and those of political legitimation (chapter 3)—as well as the separation of *ethics and morality*—with special reference to the question of the justification of universal norms (chapter 4). Can the concepts of law, democratic community, or the morally right be determined without constitutive notions of the good?

The Ethical Neutrality of Law

The dispute about the priority of the “right” or the “just” over the “good” has a special significance in the context of the question of the ethical neutrality of the liberal conception of the legal person—the conception at the center of the answer to the communitarian critique of the liberal self. And it is to be understood as a dispute about the priority of individual *rights* over (communal) conceptions of the good. Isn’t there in this conception of the person and of his or her fundamental rights—so the communitarian suspicion runs—a hidden conception of the good that is concealed by the claim of being based on general norms and not ethical values and of being “neutral” toward these values? Aren’t the “highest-order interests,” to which the liberal legal person corresponds, part of a particular ideal of the person, one that does not indeed match an atomistic theory of the self—so much must be conceded after the debate about the self—but one that does however exclude in a practical sense certain competing conceptions of the good and thereby forfeits its neutrality at the level of *justification* as well as at the level of political and legal *practice*? Within current liberal theory, the debate about these questions has led to a remarkable differentiation concerning the status of “liberal values.” In what follows I first put forward the liberal arguments for the ethical neutrality of general norms (and basic rights) (2.1), then the communitarian counterarguments, and finally the various reactions to these on the part of liberal theorists (2.2). What is important here is to distill the various ways in which the concept of “neutrality” is used. In a further round of critique, it will be seen how the conception of legal person must be interpreted so that particular ethical identities can be recognized (2.3). On this foundation, finally, it will be possible to formulate a conception of basic individual rights (2.4). The central idea of this chapter is that an intersubjectivist theory upholds the liberal principle of neu-

trality in a particular manner and can integrate communitarian reservations without being ethical in the wrong way.

2.1. LIBERALISM AND NEUTRALITY

Liberalism is primarily a political (and not a uniform moral) theory that evolved under particular historical circumstances and has continued to develop up to the present. The ends of this political theory were the following: the struggle against absolutism and for civil and economic liberties and basic rights guaranteed by a constitution, as well as the struggle for the separation of church and state, that is, for religious tolerance. In his *Two Treatises of Government* (1690) and *A Letter Concerning Toleration* (1689) John Locke gave these ends a paradigmatic philosophical justification. Early liberalism with its doctrine of natural law as the expression of human dignity and liberty (Bloch 1986) thus reacted to the major social and cultural transformations of its time: to the rise of the bourgeoisie in a radically changing social and economic structure and to the political demands of this bourgeoisie; to the reformation and the schism of the church; and, finally, to the decline of the traditional, metaphysically legitimated worldview, which was challenged by a new concept of science. The order of the natural and social world was no longer regarded as hierarchically structured, with every living being having "its" place and keeping it. In this sense Hobbes was the most radical social philosopher of his time. Liberalism is therefore the political child of modern times and the Enlightenment, one that finally found its epochal expression in the American and French revolutions.¹

The fact that liberalism is a political theory that has been developing now for more than three centuries explains the problems that arise in providing a clear definition. Three central values must in any event be mentioned, irrespective of how they may assume concrete form: *personal liberty*, *social pluralism*, and *political constitutionalism*. Arguments for social equality or popular sovereignty must be constructed on the basis of these values; they are not themselves part of these central foundations.² With regard to the moral justification of liberal principles (equal rights and a fair political system, i.e., one that safeguards basic rights constitutionally) there are various arguments and starting points—corresponding to these three elementary values:

- (a) Liberal principles can be justified primarily in their function as safeguards and guarantees of personal freedom as "negative liberty," that is, freedom from political tutelage with regard to how one ought to live.³
- (b) Liberal principles can—in view of incompatible differences between

citizens concerning conceptions of the good life—be understood as an agreement to let mutual tolerance prevail in ethical questions of the good life.

- (c) Liberal principles can be understood as norms that are justified by a general consensus among those who live according to these norms. They express a general interest.

By no means do these alternatives exhaust all possible models of justification nor are they mutually exclusive. They do nonetheless express different focal points of justification, which can be designated *individualist*, *pluralist*, and *proceduralist*. Common to all is of course the distinction between ethical—“personal”—values and moral—“general”—norms, that is, values that exist within law and norms that can serve as the foundation for law. To determine more precisely this characteristic, which leads to the claim of ethical neutrality, I discuss in what follows current liberal theories that weigh individualist, pluralist, and proceduralist aspects differently. Here the goal is to clarify the understanding of “neutrality.” This is a condition for discussing on the one hand communitarian objections and on the other the position of “ethical liberalism,” which unlike the three justification strategies mentioned (or better: in a particular version of the individualist approach) justifies liberal principles via conceptions of the good.

Ronald Dworkin’s theory is an example of an individualist approach. In his essay “Liberalism” he defends the fundamental liberal principle of the right to “equal concern and respect,” that is, nondiscriminating treatment of each citizen as a person with the same liberties and with the right to an allocation of social resources that guarantees equal opportunity (1985b, 190–91).⁴ Ultimately, Dworkin argues, this elementary right to equal concern and respect is a supra-positive natural right that human beings have as human beings, even if it always has to take on a specific form in positive law and be interpreted concretely (cf. 1978a, 182). The principles of formal and material equality justified on this basis (and compatible with one another), Dworkin further argues, are *moral* (and not ethical) principles and are therefore “neutral on what might be called the question of the good life” (1985b, 191). If that were not the case, with respect to the first principle of fair treatment, a government might instruct or force citizens to pursue one particular way of life or give preferential treatment to a specific one;⁵ whereas for the second principle of equal opportunity, particular ethical conceptions of “virtue” or “merit” might determine the criteria according to which social resources were distributed. This treatment would violate the right of all persons to be treated as equals, which according to Dworkin is the “nerve of liberalism” (1985b, 183); individuals have a “right to moral independence” (1985f, 353), which “trumps” (353) util-

utarian or communitarian ends and considerations. Liberal principles guarantee the legally secured possibility of living one's own, self-determined life, this being the central meaning of the demand for ethical neutrality. Ethical neutrality guarantees the equality of persons in their basic rights. Accordingly, Dworkin's formulation of an individualist liberalism derives the right to personal autonomy and the principle of neutrality from a basic right to treatment as an equal—an important difference from individualist models such as Nozick's (1974), for whom the ownership right to one's own body and to the fruits of one's labor is fundamental. Unlike Nozick's approach, Dworkin's fundamental natural right already relates to social and political conditions and has therefore always been a "political right" in the sense that its addressee is a political community (see Dworkin 1978d, 273). This addressee is constitutive of the realization of this right, it is not however the source of its validity.

Bruce Ackerman's attempt at philosophically justifying a liberal theory of justice shares with Dworkin a strong concept of equality but is not a "right-based" theory (Dworkin 1978a, 171–72). In his approach, the liberal principle of neutrality toward the good is itself constitutive—unlike Dworkin's model, as the latter (1985c, 205) emphasizes—and is not conceptualized in a theory of rights to equal concern and respect. In comparison to Dworkin's theory of rights, the dialogic model of justifying political and social distributions of power, which Ackerman proposes, has the advantage that it seeks to determine more concretely the criterion of "neutral" norms and to operationalize it in political contexts. Thus a first important step toward the possibility of a more contextual interpretation of the conception of legal person—as a bearer of individual rights and a person of law—has been taken insofar as the *moral* content of the meaning of being "a bearer of individual rights" is explained not in terms of natural law but through the (yet to be specified) principle of the legitimacy of norms that are to be justified generally; and, accordingly, the *legal* content of the meaning of being "a subject of positive law" is left to its determination within a democratic political community's institutionalized procedures of justification—taking us outside the dispute between natural-law and positivist theories.⁶ This interpretation, which points to an internal connection between "legal person" as the addressee and "citizen" as the author of law, pushes—as will be seen—liberal theory beyond itself inasmuch as in this respect liberalism and democracy form an indissoluble connection.

Though Ackerman's theory is proceduralist in the sense that it grounds principles of justice in a general agreement of all citizens, the most important of the three principles he assumes to be elementary is the "principle of neutrality," which reflects the pluralism of society. Whereas the "principle of rationality" requires that social and political power relations be legitimated by good reasons and not by the exercise of power, and the

second principle, the “principle of consistency,” imposes upon the participants of these justification dialogues the condition that the reasons they advance in various contexts do not contradict one another, the “principle of neutrality” specifies more precisely what reasons are good reasons: “No reason is a good reason if it requires the power holder to assert: (a) that his conception of the good is better than that asserted by any of his fellow citizens, *or* (b) that, regardless of his conception of the good, he is intrinsically superior to one or more of his fellow citizens” (Ackerman 1980, 11). According to Ackerman, for this model of dialogic justification it is not necessary to assume that the participants are not really convinced of their personal conceptions of the good; it is sufficient in a dialogue on the legitimate distribution of scarce resources that one accepts that alter ego cannot be forced to accept the higher value of ego’s conception of the good. The ends that the distribution of resources is to serve cannot therefore be controversial ethical ends; rather, they must be backed by generally shared reasons; and the latter justify, as Ackerman attempts to show, a state of formal equality before the law and an initially equal distribution of resources. He calls this state “undominated equality” (1980, 28).

Ackerman’s theory is problematic in two respects. First, the criterion for the distinction between legitimate and illegitimate ethical reasons remains unclear; and, second, this distinction is reified in that ethical arguments are regarded as nonpublic and as not open (in the political sense) to dialogue (see chapter 3.1). In the present context, the criteriological question left open by Ackerman is important: what does it mean to speak of an ethical disagreement that justifies excluding certain arguments on the basis of “conversational restraint” (1989, 16)?

In a manner similar to Ackerman, Charles Larmore stresses in his attempt to justify the ethical neutrality of “political principles” that the “political ideal” of the priority of general principles must be distinguished from the multitude of “personal ideals” that determine the good life in the private sphere. Neutral principles of equal rights can be justified only “neutrally,” namely as a procedural *modus vivendi* between incompatible conceptions of the good. This procedural justification is based on a “universal norm of rational dialogue” that stipulates the following:

In discussing how to solve some problem (for example, what principles of political association they should adopt), people should respond to points of disagreement by retreating to neutral ground, to the beliefs they still share, in order to either (a) resolve the disagreement and vindicate one of the disputed positions by means of arguments which proceed from this common ground or (b) bypass the disagreement and seek a solution of the problem on the basis simply of this common ground. (1990, 347; cf. 1987, 53)

This principle of neutrality does not rule out ethical arguments from the outset; that is to say, not until they prove to be irresolvable in “reasonable

disagreement" between persons who strive to come to a consensus. In this case, which according to Larmore is an irreversible consequence of the pluralism of ethical values in modernity, citizens have recourse only to "minimal" (1990, 340–41) common ground that all can share. Following his "contextual" (1987, 29) conception of justification, these commonalities (this "neutral ground") are not the *result* but the *presupposition* of a rational agreement. However, these presuppositions are only partly contingent, since the *modus vivendi* of common principles is not a purposive-rational compromise of ethical communities but is morally justified. What is required of citizens is not primarily that they strive for social peace but that they morally recognize the basic norms of rational dialogue and of mutual respect for persons as ends—to put it in Kantian terms—a respect that calls for dialogue in the first place and is thus more fundamental. The principle of neutrality is therefore not just a less than perfect solution in view of irreconcilable ethical differences but a moral principle of justification: "If our aim is to devise principles of political association and if we are resolved to respect each other as persons in this effort, then the principles to be established must be ones which are justifiable to everyone whom they are to bind" (1990, 351).

The concept of "reasonable disagreement" does however remain insufficiently specified, if the appearance of a dissension is already enough to require recourse to the common, neutral ground (ultimately: basic moral norms) and the bracketing of conflicts. Here it can be seen that the separation of "political principles" and "private," ethical conceptions, whose coexistence constitutes the core of the idea of *modus vivendi*, makes dialogic justification appear more as conflict minimization by resorting to a prior minimal consensus (and thereby reducing complexity) than as a process of argumentative universalization. "Neutral dialogue" is introduced by Ackerman and Larmore primarily as a conflict-avoidance strategy to guarantee the primacy of liberal principles, especially individual rights.⁷ Ultimately, they present the—insufficient—criterion that distinguishes "reasonable" from "unreasonable" disagreements and reflects the different "codes" of ethical-private and political spheres (cf. Holmes and Larmore 1982).

Although in this respect the pluralist element leads to a certain reduction of the proceduralist one, it makes a crucial course setting within liberal theory, one that allows an explanation of the idea of the priority of the "right" in terms of a proceduralist theory; on this basis, the concept of "reason" implied in the term "reasonable disagreement" is to explicated according to certain criteria.⁸

The principle of liberal neutrality—namely, that disputed ethical values may not serve as the foundation for general norms—therefore requires a special mode of procedural justification for such norms, one according to

which “no one could reasonably reject” these norms—to borrow a formulation from Thomas Scanlon (1982, 110). It would thus be “unreasonable” in a moral sense to reject these norms, whatever ethical convictions one may have. Thomas Nagel has attempted to explicate this “higher-order impartiality” (1987, 216) of general norms within the framework of a theory of “public justification.” This impartiality is on a level *above* ethical questions—according to Nagel, it is on the level of what is generally binding and can therefore become the foundation of valid law. The question is: when is legal force legitimate and how are the limits of tolerance within a liberal state to be determined? To be more precise: how can the members of a religion, for example—being convinced that their religion is the path to happiness or salvation—be restrained by good reasons from enforcing it upon other “nonbelievers”? Nagel proposes two arguments; one a Kantian, which could be termed the argument of *reciprocity*; and one an epistemological, an argument of *generality*. Both arguments aim at a separation of ethical (personal) values and politically acceptable (public) principles.

The argument of reciprocity insists on it being morally wrong to force someone to share an end of which he or she is not convinced, even if the person exercising the force feels certain that it is to the advantage of the other. In this case, a person is being used—to put it in Kantian terms—as a means to an end to which he or she did not agree (Nagel 1987, 233; 1991, 159–60). However, whether an action transgresses against the requirement of reciprocity depends on a description of the act’s context, Nagel argues. If the force to convert exercised by person (or group) A on person B is described as deliverance from eternal damnation, person A could acknowledge that he or she would not condemn the reverse case—that he or she was being forced—as being incompatible with his or her true interests. If however the action is described as interference in a person’s religious freedom, person A cannot simply claim that he or she is not violating the principle of reciprocity (1987, 236; 1991, 162). This description of the situation does however presuppose that the first answer is not acceptable. To demonstrate this, Nagel resorts to the second, epistemological argument of generality.

This argument has to show that it is illegitimate to refer simply to the *truth* of an ethical conception in order to justify legal force. But Nagel wants to avoid a skeptical position—that ethical truth does not exist—and is looking for a “higher standard of objectivity” (1987, 229). This standard requires of persons that they assume a “universal,” “impersonal” standpoint vis-à-vis their own ethical convictions, one that draws a distinction between “belief” and “truth.” Hence “there is a big difference, looking at it from the outside, between my believing something and its being true” (*ibid.*). Persons should not however stop considering certain conceptions to be true; they just ought to be in a position to assume a standpoint “outside

themselves" that allows them, under certain conditions, to recognize that their truth is *their* truth and thus a belief, a conviction not shared by others. The justification of morality must therefore correspond to a higher standpoint of general agreement, whereas the justification of ethics is a matter of "individual rationality" (1987, 230). This is synonymous, Nagel says, with an "epistemological division between the private and the public domains" (*ibid.*).

The justification of norms that are to be valid for all must therefore be public, which means that one has to be in a position to make one's reasons accessible to public discourse and to convince others of one's own conceptions in such a manner that "*they have what you have*, and can arrive at a judgment on the same basis" (232). If this is not possible, there is then reason to assume that part of the conception, which is not convincing, is to be attributed to personal belief or religious reasons. Nor is it presumably possible in such a case—this being the second condition of public justification—that there is an explanation for disagreement that would lead to the identification of an error ("errors in their evidence, or identifiable errors in drawing conclusions from it") on the part of one of the conflicting parties. This is not the case in a confrontation between incompatible personal convictions such as those of different religions. In questions that ultimately lead to such confrontations, Nagel considers tolerance necessary in such a way that they are not the object of majority decisions.

The second argument is nonetheless exposed to objections that led Nagel to withdraw it in favor of a reformulated version of the first argument, that of reciprocity (see Nagel 1991, 163). He now sees the criterion for displaying tolerance in ethical questions located in the fact that it is immoral to exercise political control in the "most central ends of self-realization" (164), a condition of which is the freedom to choose one's own good life. The Kantian argument of reciprocity is strengthened to the point that only reasons the other can accept grant the right to treat him or her in accordance with these reasons—insofar as a particular, central realm of moral questions is affected (from which there follows in turn the problem—yet to be discussed—of specifying this realm). In withdrawing his epistemological argument, Nagel is reacting to objections such as those raised by Joseph Raz (1990, 36–46), who questions the possibility of persons holding their convictions to be simultaneously true and in a certain sense—namely, after assuming the "impartial" standpoint—not true, or just to be a belief or a conviction. The "epistemological separation between private and public" proposed by Nagel does not do justice to the character of what it means to consider something true. What one considers right "privately" one defends "publicly" too.

Nevertheless, this critique can be answered in a way that supports Nagel's second argument in a modified form—by means of an intersubjectivistic

interpretation of the criterion of generality. The problems with Nagel's proposal, about which Raz has misgivings, come from the manner in which Nagel describes the moral point of view as "impersonal" or even as a standpoint from which persons objectivate themselves, step out of themselves, as it were, and call themselves into question ("look at certain of their convictions from outside" [1987, 230]). According to this interpretation, it does indeed seem as if an ethical conviction is valid "from inside" but not "from outside," just as Raz (1990, 43) criticizes. Nagel believes he can explain the difference in validity modes between ethical values and general norms according to the criteria of the subjective and objective validity of these values and norms. Thus the "higher" objectivity of general norms or values is ultimately presented through its affirmation by an impartial standpoint of rational insight into objective truth (see Nagel 1986, ch. 8). The criterion of impartiality is located in this *objectivity*, not in intersubjective-general *acceptability*: objectivity is the presupposition of generality and publicity. The difference between subjective and objective values is only "shown" in public justification and not constituted by it. If however the distinction between ethical and moral validity is separated from an objectivist conception of validity, then it becomes evident that moral reasons must be intersubjective-general, discursively redeemable, *shared* reasons (cf. Korsgaard 1993). The difference between ethical values and generally binding norms is therefore not to be understood as an epistemological difference between a subjective conviction and an objective truth that, insofar as it is recognized, questions the validity of the former. Rather, it is essential to keep the contexts of ethical and moral questions apart.⁹ Ethical values frequently (though not always) raise the claim of being ethical truths, of representing absolute (metaphysically or religiously justified) standards for the good life. As such, they answer the question of the good life "for me" or "for us" as members of an ethical community. However, in contexts in which it is a question of moral norms that are to be valid "for all" persons as members of different ethical communities, the reasons for their validity must be general in the sense that they cannot be reasonably rejected by any person.

A truth valid "for me" can claim moral validity only if it can be defended with moral reasons; ethical "truth" is not automatically moral "rightness" since for this to be the case, a personal truth would have to be justifiable "interpersonally." This does not mean that a person views his or her ethical convictions from an "impersonal" perspective; he or she is forced to provide "public" reasons for them only in the specific case in which he or she claims that these convictions have *moral* validity "for others" generally. Here it is important to see that the reasons sufficient for answering a person's ethical questions do not become ethically false per se for this person if they do not turn out to be an acceptable basis for general norms. It just means that

there are different ethical conceptions and that morality is not the medium to demonstrate their *ethical* truth or falsehood. A form of life does not become false because its general realization cannot be morally demanded. Just as ethical reasons are not necessarily general reasons in a moral sense, moral reasons are not sufficient to determine the good life.

With regard to the justification of generally valid norms, this presupposes a revised connection between Nagel's two arguments of reciprocity and generality. Reasons are good moral reasons only if they can be justified reciprocally: if person A demands of person B no more than what he or she is willing to grant, and if person B cannot reciprocally reject this demand by pointing out a one-sided situation description or a projection of interests, needs, values onto him or her by person A (reciprocity), and if, in reference to the interests of all those affected, the reasons can be justified and accepted by all with good reasons (generality). Only then are they the reasons for general norms. Reasons must be addressed to the other reciprocally and to all others generally in order to justify validity "for everyone." An ethical conviction that does not pass this "test" is not necessarily devalued in the ethical sense, but it cannot raise a validity claim in the moral sense. That one affirms or rejects a particular way of life for oneself is a question different from the question as to whether one wants to make a form of life binding for others or prohibit it. In this case one must be able to show that one is not disputing others' right to something that one claims for oneself (e.g., the right to one's own way of life); and the person must be able to provide moral reasons (and not merely personal aversions to forms of life) that prohibit certain ways of life—reasons that cannot be reasonably rejected. The two criteria of reciprocity and generality have to be met. This is how the difference is to be explained "between the values a person can appeal to in conducting his own life and those he can appeal to in justifying the exercise of political power," to use Nagel's formulation (1987, 221). By means of a *boundary* (in the sense of an argumentative *threshold*) set by the criteria of *reciprocity* and *generality*, one could say, persons are protected from being forced to adopt ways of life or values that cannot be demanded reciprocally and generally; norms, however, that cannot be rejected with such reasons have to be accepted—this being the *deontological* component of the idea of public justification. In this way, we can also give meaning to Nagel's idea of a protected core area of personal autonomy. This conception of intersubjective justification does not imply that persons as "good citizens" have to surrender their personal, ethical identity; it does however indicate that the general binding validity of ethical values and of the norms ensuing from them is subject to a further criterion, namely, to the agreement of all those affected. True, ethical values can in principle become the basis of general norms, but only if they are subjected to a *different mode of justification and validity*. The mode of legitimating liberal

principles is therefore general justification, just as Jeremy Waldron interprets the theoretical foundations of liberalism: "Liberals demand that the social order should in principle be capable of explaining itself at the tribunal of each person's understanding" (Waldron 1993a, 61).

Even though Rawls does not put the concept of neutrality at the center of his theory (because of this concept's semantical diversity), the problem it designates is nonetheless constitutive of his theory: how are principles of justice—as the foundation for the basic structure of society—and corresponding institutions to be justified without curtailing in an "unreasonable" manner the pluralism of ethical conceptions of the good, which, according to Rawls, is a "fact" of modern societies? What can and must citizens agree on without abandoning their ethical identity?

True, Rawls also assumed in *A Theory of Justice* that persons have the rational and legitimate end of realizing their conceptions of the good life and that "there is no urgency to reach a publicly accepted judgment as to what is the good of particular individuals. The reasons that make such an agreement necessary in questions of justice do not obtain for judgments of value" (1971, 448). However, in part 3 where the stability of society is made dependent upon a (limited) congruence of the good and the just in the eyes of citizens, Rawls presented his model—he believes, in retrospect—at least as a "partially comprehensive" moral doctrine (1993a, xvi)—not, to be sure, metaphysically justified but nonetheless as an independent and central part of citizens' ethical identity. This serious disadvantage of the original theory now forces him to reinterpret it as a "political" and not a "comprehensive moral" conception. Here, on the one hand, his language usage is equivocal: the "political" conception of justice is also of course a "moral" conception (1993a, 11)—though one that rests on foundations that are not drawn from "comprehensive doctrines" but are "freestanding" (12). The meaning of "moral" from which Rawls withdraws is the ethical sense of a conception that is justified in ultimate values and refers to the good life.¹⁰ On the other hand, emphasizing stability as a central problem is misleading, as Rawls has meanwhile acknowledged (1996, xxxviii–xxxix). It is not primarily a matter of how a democratic society can be stable but of how it can relate a common normative basis to ethical conceptions; basically, it is about the problem of the justification of general norms: "Given the fact of the reasonable pluralism of democratic culture, the aim of political liberalism is to uncover the conditions of the possibility of a reasonable public basis of justification on fundamental political questions" (1993a, xix).

Obviously, a conception of "reason" plays a central part in Rawls's political liberalism. It serves the justification of the theory with the help of a "constructivist" method that builds on "principles" and "ideas of practical reason" (1993a, 107).¹¹ In this connection, it explains to what extent Rawls

raises the claim that the theory of justice is “reasonable” but not “true.” Furthermore, the conception of reason serves to distinguish between “reasonable” and “unreasonable” ethical conceptions and to justify the thesis that the principles of justice are at the center of an “overlapping consensus” of reasonable doctrines. Citizens who hold such doctrines do not have to surrender their ethical identity; rather, they interpret and accept justice from within their ethical perspective. And the conception of reason serves in turn to explain the reasonableness of persons who as legal persons attune their ethical convictions to the primacy of justice in questions that affect the basic structure. Thus the “reasonable” theory is not “political” in the sense that it represents a contingent consensus of ethical doctrines; it is “political” in that it attempts to keep the *moral* limits that reason draws as *ethically* neutral as possible. “[W]hile justice draws the limit, and the good shows the point, justice cannot draw the limit too narrowly” (1993a, 174).

But what does it mean that “reasonable” persons now judge their ethical identity as being ethically good and valuable no longer primarily according to the parameter of the just but by incorporating justice into their ethical convictions? How demanding is this posttraditional conception of reason which, in the event of ethical convictions militating *against* the just, qualifies them as “unreasonable”?

To answer this question it is necessary to recall the conception of the “reasonable” to which Rawls referred in the debate with Sandel and according to which the conception of the person on which the original position is based includes the “moral power” of having a sense of justice and of being capable of social cooperation. Reasonable persons, Rawls says, have the capacity of practical, “shared and public political reason” (1993a, 9); they are willing to propose and observe fair principles of cooperation; what is more, they are morally motivated because of a “conception-dependent desire” (83–84) to act as free and equal citizens according to principles “that cannot be reasonably rejected by persons who are motivated to find a free and informed basis of willing agreement in political life” (124). Rawls thereby adopts Scanlon’s formula (see above) for morally justified action: the foundation of “reasonable” action is principles that are to be “publicly” justified in the sense that they cannot be *reasonably* rejected. The common basis that is generally nonrejectable in this manner is, according to Rawls, the political conception of justice, which was justified with the help of the original position; it satisfies Scanlon’s criterion, Rawls says, since primarily (though not only, as will be seen) ideas and principles of practical reason have gone into its justification—it “represents” free and equal persons in a “reasonable” initial situation that leads to “reasonable” principles. Scanlon’s criterion is *aufgehoben* (sublimated), as it were, in the original position, whose principles represent a starting point for the “public reason” of citizens.

The recognition of “reasonable” principles presupposes, Rawls argues, a second aspect of the reasonable, apart from the willingness to engage in fair cooperation; it is an aspect that elucidates the concept of “reasonable disagreement” employed by Larmore and Nagel. Reasonable persons recognize the “burdens of judgment” (or the “burdens of reason” [1993a, 54]). These burdens explain the reasons for the disagreements among “reasonable,” that is, neither irrational nor egoistic persons, but ones oriented toward reaching understanding (1989a, 235–39). According to Rawls, it is often not clear what counts as evidence in a political-moral question and what considerations are to be weighed in what way; in difficult cases, moral concepts can encounter their limits and be indeterminate; different experiential backgrounds and especially ethical values influence practical judgments; good reasons might be advanced for two mutually exclusive alternatives; finally, limited social space unavoidably leads to giving priority to certain values over others without the latter being of lesser value in all respects.¹² All these grounds lead to normative conflicts that cannot be definitely resolved on the basis of theoretical or practical reason; we must therefore reckon with irresolvable, though not unreasonable disagreements *within* the bounds of justice. One can express it like this: it might not be unreasonable not to want to accept a particular form of life (and its values) for oneself; this does not make this form of life unreasonable, however. To acknowledge the “fact” (1993a, 58) of the “burdens of judgment” is a demand of reason: acknowledging its own limits and the inevitable plurality of ethical perspectives. According to Rawls, reasonable persons see that there can be ethical differences that must be accepted because the individual positions are neither obviously irrational nor immoral—even if one does not share them oneself. Hence, Rawls’s view (xviii) of reasonable comprehensive doctrines that recognize this as being “incompatible” has to be relativized to the effect that they are incompatible not in a moral but in an ethical respect—there remains an “overlapping” consensus. His point is that comprehensive doctrines in a “reasonable” pluralism exhibit both aspects of being reasonable. They accept the priority of justice principles (which they incorporate as part of their comprehensive doctrine) and know that ethical differences between reasonable persons are not a reason to force opponents to adopt one’s own view. “To conclude: reasonable persons see that the burdens of judgment set limits on what can be reasonably justified to others, and so they endorse some form of liberty of conscience and freedom of thought” (61).

This view of what is demanded of persons as citizens of a well-ordered society is “not an epistemological idea” (62), as Rawls emphasizes, since it does not demand of persons that they bracket their ethical convictions as mere “opinions” in contrast to the “objective” moral truth of justice. In the presupposition of the acknowledgment of the limits of reason, however, it

does have “epistemological elements” (ibid.). This acknowledgment refers to the limits of *one’s own* reason and that of *others*. The former does not necessarily lead to the circumstance that one’s own conviction is no longer considered right but does lead to critical examination rather than dogmatic defense of one’s conviction; and this, the more the latter leads to understanding others’ convictions against the background of their genesis, either (the strong version) to seeing in them a certain normative justification or (the weak version) to recognizing them only in their meaning for the other person, even though one considers them not even partially right for oneself. Neither precludes the possibility of wanting to convince this person of the merit of one’s own values; it only requires attention to the reciprocal conditionality of ethical perspectives (cf. Hinsch 1992, 25–26).

What is more important than this *cognitive* dimension of ethical self-relativization is its *moral* dimension, according to which tolerance is required not because of the dilemma posed by normative indeterminacy but by virtue of insight into the legitimacy criteria of general norms. For this Rawls falls back on the criteria that were identified in connection with Nagel as that of *reciprocity* and that of *generality*:

Of course, those who do insist on their beliefs also insist that their beliefs alone are true: they impose their beliefs because, they say, their beliefs are true and not because they are their beliefs. But this is a claim that all *equally* could make; it is also a claim that cannot be made good by anyone to citizens *generally*. So, when we make such claims, others, who are themselves reasonable, must count us unreasonable. (1993a, 61; italics added)

Here it is evident that both aspects of “being reasonable”—willingness for public justification and recognition of the burdens of reason—are indebted to the principle of practical reason, namely, only those norms may claim general validity that are reciprocally and generally justified; and those persons are in a practical sense “reasonable” who are cognitively *capable of* conducting and morally *willing to* carry out this justification. They are able to provide and accept good reasons and they can distinguish good *ethical* from good *moral* reasons. This does not mean, as mentioned above, that ethically good reasons “for me” or “for us” cannot be cogent reasons for orienting one’s own life toward them as being “true”; it only means that when ethical values claim general validity “for all,” they require reasons that can be reciprocally and generally justified. In this way, moral consensus and ethical difference become compatible, and the criterion of “cannot be reasonably rejected” becomes more clearly determinable. After all, the principles of justice themselves (and the norms compatible with them) are justified as ones that form a “reasonable” basis for society by not being reciprocally and generally contestable, unlike ethical values. It is in this respect correct to say that the principle of reciprocal and general justifi-

cation is the basis of the “original position,” such that Rawls’s device of justification is just one way of applying this principle. The following can thus be concluded: practical reason is differentiated according to ethical and moral aspects on the basis of the principle of justification, so that reasonable persons recognize the *threshold of reciprocity and generality*; they can advance good reasons in each of the particular *practical contexts*.

This proposal of a distinction between contexts of ethical and moral *validity* has the advantage of grasping the criterion of the “reasonable” and its relation to ethical “truth” more precisely. According to Rawls’s conception, “reasonable” persons regard the principles of justice as “part” of their own ethical doctrine and therefore as “true” (and not just reasonable)—nevertheless, justice (and reason) trumps ethical values (and therefore “truth”) if they come into conflict with it. To explain this conception of the priority of reason as well as the compatibility of truth and reason now *within* the perspective of a comprehensive doctrine, Rawls follows Joshua Cohen’s (1993, 283) suggestion that in questions of justice reasonable persons (a) refer indeed to “their” truth, which is contained in the overlapping consensus, but (b) activate only the “part” of their convictions that lies within this consensus, and (c) recognize that reference to the “whole truth” is not possible since this would be equivalent to an argument on the basis of mere beliefs (Rawls 1993a, 127–28). However, this distinction between reasonable “truth” and mere “belief” within the ethical perspective of one person remains rooted in Nagel’s epistemological conception, which transforms the *criterion* of morally good reasons shareable in justification discourses into a particular *attitude* toward one’s beliefs (even if this is not understood objectivistically in Nagel’s sense). As “reasonable” truth, truth within the overlapping consensus would be “truer,” as it were, than truth outside of it; in contrast to that, it is more plausible to assume that it is not more or less true but satisfies *other* validity criteria in a different practical context.¹³ The overlapping consensus is to be understood not as a static stock of “true” and “reasonable” values that enjoy a special normative and epistemic position within comprehensive doctrines but as a dynamic consensus on norms that, in questions of justice, *prove to be* “publicly” justified and “reasonably” acceptable on the basis of good reasons. Reasonable persons recognize general norms *because* the latter are reciprocally and generally justifiable and thus acceptable to every person. In this sense, they can be reasonably (i.e., without good counterreasons) integrated into his or her comprehensive normative identity.

Reconstructed in this manner, insight into the necessity of reciprocal and general justification does not presuppose a gap between the two “parts” (Rawls 1993a, 38) of the normative perspective of justice and the good. Ethical self-relativization in questions of general legitimation does not mean casting off one’s own ethical identity, but it does mean being willing,

in contexts relevant to justice (and only here), to limit one's own identity-determining values in view of others' ethical identity, and to do so to such a degree as to respect the value of the other person's identity *for him or her*. Hence, the basis for mutual tolerance is not doubting the ethical validity of one's own values (or of values generally) but recognizing what it means to have an ethical identity. Awareness of the constitutive connection between ethical values and the identity of persons, together with knowledge of the context connectedness of "strong evaluations" (Taylor), as well as acceptance of the threshold of reciprocity and generality, lead to the exercise of reciprocal tolerance. The image of the "atomistic" person has receded into a dim distance; the right to an ethical identity is not an atomistic right but one that reflects the significance of values to persons.¹⁴

Thus, to summarize, "reasonable" persons recognize the possibility of a plurality of ethical answers to questions of the good life—answers that are reasonable insofar as they are neither irrational nor immoral. Furthermore, they recognize the significance of such answers to persons and respect them even if they regard them as ethically unsatisfactory answers. They therefore recognize—and it is here that the moral dimension of insight into the limits of reason begins—that ethical answers have to be answers that relate affirmatively to "my" (*jemeinig*) life. This insight does not rule out the attempt to convince others of the quality of certain values that would enrich their lives; but it does rule out restricting their ethical form of life with reasons other than those reciprocally and generally justified. Respect for ethical identity is therefore morally required.

Recognition of the threshold of reciprocity and generality is a normative demand that is indispensable for the members of a legal community. The principle of neutrality, which implies this threshold (and the boundary between contexts of justification), serves therefore in liberal theory to justify individual rights to freedom of ethical self-determination within the bounds of morality. These individual rights are reciprocally justified, "negative" rights to the possibility of determining "positive" projections of ways of life—John Stuart Mill (1989, 57) speaks of "different experiments of living." An "enforcement of ethics" is ruled out inasmuch as it seeks to universalize a particular way of life and thereby violates the two criteria of justification. In this model of normative justification there is also the internal connection between liberal neutrality and democratic self-determination among citizens—a connection neglected by liberal theory and one that reveals itself when the question is raised as to what it means to justify *legal norms*. I shall return to this.

Against the background of this discussion, one can determine more precisely what "neutrality" means.

(1) The central meaning of neutrality follows from the *principle* that only those norms that can be justified reciprocally and generally can claim gen-

eral validity. The principle of neutrality therefore distinguishes a *criterion* for the justification of the validity of norms. The “neutrality of justification,” or “neutrality of reasons,” or “procedural neutrality” are terms that hint at this principle (without determining it precisely in this form).¹⁵ Neutrality in this sense refers to the moral *impartiality* of the justification.

An important distinction has to be observed here, one frequently neglected by liberal theories. Insofar as it is a matter of justifying basic *principles of law*, in particular basic rights, moral arguments for or against their validity are required. These principles claim—in accordance with their abstract core, which has to be determined and institutionalized concretely in legal terms—deontological validity as norms that are not mutually contestable and therefore make moral demands on law. That moral norms (have to) enter into positive law in this way does not mean that they constitute a “superordinate law”; it simply means that basic principles of law are to be justified according to the criterion of *strict reciprocity and generality* and can be restricted *only* by reasons that satisfy this criterion. This requirement does not approach law from the outside, in the sense of natural law: the persons themselves with vulnerable identities are the ones who demand reasons for any restrictions imposed on their form of life, reasons that have to be justified in the strict sense and to which then *all* those affected have to be able to agree. The coercive character of law can be legitimated only if it does not violate the justified rights of persons to respect for their person and can be followed “on the basis of insight” (Habermas 1996a, 121).¹⁶ Law—when it is a matter of the sensitive, morally relevant areas of basic rights—has to be justifiable with “shareable” reasons. It must correspond to the threshold of reciprocity and generality. Herein lies the rights-guaranteeing character of the neutrality principle.

The criterion of *restricted generality*, in contrast, applies to normative regulations that relate not primarily to moral questions and rights but to political questions, which do indeed also have to be regulated in the general interest but in which legitimate compromises and majority decisions are nevertheless possible. The reasons advanced here do not have to be morally “shared” reasons but, in the broadest sense of the term, “political” reasons, into which ethical or pragmatic viewpoints enter.¹⁷ If however moral questions are affected, they cannot be “trumped” (Dworkin) by other viewpoints. They then require a *raising* of the threshold of reciprocity and generality. Prohibiting or limiting certain forms of life on the basis of ethical or even pragmatic considerations violates the criterion of strict generality; promoting certain values on the basis of an imperfectly general judgment, for instance, promoting art, does not *prima facie* concern the moral problem of discriminating against certain forms of life.

Thus ethical neutrality does not mean that law is entirely free from ethical values or that political communities cannot have strong evaluations. It

does however place certain conditions on an “ethicization” of law. It does not imply a dichotomous relation between ethics and law; the division of regulations that are to be justified generally in the strict or restricted sense cannot be determined in terms of content *a fortiori*—what matters is the reasons for and especially against a regulation. For the possibly disadvantaged are the ones who question the given reasons and raise moral problems and thereby bring about a “switching” of justification criteria. The critical potential of this concept of law—which I still have to discuss—rests here.

Norms that are not the object of “reasonable disagreement” are therefore general in the strict sense; they constitute the framework for treating questions that are controversial in the reasonable sense. Ethically controversial values cannot then be the foundation of generally binding norms, but the question is whether compromises—on the basis not of shared reasons, but not of entirely opposing reasons either—are not perhaps possible, compromises that conform to a general need for regulation without being morally problematic.¹⁸

(2) The question of the normative justification of the neutrality principle has to be separated from the principle itself and its meaning. Is there a “neutral” justification of the principle of neutral justification? Does the principle itself rest on a theory of the good, on a conception of moral rights, on moral-skeptical assumptions, or on a conception of practical reason? These questions will be dealt with in the following section.

(3) Since the neutrality principle relates primarily to the validity criterion of general norms, it does not imply neutrality in the process of justification in the sense that ethical arguments would be excluded from it. Political discourses are not “neutralized”; what is important is that ethical arguments, when they propose values as the foundation for general regulations, be “translatable” into universal arguments. They must be compatible with the principle of public justification; however, they do not therefore completely detach themselves from the ethical background from which they originate. The criteria of strict and restricted generality do not disengage arguments or justified norms from their social contexts.¹⁹

(4) No liberal theory defends the thesis of a “neutrality of effect” or a “neutrality of consequences” in the sense that the realization and institutional implementation of norms within a legal system has the *same* effects on all life forms in the legal community and all conceptions of the good present there.²⁰ Neutrality prohibits ethically motivated discrimination against forms of life; it does not guarantee that all are affected in the same way by the decisions and development of the political community and by social change. An ethical justification of legal regulations cannot as such be inferred from the different effects these regulations have on ethical communities in practice. Though this is possible in the critical sense, there

do not follow from this any affirmative consequences in the sense that law is and should be unavoidably justified ethically.

(5) However, the liberal state must observe a “neutrality of aims” in the sense that “the basic institutions and public policy are not to be designed to favor any particular comprehensive doctrine” (Rawls 1988, 263)—for instance, by establishing a state religion. This neutrality conforms to the above-mentioned “weak” or “restricted” generality of political regulations insofar as a legal community can translate collective ends into valid law, but this must be done in a legitimate procedural way and the criterion of strict generality may not be violated (cf. Habermas 1998a).

(6) With regard to the relation between law and legal person, ethical neutrality is understood—by Dworkin, for instance—as “equal concern and respect,” that is, as the principle of treatment as an equal, be it formal or material, before the law. Linked to this is the problem of whether ethically neutral law is “blind” to ethical differences that justify special attention. Here it must be seen that “neutral” equal treatment links equality and difference appropriately and sensitively.²¹

(7) As Sunstein (1993) in particular emphasizes, the principle of neutrality and impartiality does not mean that existent conditions appear as justified in the sense of a “status-quo neutrality” and, inasmuch as the state does not change them, it remains “neutral.” “Neutral” reasons have to be generally justifiable, whether they are for or against existing institutions (cf. Ackerman 1990).

This differentiation of (heterogeneous) meanings of the concept of neutrality may be incomplete but ought to help clarify the concept to such a degree that the various critiques of liberal neutrality can be better understood against this background. Thus, in what follows the arguments on the justification of the neutrality principle will first be discussed and then the principle’s implications for an understanding of equal treatment will be examined.

2.2. INDIVIDUAL RIGHTS AND AUTONOMY AS A GOOD

The communitarian critique of the neutrality claim of norms of liberal justice disputes, on principle, the possibility of a division between ethics, law, and morality. According to this critique, the principle of general justification merely conceals a particular, individualistic theory of the good; neither in its justification nor in practice is liberal neutrality neutral toward ethical conceptions. Various arguments can be distinguished in this critique.

A fundamental argument against liberal-deontological theory has been advanced by MacIntyre: the charge of skepticism. According to it, the claim to neutrality in justification is not a position that can be defended morally

but is rather the outcome of a “moral catastrophe,” namely, that of the Enlightenment’s attempt to justify a conception of morality free from historical traditions, ethical practices, and a teleological view of human nature. Without these three elements—the central elements of a concept of virtue, MacIntyre says—there cannot be a conception of justice. According to his Aristotelian theory, morality and ethics cannot be distinguished (MacIntyre 1984a, 152); that is, norms cannot be justified generally and independently of particular values. Politics in a pluralistic state without a common conception of the good is “civil war carried on by other means” (253).

The argument with which MacIntyre supports this thesis rests on a particular theory of the person, which has already been discussed in connection with Sandel’s critique of Rawls. MacIntyre uses almost the same words as Sandel when he remarks that the identity of persons is formed in particular communal contexts, in “roles” that incorporate certain obligations that individuals cannot discard except at the cost of losing their identity. “Hence what is good for me has to be good for one who inhabits these roles. As such, I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point” (MacIntyre 1984a, 220). These identity-determining values, MacIntyre argues, make it impossible to have a neutral (“impersonal”) and impartial deontological standpoint of morality, one conceived for “nonpersons” (see 1984b)

In its similarity to Sandel’s conception of the person, MacIntyre’s theory inherits the same problems. Thus it does not sufficiently explain how the many dissimilar roles, which he lists and which belong to various contexts, can be unified within one identity, how conflicting values can be judged, and what it means to be recognized as an autonomous person.²² Furthermore, it leaves unclear how the self, whose moral identity is context-bound in this manner, can transcend the moral limits of certain particular communities in “search for the good, the universal,” which MacIntyre explicitly envisions (1984a, 221). In connection with “evil” practices and traditions that do not provide any internal possibilities for critique, he even speaks of the necessity of resorting to a “moral law” (200). He cannot however justify such a universally valid law within his theory because, in his view, a self that distances itself in a radical manner from its community loses “all genuine standards of judgment” (1984b, 11; see chapter 4.3 below).

A deontological theory, by contrast, is not forced to endorse an ethical or a moral skepticism. It does not have to doubt in principle the possibility of objective values, nor does it have to understand the norms that it distinguishes as universally binding as compromises in a war of all against all. Recognizing the possibility of “reasonable disagreement” neither includes nor excludes a radically skeptical position regarding the good (Rawls 1987, 12–13; Larmore 1990, 341). Though liberalism is an offspring of the skept-

tical Enlightenment (Barry 1990), it can nonetheless also maintain the view that there is a plurality of incompatible objective values between which persons and communities have to—tragically—decide, so that a liberal society is the place where most—though not all—of these values can be realized.²³

More important, however, is the following. If MacIntyre differentiated between the various communities he lists, the difference between relations of reciprocal recognition that distinguish ethical from political and moral communities would become evident. Then it would be seen that there is the “civil war” he diagnoses only if members of ethical communities recognize solely their own kind and have no respect for “other” persons as legal cohorts, fellow citizens, or moral persons—persons who do not share their own conception of the good. This respect is, however, not an ethical but a moral requirement—the moral requirement to recognize others as equals despite their difference. But since MacIntyre rejects more abstract, legal as well as moral relations of recognition and transforms all norms into ethical values, he does not do justice—descriptively—to the conditions of modern pluralist legal communities or—normatively—to the requirements of mutual recognition. With regard to the problem of the neutrality of legal principles, this means that, by undermining the distinction between general law and particular ethical values, MacIntyre also reads “legal person” in a concretistic sense as a description of the self. Since norms are for him always of an ethical nature, abstract legal norms correspond to an abstract “emotivist” self that has no deep bonds anymore. It cannot however be concluded from the thesis of persons’ being members of constitutive ethical communities that legal communities either have to be ethical communities or consist of atomistically singularized persons. The crucial point is that the legal person is just the abstract cover for concrete identities in the form of general and equal recognition—an abstract cover that presupposes conceptually neither that ethical values are not taken seriously nor that moral principles of equal recognition are mere compromises. Thus Dworkin underscores that “Liberalism cannot be based on skepticism. Its constitutive morality provides that human beings must be treated as equals by their government, not because there is no right and wrong in political morality, but because that is what is right” (Dworkin 1985b, 203; 1985c, 205).

MacIntyre does however have another, more important argument. Even if it is granted that liberalism is not based on a skeptical position, and even if it is recognized that the abstract conception of legal person does not contain a description of the person, the claim to morally justified ethical neutrality and tolerance conceals the fact that liberalism is based on “a particular conception of the good life” (MacIntyre 1988, 345). Correspondingly, liberalism is no longer to be regarded as the breakdown of all

traditions but rather as one tradition among others that may not raise a claim to priority of a moral kind. It enjoys currency only within a particular, Western culture, and there only among those who share the individualistic theory of the good on which it rests. The theory of the legal person is not per se already a theory of the self, but it reckons with social conditions in which individuals seek to realize themselves, in an impoverished manner, as “ghostly” (MacIntyre), “unencumbered” (Sandel), or “neutral” (Taylor) selves without “deep” communal bonds. Liberalism rests, as it were, on a “bad theory of the good”: “The starting points of liberal theorizing are never neutral as between conceptions of the human good; they are always liberal starting points” (MacIntyre 1988, 345). The foundation of Rawls’s “thin” theory of the good, for example, is a “thick,” individualistic theory. The failure to find a neutral justification is reflected, as Sandel claims, at the political level: the ethical conceptions that do not conform to the liberal theory of the good are marginalized and excluded. Liberalism is nonneutral not only in respect of its *effects* but also in its *ends*, and its *justification*; furthermore, the ethics on which it is based is without substance. These are two claims—that liberalism rests on a theory of the good and that this is a problematic theory—that have led to different liberal answers. The central communitarian critique thus doubts the possibility of a separation of values and norms: what liberalism demands in terms of ethical self-relativization can be philosophically *justified* and subjectively *pursued* only on the basis of a liberal theory of autonomous life. We shall have to pay attention to these two aspects of the critique in what follows. Basically, the first question under discussion is the philosophical justification of the neutrality principle; the discussion of the possibility of acting according to it, and of the sacrifice that this requires of ethical identities, then follows.

Before that, however, it is important to take a second look at the communitarian arguments. Below the level of their common thesis that the claim of liberal neutrality is false and that it is based on an individualistic theory of the good, there are important differences. In MacIntyre’s dichotomy between Nietzschean nihilism (read: skeptical liberalism) and Aristotelian traditionalism there does not seem to be any room for a conception of equal rights and recognition. Persons are ethical subjects “through and through”—there are no norms that span roles and communities and that are not themselves in turn part of a tradition of self-understanding. Thus the universal “moral law,” which he calls for in *After Virtue*, seems in later writings to be possible only within a Christian, Augustinian, or Thomistic tradition (1988, 198).

Sandel’s critique of liberalism is also based on an ethical-contextual theory of the self and of norms. Accordingly, the “procedural republic” must be changed in such a way that ethical bonds are granted recognition and—in a political respect—that self-government in small units is made possible.

His theory does however permit two interpretations; on the one hand, the radical questioning of all abstract, legal conditions of recognition (by drawing parallels between “family” and “nation” and “people” as constitutive communities, and by emphasizing the primacy of an ethical common good); on the other hand, the more moderate thesis of promoting self-government, ethical pluralism, and social solidarity. Therefore, in a later text he retracts the equation of family and political community (Sandel 1988, 22) and cannot manage without a conception of equal civil rights when he, for instance, criticizes the exclusion of African Americans from the political community (1984b, 17). Equal, formal civil rights, and not the “shared understandings” of the American political community traditionally reserved for whites, protect the “good” of persons here—and this with formal arguments of equality and not with substantively ethical ones. Sandel’s criticisms, to which I shall return, do however highlight an important question: how can a “colorblind” legal system, treating all persons as formally equal legal persons, grant *special* rights at that point where, because of certain circumstances, this “difference-blindness” (in the broadest sense of the term) leads to the unequal treatment of certain groups in the population?

Charles Taylor has endorsed this critique of procedural liberalism in respect of the question of the recognition of cultural communities (see section 3 below). His view of the problem of ethics and law differs however from MacIntyre’s and Sandel’s. True, Taylor proceeds from a theory of the person and from the thesis that a meaningful life is possible only in harmony with identity-determining strong evaluations, which the individual has already adopted as one socialized in particular communities and traditions; and, on this basis, he also criticizes atomistic theories of morality that focus on rights; but he explicitly identifies in the “transcending goods” that determine the identity of modern subjects “substantive” goods, such as liberty and respect for the dignity of all (Taylor 1989a, 531–32n. 60), which lead to the principles of a liberal democracy. Thus the “primacy of the good” means not that the concept of individual rights is questioned, but that rights are justified via certain “transcending goods” such as individual self-determination, and that from this there follow certain social obligations to acknowledge that strong evaluations are bound to context and community in this manner (1985f, 197; see chapter 3.2 below). The thesis that rights are ethically justified is therefore located at a “higher” level in Taylor’s view than in that of MacIntyre or Sandel. The legal person is not reduced to the ethical person; rather, there is a leading concept of value-constituted identity that permits a differentiation between particular ways of life and general rights. This leading concept of ethical identity and a *moral* idea of the good will therefore be analyzed in the discussion of universalism and justification in chapter 4.4.

Despite the differences between the individual theorists, it can be said in summary that the communitarian critique of the liberal concept of neutrality is of a twofold kind. First, it is claimed that liberal theory rests on a particular, individualistic view of the good life that excludes a priori other alternatives; and second, it is criticized that this view of the good is problematic because of its atomistic character.

The liberal responses to this critique differ according to whether they reject both the first and the second thesis or accept the first and oppose just the second. Larmore, Ackerman, and, with qualification, Rawls belong to the first group, Dworkin in recent publications, Raz, Macedo, Galston, and Kymlicka to the second; they add an *ethical liberalism* to the individualist (rights-based), pluralist, and proceduralist versions of liberalism discussed so far.

Larmore's theory of political liberalism defends the possibility of justifying neutral principles of justice without referring to controversial conceptions of the good life or the more abstractly conceived ideals of autonomy and individuality (Larmore 1990, 342–43). These principles rest solely on the moral norms of rational dialogue—that is, the necessity of public justification on the basis of a “neutral” ground common to all those involved—and of equal respect, that is, the recognition of all persons as ends, not as means. These norms have, insofar as public and not private life is concerned, priority over ethical ideals of the good. This conception extends into the ethical realm of the good life, Larmore argues, only insofar as it presupposes the capability of persons to distinguish between their role as citizens and their roles in ethical communities—to that extent, speaking of a “liberal conception of the person” (351) has a certain justification. This is nonetheless a moral and not an ethical condition that determines the good life in a substantive manner. Moreover, what matters in this connection is that this conception of the person is not the philosophical ground on which liberal theory is based; it is simply implied in the dialogic-general form of the justification of political norms. “We do better to recognize that liberalism is not a philosophy of man, but a philosophy of politics” (1987, 129).

The justification of the neutrality principle by these two norms is itself, Larmore argues, an ethically, not a morally “neutral” justification (53). Concerning the norm of rational dialogue, he refers to Jürgen Habermas's (1979; 1984a, 1:22–42) discourse-theoretic reconstruction of the validity conditions of universal norms. He raises the objection, however, that contextualist recourse to commonly shared, local standards and beliefs is sufficient for norm justification and that the notion of “ideal” conditions of justification presuppose a standard that cannot be met (Larmore 1987, 55–59; 1996, 208). This view corresponds to his model of justification by referring to a “neutral ground”; however, it misinterprets the specification of

justification under “ideal” conditions as an anticipation of *substantive* conditions of reaching understanding beyond particular contexts. Yet, what it means is *formal* conditions of reciprocity and generality, under which consensual agreements can be called “reasonable” in the first place (Habermas 1996a, 311–12). Larmore’s critique that a communicative conception of practical reason is also the object of “reasonable disagreement” (Larmore 1996, 214–15) is thus faced with the problem of how this “reasonableness” can be explicated as a critical standard independently of conceptions of the good. Here, a general conception of “reasonable” justification (and thus of practical reason) is needed.

Whereas Larmore proceeds from the morally justified norms of dialogic justification and equal respect, the philosophical foundations of Ackerman’s dialogic model are unclear. In *Social Justice and the Liberal State* he discusses four possible ways of justifying the priority of morality over ethics in universal questions: “realism about the corrosiveness of power; recognition of doubt as a necessary step to moral knowledge; respect for the autonomy of persons; and skepticism concerning the reality of transcendent meaning” (1980, 369.). Each of these paths leads individually to the goal. In later articles, Ackerman does however criticize Rawls’s strategy of making a conception of the morally autonomous person the foundation of the theory (1983, 378); yet he also wants to avoid adopting a proceduralist theory of morality (1989, 7–8). “Political” justification, Ackerman argues, can be imagined not according to a moral model but as a “supreme pragmatic imperative” (10), and it must attain peaceful coexistence in a political power struggle by keeping controversial ethical questions out of the political discussion. The principle of general justification is thus diluted to a pragmatic principle of avoiding irresolvable political conflicts—the parties in a justification dialogue therefore act primarily according to their own interests, and Ackerman assumes that the interest in social peace will predominate. However, the question of the *moral* justification of the dialogue principle is thereby left open.

Like Larmore and Ackerman, Rawls disputes the assertion that liberalism is grounded in a particular conception of the good, but unlike Ackerman he provides *moral* reasons for this, and unlike Larmore he is willing to recognize certain *substantive* values that belong to the moral content of the theory of justice as fairness. Rawls sees five ideas of the good contained in his theory (see Rawls 1988). The first is the idea of goodness as rationality: the assumption that every person has the capability of forming a rational plan of life that he or she seeks to realize in his or her life. Rawls does not describe how such a plan of life comes about, how it changes, succeeds, or fails; he merely assumes that persons in general have essential ends in life that they want to realize. The first idea of the good is therefore formally defined. To realize their own plans of life, persons need certain means;

and at this point the second idea of the good comes into play: that of primary goods (i.e., rights, liberties, opportunities, material resources, and the social bases of self-respect). According to Rawls, this list of primary goods is so formally defined that it does not favor particular plans of life, for example, possessive-individualistic ones (1975c, 540); rather, it is compatible with a multitude of very different concrete ethical ways of life (cf. Hinsch 1992, 36–44).

But not all “comprehensive doctrines” are compatible with the conception of justice as fairness. The third idea of the good advanced by Rawls is therefore that of “permissible” or “reasonable” conceptions of the good. Here Rawls underscores that his theory of justice is not in a strict sense “procedurally neutral” since the conceptions of the moral person and of social cooperation that enter into the original position are just as “substantive” (1988, 261) as the principles of justice justified in this way. It is however procedurally neutral insofar as it is guided by the principle of the “public basis of justification” (ibid.), which is based on a notion of practical reason independent of ethical conceptions of the good.

Yet ethical views that are not “unreasonable” can also prove on a political-cultural level to be too weak to survive and gain enough supporters. In that case, however, they cannot appeal to political principles of justice to guarantee their survival; they must not be suppressed but they do not have to be especially promoted either—unless special circumstances of justice require this. The conception of justice rules out only those views that violate basic moral principles, and it supports no ethical views in any special way—unless they can provide moral arguments to sustain them. Conversely, the liberal state does not demand of ethical communities that they promote as ideals within their forms of life the “values of autonomy and individuality” in the sense of Kant or Mill; the state tolerates illiberal forms of life to the extent that these do not violate the basic rights of their communities’ members.

Even when justice as fairness is formally defined, Rawls claims that it can highlight certain virtues—these are however political virtues like willingness to cooperate, tolerance, and the practice of justice. These virtues do not constitute determinations of the good life, as “civic humanism” (1988, 272–73) assumes; rather, they describe an ideal of the “good citizen” that, insofar as it is generally shared, contributes to the stability and development of a just society. Nor is the fifth idea of the good, that of a well-ordered society, an ethical idea but rather a political-moral one. This good is not only instrumentally justified—as safeguarding individual rights; rather, it is a “social good”—a good that can be realized only jointly and not individually. Rawls employs here (as in *A Theory of Justice*, § 79) the image of an orchestra that unites individual achievements into a single work, of which each particular individual as well as all jointly are proud. Individual and

general well-being are no longer opposites in a well-ordered society because society may not have priority over individuals and individuals can find their well-being only in an ordered society.

These ideas of the good are “political ideas,” with reference to which Rawls assumes “(1) that they are, or can be, shared by citizens regarded as free and equal; and (2) that they do not presuppose any particular fully (or partially) comprehensive doctrine” (1988, 253). They are therefore justified *generally*—as implications of the principle of the public basis of justification among free and equal citizens—and not ethically—as values that are identity-determining components of the good life for persons or groups. The conception of autonomy that is formally determined in Rawls (the first idea of the good) merely designates the condition that autonomous life is *one’s own* life. Legal autonomy guarantees the freedom to act in a way that does not harm others, whereas ethical autonomy consists in seeking, choosing, adopting, and changing one’s own good. The point of “political” liberalism consists in justifying principles of legal autonomy not through a conception of the good—even a formal one—but through the principle that the subject matter of an overlapping consensus can only be norms that cannot be reasonably rejected, that is, norms that do not contradict fundamental conceptions of person and society, which are “conceptions of practical reason” (1993a, 107). This notion of practical reason enters into the original position; and what is problematic about it is not a particular conception of the ethically good that is connected to it, but the “political” assumptions that are present in, for instance, the theory of primary goods. It will have to seen to what extent these assumptions lead to tension in Rawls’s model and particularly in that which is to be “reasonably” justified (chapters 3.4 and 4.2).

What the answers of Rawls, Larmore, and Ackerman have in common is that they insist on the principle of the ethical neutrality of the justification of liberal principles. They therefore reject the communitarian thesis that liberalism has an individualistic theory of the good as its foundation (and thus implicitly the second thesis too, viz., that this conception of the good is problematic).

An *ethical liberalism*, on the other hand, affirms the first thesis but rejects the second. Versions of this theory have been suggested by Dworkin, Raz, Macedo, Galston, and Kymlicka, among others. They attempt to defend a substantive conception of liberal ethics that justifies liberal principles but is nonetheless formal enough to leave room for a plurality of concrete ethical projects. This seems to amount to squaring the circle: justifying the primacy of principles that can be tolerant toward *different* conceptions of the good with the help of *one* conception of the good—whereby the latter obligates us to be ethically tolerant in the *moral* sense. What character can this “second-order ethics” have?

As has already been noted, Dworkin defends the conception of a fundamental moral right of all citizens to equal concern and respect and (on the basis of this) a principle of “equality of resources.” He introduces the first principle as a natural right that must be institutionalized in a political community; the second principle, that of distributive justice, is introduced as the demand for equal opportunity among citizens to be able to realize themselves, without disadvantage from differences that spring from a worse starting point at birth, from chance, or from certain handicaps pertaining to personal capacities (1985c, 207; 1981b)—that is, from those contingencies that Rawls excludes from the specification of the fair initial situation with the help of the veil of ignorance. In his article “Liberalism,” Dworkin defends his liberal conception of political and social equality as a deontological conception that is grounded in the fundamental principle of the equality of all persons as persons (1985b) and, as such, is neutral toward ethical conceptions of the good: its principles are moral principles that “trump” ethical values and are universally binding; they neither rest on ethical conceptions of the good nor favor particular ethical forms of life.

In contrast to this model, however, in his Tanner lectures on the foundations of this liberal conception of equality Dworkin attempts to find the “ethical foundations for liberalism” (1990, 3); he tries to show that liberal principles can be connected to an “appealing” theory of the good life. It is important to see that Dworkin does not change the content of the principles he defends; instead, he merely attempts to develop an ethical conception that is compatible with these principles and can explain what reasons persons can have to advocate these principles. True, he does not want to have this understood as a question that is aimed at “motivation,” at the empirical motives that can move persons to accept normative principles of equal respect (5n. 1); however, the meaning of the concept of foundations is unclear in this context: is the conception of the good life that he proposes the only possible and fundamental normative (teleological) justification of liberal principles, or does it just supplement another, deontological justification? What does the validity of these principles rest on?

In opposition to Rawls’s or Scanlon’s contractualist theory of “discontinuity” between justice principles and conceptions of the good, Dworkin proposes a “strategy of continuity”—a liberal ethics. Yet this ethics, Dworkin argues, must be “abstract,” that is, more “structural and philosophical” than “substantive” (20): it must be *formal* enough to include “diverse substantive ethical convictions” (21). Liberal, formal ethics is therefore a second-order ethics because it demands neutrality (42) in substantive questions of the good life. It raises a superordinate claim to general validity and attempts to provide ethical reasons for the ethical neutrality of political principles.

To achieve this, Dworkin introduces a number of distinctions. Thus he

differentiates between a “volitional” and a “critical” conception of well-being. The former is satisfied when a person has or achieves what he or she wants, whereas the latter requires that a person have or achieve what he or she *should* want—that is, achievements that distinguish a life beyond subjective preferences but also below objective value standards. The standards according to which persons judge what belongs to a good life have a cultural index but are nonetheless measured by further normative criteria. Now, it is Dworkin’s goal to show that the normativity of critical well-being (“the interests one *ought* to have” [49]) has to be not only a purely ethical but also a moral normativity. What is more, he attempts to demonstrate that ethical and moral normativity harmonize in a manner that provides good reasons for persons to accept liberal principles “naturally” (46) in their own critical interest. Dworkin takes a first step toward this goal in a further distinction between an “additive” and a “constitutive” conception of the good life. An additive appraisal of a life merely considers what successes, experiences, and other things considered valuable are or were to be found in the life of a person without asking whether these values were actually this person’s own ends. But a “constitutive” appraisal does ask this question; here, a life is to be judged as successful only if the person identifies with what has been achieved. Dworkin argues that the constitutive view is to be favored since we cannot speak meaningfully of a person’s good life if he or she does not identify with this life and with what makes it good. And from this argument Dworkin infers the liberal principle that realizing certain values in a life on account of external constraint cannot lead to a good life: no one can be forced to live a good life.

The next distinction made by Dworkin is the one between two models of the good life: the model of “impact” and that of “challenge.” According to the first, a life is judged in terms of the impact it has on the world as a whole; according to the second, the value of a life lies in the inherent value of “a skillful performance of living” (54), whereby “skillful” here means responding appropriately to challenges, “mastering” them.²⁴ A liberal ethics, Dworkin says, favors the second model since the requirements it places on “critical” well-being are less demanding than those of the first model. The good life does not mean living a great and famous life according to objective standards. But what are the parameters for a model of challenge equipped with a cultural index? What do “critical” interests consist in, according to this model? Most parameters, Dworkin says, arise out of the circumstances from which the challenges of life spring: circumstances of life’s place and time, personal talents, preferences, chance occurrences, and much more. The “right” way to respond to particular circumstances depends upon the objective and subjective elements of the situation as well as upon certain standards anchored in cultural self-understandings.

But Dworkin also counts the parameter of justice among the parameters that determine what one ought to do. He counts it not only in the sense that someone who has less than what he or she would be entitled to according to the justice conception of “equality of resources” has fewer opportunities to lead a successful life and to master challenges, but also in the sense that someone who has more than what he or she is justly entitled to also lives a less good life from a “critical” perspective. Plato’s question as to whether an unjust life can be a good life is answered in the negative by Dworkin. If the “challenge” of a life consists in responding to particular circumstances in the best possible way, then it is clear “how difficult it is to lead anything like the right life when circumstances are far from just” (74). At this point Dworkin introduces the moral criteria of fairness and reciprocity. He proceeds on the assumption that the conception of the good life as “mastering” challenges is meaningful only if persons enjoy equal conditions at the outset. Just as Hegel’s master does not achieve consciousness of his own self as a recognized self because he stands opposite the slave, the person who attains a good life on account of a better starting position cannot assume that he or she really is successful. “Hegel said that masters and slaves are prisoners together; equality unlocks the prison for both” (104). Dworkin’s restatement presupposes that it is in persons’ “critical” interest that the value of their lives be *generally* recognized, not only by a limited community of equals but by all the members of a political community. This presupposition is, however, questionable in an ethical respect. That there is not equality of opportunity in a society is *morally* criticizable, but the inequality—seen empirically—does not necessarily lessen recognition for the achievements of someone who, notwithstanding a favorable position (e.g., by virtue of particular ancestry or talents), has accomplished extraordinary things. And to assume that such a person leads a less good life presupposes that this person’s moral consciousness cannot be seen as a general ethical principle. That the ethical-critical interests of a person merge with the sense of justice can be made plausible by Dworkin only if a person accepts the premises of general recognition and success solely on the basis of equal starting opportunities. Then, however, the “categorical force” (25) of justice would depend upon persons’ judging their good life in such a strong manner—the categorical force of obligation would remain hypothetically dependent upon this self-understanding, which, indeed according to Dworkin’s comprehension of the “constitutive” conception of the good, *cannot* be demanded or enforced. Liberal justice would apply only to persons who can and want to understand themselves as “liberals” in this specific sense. This understanding is not however compatible with Dworkin’s view that his conception of equality contains principles that have to be justified in a deontological sense and can attain the status of legal principles, principles that are to be recognized not in the

ethical sense for the sake of one's own well-being, but on account of others' justified claims.

Thus the division between ethics and morality has to reappear *within* Dworkin's ethics. To show that ethically justified liberal equality is "neutral" in its justification and its ends, he draws a distinction between "first-person ethical beliefs" (conceptions of one's own good) and "third-person ethical convictions" (conceptions of the good for others or the general good) and writes: "Liberal equality is neutral about first-person, not third-person, ethics, and only insofar as first-person ethics does not embody antiliberal political principles" (118). The liberal antipaternalism that Dworkin thereby defends means, first, that various, even religious, conceptions of the good are compatible with liberal equality and, second, that only reasons of justice, not of ethics, may restrict individual freedom (113–14). He thereby sets a moral limit to ethical ideals: "Liberal equality cannot be neutral toward ethical ideals that directly challenge its theory of justice" (117). Only general principles legitimate law's coercive character; ethical convictions cannot do this (cf. 1987a). Second-order ethics permits not only a plurality of ethical conceptions of the first person; ultimately, it traces the model of challenge back to the moral principles of equality and tolerance. These principles are *valid for* and *apply to* every person, irrespective of whether the person has a particular conception of the good according to this model. Moral obligation is not normatively tied to conceptions of the good. Justice may well be part of the good of a "liberal person" according to the model of challenge, but it is not called for because it is good for a person. Thus liberal justice is not, as Dworkin claims, grounded in a conception of the good; but rather, *one* possible conception of the good is grounded in justice. Justice is deontologically, and not teleologically, grounded: no ethical *values* are normatively prior to it. Mutual tolerance and material equality of opportunity are grounded in persons' *rights*—they remain "trumps" over ethical conceptions (1990, 9).²⁵

Because of the primacy of deontological principles, Dworkin's theory is not "perfectionist" in the Rawlsian sense. According to Rawls, the principle of perfection is characteristic of a teleological political and moral theory in which social institutions aim at realizing certain human ideals (Rawls 1971, 325).²⁶ In an elitist, Nietzschean form, this theory sacrifices certain principles of equal respect in favor of promoting some persons who have special capacities; in a more egalitarian form, this theory attempts to promote the good of all persons in a form regarded as valuable. Dworkin's formal theory of the good life rejects both forms: the principles of equal respect and equal resources have priority over substantive ethical values. It therefore rules out perfectionism—and, correspondingly, political paternalism. Joseph Raz, however, proposed in his book *The Morality of Freedom* (1986) an ethical justification of liberal principles that leads to a perfec-

tionist political theory at whose center there is a qualitative conception of autonomy.

Raz's main argument unfolds in three steps. First, he attempts to show that a particular conception of personal autonomy (or political freedom corresponding to it) forms the core of liberalism's "political morality." Second, he argues that this conception of freedom (in conjunction with an ideal of autonomy) must not be understood in purely formal terms: freedom is a qualitative notion, it can be realized only under certain social and cultural conditions. Freedom is a value only if it means the possibility of realizing values. Thus, third, Raz concludes that it is the duty of the liberal state to create a context in which valuable options are available for the autonomous "self-creation" of individuals. The liberal state must be perfectionist in this sense. "Autonomous life is valuable only if it is spent in the pursuit of acceptable and valuable projects and relationships. The autonomy principle permits and even requires governments to create morally valuable opportunities, and to eliminate repugnant ones" (1986, 417).

According to Raz, a "neutral" liberal state does not master its task of guaranteeing personal—ethical—autonomy in a substantive sense. An anti-perfectionist policy would undermine the survival of "many cherished aspects of our culture" (162) since it prohibits promoting ethical values that belong to a particular form of life. However, this critique rests on too strong an interpretation of neutrality as a strict neutrality of effects, according to which state measures have to ensure equally the chances that all existing conceptions of the good have of being realized in society (114–15). Yet this interpretation is, as has already been mentioned, not implied; the neutrality principle refers essentially to the *criterion* of the justification of generally valid norms and is not a principle of the equal preservation of ethical forms of life. But Raz also criticizes this understanding of neutrality. According to him, it is incorrect to assume that ethical values are necessarily disputed and should thus not enter into law; for Raz, it is not only norms that can be generally justified. For example, institutions such as monogamous marriage can, on the basis of "unanimous support" (161) in a community, become part of law, and certain measures such as the awarding of art prizes and the taxing of activities (e.g., hunting) can be "perfectionistically" justified without thereby enforcing a particular style of life. To the extent that Raz has such values and practices in mind, he does not contradict the neutrality principle explicated so far. For these measures either are covered by the criterion of the restricted generality of ethical-political questions, which do not violate the morally relevant criterion of strict generality (art and hunting), or, as in Raz's description of the example of marriage, they are not at all disputed and are therefore not at the center of a neutrality problem—for this arises only in the case of conflicting ethical values. To the extent, however, that there is not "unanimous support" for

the legal institutionalization of a particular form of life, the problems of Raz's perfectionism appear: according to what criteria are ethical possibilities that ought to be prohibited judged "repugnant"? And who is to judge them? The "government," the totality of all those affected in their majority, or the individuals themselves?

Raz attempts to solve this problem—which is at the center of a non-metaphysical, Aristotelian-perfectionist political theory,²⁷ and which is all the more difficult because a liberal theory is at stake—by falling back upon the "social forms" existing in a society. They are, as it were, culturally objective practices and behavioral patterns within which—and here Raz embraces a communitarian idea—the good of persons can be formulated as part of this practice and realized. "I mean social forms to consist of shared beliefs, folklore, high culture, collectively shared metaphors and imagination, and so on" (311). These social forms represent the ethical context from which the standards for "valuable forms of life" stem—with the two qualifications by means of which Raz seeks to avoid a problematic conservatism: by regarding these social forms as being internally capable of change and, moreover, by pointing to (unspecified) moral standards that social forms must meet whatever the case (319). However, both problems come together in the case in which law prescribes certain social forms and thereby ceases to be the addressee of claims to equal treatment raised by minorities: law becomes deaf to the claims of "different" communities to equal treatment if the form of life (usually, of a majority) that is criticized by these communities and that marginalizes them is itself an integral part of the law.

Raz tries, however, to avoid a too restrictive understanding of social forms: within a society there exist partially incommensurable and incompatible values and forms of life; there is in a society a plurality of options that are valuable without a clear judgment on their order of priority being possible and without their being jointly realizable within a life. Unlike MacIntyre, Raz regards the compulsion in modernity to be autonomous—that is, to decide between valuable options—not as a loss of ethical wholeness but as a value itself. Autonomy is therefore a fact and a value in modern societies—not an absolute value (391, 3). Consequently, there are no moral rights independently of the "interests" of persons that are recognized within societies as the basis of justified claims to legal protection against the background of what is part of the normative integration of a political community—its "values." "The importance of liberal rights is in their service to the public good" (256). Correspondingly, rights do protect ethical identities, but they protect only those *specific* identities that fit the *ethical* criteria of a particular political culture. Here is the central difference to a conception of rights as the reciprocally and generally justified "protective cover" for ethical-autonomous identities, without having antecedently given

a substantive (and thus potentially exclusive) determination of the good and the valuable and thus of what is to be protected.

According to Raz, autonomy is valuable only as the choice of *valuable* ethical options; and, to contribute to a good life, ethical options have to be *self-chosen* (370–71). There is a tension between these two specifications. On the one hand, autonomy is determined as the choice of the good *of a society* (i.e., of what is considered good within a society); on the other hand, autonomy consists in choosing the good *for a person*. A *substantive* and a *formal* specification of autonomy compete with each other—a competition that ultimately crystallizes in the question of the degree to which the frame of ethically autonomous life may be *limited*.

The authority responsible for this limiting is the government. However, this authority seems to be incompatible with a liberal position and to give rise to the danger of paternalism—a problem that Raz examines in his discussion of John Stuart Mill. The latter’s “harm principle”—“that the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others” (Mill 1989, 13)—can be regarded as one of the basic principles of political liberalism: it precludes an “enforcement of morality,” that is, the political implementation of ethical conceptions of the good, even if less strict interpretations of Mill’s principle apply in protecting persons from certain dangers (safety belts are an example) (cf. Hart 1963). A perfectionist theory does however differ from this liberal-individualist view. It regards it to be the state’s duty to promote persons’ good life in a substantive sense. A political community has the duty to secure the necessary “contexts” of autonomy, to promote persons’ “opportunities” and their “ability to use them,” which the autonomous choice of the good requires (Raz 1986, 413). The harm principle, Raz says, is violated not only when a state illegitimately forces its citizens to do something they do not accept, but also when a state fails to secure them the possibility of a good, autonomous life. “It is a mistake to think that the harm principle recognizes only the duty of governments to prevent loss of autonomy. Sometimes failing to improve the situation of another is harming him” (415–16). However, don’t these two principles—the negative and the positive harm principle—contradict each other? Can a person be forced to be autonomous? To this question Raz responds that though a state has the task of making valuable options available and of giving its citizens the possibility of choosing these options, he denies that this choice may be enforced (417). Since every form of force restricts autonomy, a political theory based on a principle of autonomy cannot enforce a good. “Given that people should lead autonomous lives the state cannot force them to be moral. All it can do is to provide the conditions of autonomy” (420). At this point he gives priority to a formal, negative conception of autonomy over a qualitative-positive, perfectionist

one. On the one hand, Raz points out that the basically legitimate, forced prohibition of “repugnant” options impairs the capability of persons to be autonomous in the first place—that is, he gives priority to this capability in a formal, nonqualified sense; on the other hand, he distrusts political institutions and fears that they could mistake the valuable for the bad and misuse their power. He can thus avoid the paternalism of perfectionist values or of a too powerful state only by having recourse to a nonperfectionist conception of personal autonomy (cf. Sadurski 1990, 110–11).

Despite these reservations, Raz’s theory exhibits certain paternalist features. A special problem arises within a liberal state in the treatment of a minority culture (he does not distinguish here between an endogenous culture, an immigrant culture, or a religious sect) whose members live non-autonomous lives according to liberal standards. In Raz’s view, in cases in which the members of a liberal culture are convinced that the minority culture is “inferior” to them, they are justified in assimilating this culture, even at the cost of this culture’s survival or its absorption (424). This assimilation takes place however on the assumption that in this way the members of this minority culture get the possibility of having a better, more autonomous life. Where it is evident that the change would lead to complete disorientation and disintegration, Raz argues for tolerance and gradual change. Nevertheless, by regarding the liberal-autonomous life as the better life in principle, even for cultural minorities, he violates his culturalist view that autonomy is a value only for those individuals “who grew up in the embrace of the liberal tradition or who at least have felt its attraction” (1). Here again, the absence of a distinction between ethical and moral standards becomes apparent: criticizing a culture as ethically and culturally “inferior” from a particular standpoint does not justify impairing it legally; to do this, moral arguments are necessary (e.g., in the case in which a community denies its own members basic moral rights).

Raz’s model, it can thus be concluded, exhibits the following weaknesses. First, his critique of neutrality falls short of the mark because it presumes too strong a neutrality thesis. Second, his theory does not provide a satisfactory answer to the question of the exclusion criterion for “repugnant” forms of life; insofar as Raz defines the criterion ethically, he violates the neutrality principle and denies persons the possibility of appealing to law as the “protective cover” against ethical discrimination. Though “social forms” can change, and ethical-legal standards reflecting the exclusion of certain forms (e.g., monogamous, homosexual marriage) may gradually alter, law is nonetheless ruled out as the authority for checking existing regulations in terms of aspects of equality because it *itself* speaks the ethical language of the majority. In this sense, ethically justified law does not do justice to ethical identities. Third, Raz’s conception of autonomy remains ambivalently located between a formal and a substantive meaning, whereby

the former serves to support liberal arguments against the danger of paternalism. Fourth, his conception of the state and of law does not assign a central role to the notion of democratic justification. Yet it is in political justification discourses that the claims to recognition of particular forms of life have to be reciprocally defended among citizens having equal rights. Only in this way can these claims enter law, and it is only in this manner that all can then assume joint responsibility for the law. (I discuss political justification discourses in the next chapter.) Fifth, and finally, an ethical foundation of law cannot explain its general and obligating character and the primacy of individual rights: if persons have no “right to personal autonomy” (247) but just rights within the framework of certain values, then law can claim validity only within this framework and appears to others as representing a specific form of life. This does not do justice to the demand for basic rights to personal autonomy—according to the strict generality criterion. What is not disputed here is the fact that values are “constitutive” of persons or that values which are not criticizable morally can attain general, legal validity; yet, insofar as there is a plurality of various “constitutive” values in a political community, the consequence following from the awareness of these values’ significance for persons’ identity consists in the expectation that law will meet the requirement of reciprocal justification. This expectation is not adequately reflected in Raz’s approach.

A number of other ethical-liberal objections to the neutrality principle connect up here. According to William Galston, the requirement of respecting ethical autonomy does not speak in favor of a strong perfectionist promotion of certain forms of life, but liberalism cannot be justified “neutrally” or “pragmatically”: liberal principles serve particular purposes of human well-being and require—at the political level—certain virtues. A liberalism without “liberal purposes” remains empty. This view of an alternative between a second-order ethical justification and a primarily strategic, pragmatic, or conventional justification leads Galston to the conclusion that it must be a “thin” theory of the good on which liberalism is based (1991, 177). The list he proposes comprises goods such as life, the development of human capacities, the attainment of subjective ends, freedom, rationality, social bonds, subjective satisfaction. Galston comprehends these goods as generalizations of human experiences, without raising a strong essentialist claim (169).²⁸ Along with Amartya Sen (1985, 1993), he understands this extended theory of essential basic goods as functions of a good life; the liberal state has the task of promoting citizens’ capacities to realize these functions.

This theory of the good does not however contain a criterion concerning the question of what claims to these goods are *justified* in social contexts; they merely form a foundation for very general viewpoints of the good for persons, which assumes different forms in various contexts. Whether and

in what manner persons claim these goods is left to them, and the degree to which they can demand them from others and must grant them to others has to be reciprocally and generally justified. Thus the formal theory of the good simply explicates central topics of justification discourses; it does not however impose any ethically justified restrictions on these discourses. The priority of the criterion of the reciprocal and general justification of norms thereby avoids the too narrow alternative between an ethical and a pragmatic justification of liberal principles.²⁹

Stephen Macedo's attempt (1990a, 5) to defend liberalism against communitarianism as an ethical way of life that implies certain personal and political virtues does not argue that liberal principles are based on a theory of the good in the way Galston does. Instead, Macedo tries to show that liberal states are "regimes" in the sense that they highlight standards of the virtuous and good life that are neither undemanding nor atomistic. Here, he quite correctly emphasizes "public virtues" such as tolerance and the willingness to provide "public justification"; however, he reifies these into the virtues embodied in a liberal form of life: self-critique, openness, and willingness to experiment. "Liberalism holds out the promise, or the threat, of making all the world like California" (1990a, 278). In this way, Macedo ethically overextends and absolutizes the moral concept of reasonableness, even though he does concede elsewhere that "Equality of respect for persons is, perhaps, the more basic liberal concern, but the good of autonomy has, in a liberal political regime, a status that is independent and worth preserving: the first among equally respectable ideals of life" (253). The normative validity of legal principles is thus not reduced to an ethical validity solely for those who understand themselves as "liberals" in a sense that "encompasses" their ethical life—for instance, in Richard Rorty's sense of "liberal ironists" (1989, 61); even if Macedo seems to assume that liberal tolerance is in the long run compatible only with liberal forms of life.³⁰

This argument of reasonableness, however, gives rise to a further, central problem for a "neutral liberalism." Is the idea of "reasonableness," which was specified above as persons' capacity and willingness to provide good reasons in various contexts, an impossibility? Does it presuppose a "schizophrenic" separation of the ethical and "political" identity of persons? "When it comes to thinking about politics and about what justice demands, we are to suspend or bracket our beliefs—beliefs that perhaps give our life its meaning and make up our very identities as individuals—in favour of a particular understanding of citizenship and society" (Mulhall and Swift 1992, 178).³¹ According to this objection, persons have to be liberals (in at least a partially comprehensive sense) who regard the principle of "public justification" to be a part of what is *as such* important to them ("private" or "public"), and this to such a degree that they accept the priority of justice in political questions. The priority principle must itself be part of their

“comprehensive doctrine.” Hence, liberalism is compatible only with certain forms of life and rules out others *for ethical reasons*.

This conclusion is not justified, however. The fact that generally justified principles are not compatible with all forms of life does not mean that they discriminate against these forms for ethical reasons; only moral reasons justify a restriction of forms of life. One cannot conclude nonneutrality of justification directly from nonneutrality of effect; though this conclusion is possible in the critical sense (as the unearthing of a problematic ethical justification of law), it is then precisely not so in the affirmative sense. For what one criticizes is that the law is justified in the wrong way. Second, it must be emphasized that the ethical self-relativization demanded of “reasonable” persons refers only to conflicts about norms that are to be valid among persons with *different* ethical convictions. This qualification excludes ethical values neither from public discourses nor from law, as long as certain criteria of justification are observed. The acceptance of these criteria is *morally* required and leads to a constraint on one’s own way of life only if the latter places claims *on others* that cannot be justified. The “threshold of reciprocity and generality” is equally respected by the majority and by minorities—and this respect has to be justifiably *compatible* with their ethical convictions, without their having to give up these convictions as answers to ethical questions. The “internal” interweaving of ethical values and general principles to which Mulhall and Swift refer means that the “reasonableness” required in moral and political contexts can be brought into agreement with ethical convictions to such a degree that persons are, *from their perspective* but nevertheless *unrestrictedly*, willing to generate this respect—and this, on the basis of *insight* into the justified validity of general norms.³² This willingness is not demanded for the sake of an ethical good, and there is no particular conception of the good connected to it. In ethical contexts, a plurality of values and forms of life remains valid, ones that are not necessarily “liberal” forms of life in the ethical sense. The idea of a “liberal self,” which is criticized by some as “unencumbered” and is reified by others as an ethical ideal, is not the normative foundation of law; “liberal” principles of law constitute not a particular form of life but a system of justified norms that, to be sure, is *not without ethical demands* (and not entirely without ethical content) but is *not justified on ethical grounds*.³³ Only reciprocally and generally justified law can be ethically pluralistic, open, inclusive, and legitimately binding; only in this way can legal persons be responsible to the law and, as citizens, be responsible for it. (An examination of how this conception of law is to be “situated” in the context of a political community follows in 2.3.)

Thus it is evident that the seven different uses of the neutrality concept can be coherently connected if the question raised in (2.2) concerning the justification of the neutrality principle is answered through reference to

the conception of *practical reason* adduced in the notions of “reasonable” persons and “reasonable” justification. Persons are reasonable in the practical sense if they can provide and accept good reasons in various practical contexts. In moral contexts—which can also be political contexts insofar as their subject matter is moral questions—shareable reasons are required for the validity of norms that satisfy the strict criterion; in political questions that do not primarily affect moral issues, there is a need for reasons that are acceptable generally to a certain degree, ones that can lead to fair agreements or compromises; in ethical contexts, finally, there is a need for reasons that answer the specific ethical questions of what is “my” or “our” good life. The dissimilarity of these contexts does not lead to a fragmentation of the self; it just requires of persons that they pay attention to the dissimilarity for the sake of others and of themselves.

2.3. GENERAL LAW AND PARTICULAR IDENTITIES

Law’s normative idea of recognizing and respecting persons as free and equal legal persons whatever concrete identity they may have as ethical persons implies that the conception of legal person—we can therefore say—represents outwardly the cover for the abstract-formal recognition of the person, and inwardly the cover for the individual’s concrete identity. Hence, to recognize individual rights as normatively binding does *not* mean conceiving of the organization of social life according to the model of contractual relations: that persons have rights does not imply that, in a society that recognizes rights, all social relations—be they marriage, friendship, or the political community—are transposed into legal relations in which self-interested subjects attempt to have “their” rights enforced in the best way possible.³⁴ Hannah Arendt’s (1973b, 108) conception of the “protecting mask of a legal personality” reflects the meaning of *persona* as a “mask” that, as a protective cover, *enables* personal-ethical autonomy and *demand*s of legally autonomous persons that they not dispute this possibility in others.

Against the background of this *ideal* conception of the ethically neutral legal person, a problem crops up when its role as an ethical protective cover turns into one of ethical straightjacket. When does law’s “blindness” to differences in race, gender, and religion become blindness to the special requirements of recognizing these identities?³⁵ A new dimension in the controversy is opened up by this, one that now asks at the level of law how ethical identities can be recognized and protected by a formally and generally formulated law. At the center of legal theory’s critique of the claim to neutrality are especially problems of exclusion or of the nonrecognition of persons who, despite equal “liberal-neutral” rights, do not have the possibility of becoming personally and politically autonomous members of the

political community. It concerns, for instance, problems that arise from religious affiliation, sexual orientation, gender, or ethnic origin.

On the basis of a number of cases adjudicated by the U.S. Supreme Court, Sandel attempts to document his thesis that the liberal conception of the legal person does not do justice to the identity of persons as members of “constitutive communities.” Thus when liberal law attempts to be “neutral” and impartial, it is biased toward those groups that do not correspond to the image of individualistic persons. To avoid this bias, law must include more substantive considerations of an ethical kind. This conclusion does not however seem necessary: it is one thing to claim that law violates the ethical identity of persons in a form that ought to be criticized *morally*, but it is quite another to conclude that law itself must therefore be *ethically* grounded. Two of Sandel’s examples display this.

The first concerns the question of religious identity. Sandel considers it a mistake—one that stems from a voluntarist conception of the person—to ground religious liberty not on respect for the ethical value of religion but on persons’ free choice to lead a religious life. The value of free choice trumps the value of religion, which is thereby degraded to a merely subjective preference. Thus the Supreme Court ruled in a case that an orthodox Jew may not wear his traditional skullcap (the yarmulke) while he is on duty in a clinic of the U.S. Air Force. In the justification provided it is stated that military service makes it necessary to subordinate “personal preferences and identities” to the requirements of the service (Sandel 1989b, 614). Accordingly, the court did not distinguish between a mere preference and a religious duty that is constitutive of a person’s identity.³⁶ Sandel rightly criticizes the fact that this ruling does not do justice to the ethical significance of religious belief and that law must be able to distinguish the significance of an ethical duty from a mere subjective preference. He cannot however show that recognition of this distinction is itself an ethical demand. For the religious person cannot argue for recognition of his or her belief, and the consequences that follow from this recognition, by referring to the superiority or the absolute value of his or her religion, but must refer to the *particular* implications, peculiar to a specific case, of claiming the *general* right to the free practice of religion. The reason for this general right is not respect for a particular religion or its ethical value but respect for the convictions that are constitutive of an autonomous, ethical identity. This right is morally and not ethically grounded since it safeguards the possibility of identity by recognizing the significance that belief has *for a person* and his or her personal-ethical autonomy: it is the religious identity of the person that is at the center of the argument, not the religion itself. A person’s religious conviction is worthy of protection because it is identity-determining, and not because it is religious. Thus it is neither the voluntarist freedom of choice nor the intrinsic value of religion that is protected;

rather it is the possibility of persons to form and maintain (as well as, of course, change) ethical identities. To recognize ethical, identity-determining values does not mean in law that ethical values replace universal-moral norms.

A second example from Sandel demonstrates the problem of grounding rights on certain values.³⁷ He attempts to justify tolerance toward homosexual partnerships and sexual practices³⁸ by referring to the values of marriage, which homosexual relationships share (Sandel 1989a, 534). Tolerance toward homosexuality must therefore be defended with ethical, substantive reasons and not on the basis of a voluntarist conception of the free choice of forms of life, of whatever kind they may be. According to Sandel, the “privacy”—recognized in Supreme Court decisions—that, in matters of the conjugal community, is considered worthy of protection on the basis of the “intrinsic value or social importance of the practice it protects” (524) can also apply to homosexual relationships, which also embody “virtues” such as intimacy, harmony, and loyalty between persons. In this way, Sandel argues, rejecting the liberal-voluntarist conception of neutrality toward ethical values does not necessarily lead to intolerance. But here it is Sandel who does not reach his goal of taking persons’ ethical identity seriously. By presupposing that homosexual couples identify with and live according to the “values” and “virtues” of marriage as are current in society, he does not do justice to the self-understanding of those who do not see their form of life according to this model. And even homosexuals who advocate the legal recognition of a partnership as a marriage do not necessarily have to accept for themselves the traditional implications of this form of community. Yet Sandel, bound to the dichotomy of subjective choice and (socially guaranteed) objective values, overlooks the possibility of arguing with moral reasons for a form of recognizing particular forms of life that comprehends ethical identities not as mere preference nor as the embodiment of values. The “right to privacy” is thus justified not on the basis of certain traditional understandings of valuable practices (Sandel’s “old privacy”), nor by the value of freedom of choice as such (“new privacy”), but on the recognition of persons’ right to develop and to determine by themselves their *own* identity within ethical communities. The right to freedom *from* identities that, from the perspective of those affected, deserve to be changed, and the right to freedom *to* an ethical identity that one can affirm, are what determine the content of talk about a “right to privacy.” It is not the “good morals” of a community that establish the domain of tolerance, but rather moral norms according to which the equal rights of all to a personal identity are to be recognized. With regard to the “privacy” of persons, law thus has the threefold function of (a) guaranteeing a formal framework for the possibility of forming one’s own identity, (b) recognizing and protecting particular identities with certain legal con-

sequences, and (c) maintaining the moral limits of this recognition. Such a conception of privacy as the protection of ethical-autonomous identity avoids grasping privacy as a social no-man's-land of individual autonomy and understanding it as "nonpublic" or noncommunal. Ethical identity and legal autonomy are not opposites; they presuppose and complement each other. The legal person is not ethically determined but is for that very reason ethically "sensitive."

Communitarian critiques of the liberal conception of the person are not alone in casting doubt on this sensitivity. Feminist critiques protest that the conception of the legal person has a predetermination—one dominated by a masculine-individualistic orientation—of what identities law will recognize and what legal consequences will follow from this recognition. Law disregards the requirements of women's identity, critiques insist, precisely at that point where these requirements warrant special legal recognition. The identity that feminist critiques want to see recognized is not however one that corresponds to the traditional self-understanding of society, it is a changed one: what is demanded is a right to the *special* recognition of a *self-determined* identity. Recognition of the concrete person through law must not be understood, as Sandel or MacIntyre asserts, as recognition of the traditional-concrete person in his or her conventionally determined identity.³⁹ Values are not to be given priority over identities. From a feminist perspective, the liberal conception of "privacy" is not therefore too individualistic but too intent on legitimating domination in a sphere such as that of the family, which enjoys the *wrong* protection of the "private sphere." "[T]he legal concept of privacy can and has shielded the place of battery, marital rape, and women's exploited domestic labor. It has preserved the central institutions whereby women are deprived of identity, autonomy, control, and self-definition" (MacKinnon 1989, 194). Feminist critique has an ambivalent relation not only to communitarianism but also to liberalism: the critique of an individualism that recognizes only the claims raised and justified by "masculine" persons stands alongside the individualistic demand for the possibility of a self-determined identity. The distinction between an ethical person and a legal person constituted by general norms makes it possible in this context to understand the critique of the legal person without abandoning this conception and to see how the recognition of "difference" and the recognition of equality can coexist—equal rights require, as *rights to equality*, the *particular* consideration of particular identities.

In exploring this problem, however, one must bear in mind an essential difference between the conception of the "legal person" and that of the "moral person." The "legal person" assumes a form in a particular, legally constituted community only by means of positivization and institutionalization. Therefore, this form is always concretely defined and bears the mark

of a particular, historical-political legal community. It is not until basic rights become positive law that they become binding for legal persons and require a concrete institutionalization and, above all, interpretation. This interpretation is the subject matter primarily of legal—law-interpreting—but also political, law-changing discourses. Hence, in the complex of problems addressed here one has to discern whether critics of liberal “neutrality” are referring to general *conceptual* problems of this notion or primarily to questions of the political and legal *practice* of a particular political community.

Even if it is implied in the notion of the “neutrality of justification” that the *general* legitimation of principles is general in a discursive sense and the “legal person” constitutes a protection for vulnerable identities, feminist critique nevertheless expresses doubt as to whether law’s claim to generality does not necessarily disregard particular “different” identities. The claim to equal treatment of all legal persons thus mutates into injustice toward those who are disadvantaged by this equal treatment, ones who are not in a position to avail themselves in the same way of the rights and liberties granted. Rights and liberties cannot be made use of equally by all persons—social inequalities prevent this. In an unjust society, “neutrality” and equal treatment turn into a nonneutral affirmation of precisely this inequality (Minow 1990; Sunstein 1990, 5). Law, Catharine MacKinnon asserts, is “masculine” through and through: “the law sees and treats women the way men see and treat women” (1989, 161–62). Moreover, law’s claim to be “neutral” and to be “passive” toward the private spheres of social life is not correct: legal regulations intervene in these spheres and maintain social power relations.

To the “sentimentality of liberalism” (MacKinnon 1989, 231) in its claim that a general law guarantees general equality there is the response of two approaches, neither of which wishes to do without the concept of individual rights. One model rejects a special treatment of women with the argument that this treatment just underpins existing differences: it both affirms them symbolically and can in reality (for instance, in labor law) turn out to the disadvantage of women. Hence, so the demand, the goal of legal equal treatment should be favored as much as possible over explicit special treatment (cf. Kaminer 1991). The second position, however, objects to this goal since it sees here a misappreciation of the special problems of women and of their identity (Young 1990, 175). Accordingly, equal treatment of unequals can be achieved only through unequal treatment. The status of the legal person is sensitive to the identity of women only if the “gender-blindness” of law is dissolved in favor of special rights and regulations. According to MacKinnon, however, both approaches—the one emphasizing legal equality and the other difference—suffer from the same weakness, that of measuring the identity of women against that of men: “Gender

neutrality is the male standard. The special protection rule is the female standard. Masculinity or maleness is the referent for both" (MacKinnon 1989, 221). Put differently, both approaches are in a "dilemma of difference," as Martha Minow (1990, 42) describes it: "Governmental neutrality may freeze in place the past consequences of differences, yet any departure from neutrality in governmental standards uses governmental power to make those differences matter and thus symbolically reinforces them." The dilemma consists in the question of how law can do justice to particular identities without binding them to traditional role patterns, on the one hand, or branding them "different," on the other. How can "difference" be preserved and at the same time not have disadvantageous effects: how can it be *recognized*? How can impartiality do justice to particular and unequal parties?

Minow proposes a "social relations approach." It puts "difference" into a concrete social context: what identities are defined as "different," and in what way? And who does the defining? What identities are self-chosen and what ones are not? (Minow 1990, 119). The sensitivity of law thus depends upon those individuals and groups affected examining the validity of existing understandings of difference and equality in respect of their genesis and the possibility of their justification and acceptance (213; cf. Jaggar 1990). Here, rights are indispensable: formerly excluded groups articulate their interests and needs in the language of rights (Minow 1990, 307; cf. Schneider 1991). By recognizing these rights claims, law recognizes persons as "special" and, at the same time, "equal"—as persons with a right to *material* equal treatment, a right that, depending on the particular context, makes it necessary to have special regulations for guaranteeing equal rights to a self-determined identity.⁴⁰ In contrast to a communitarian-substantive or an ethical-liberal conception of the legal person, a procedural comprehension of law provides in this context the possibility of embracing this conception as the "protective cover" of ethical identities, instead of—in the name of social values—placing criteria on it that specify *what* identities are worthy of legal recognition, and in what way. For instance, rights to a "private sphere," insofar as it is understood in the manner elaborated above, are a component in this protection of the "personality" of the person and are not constituted by a previous determination of "the private." The formal cover can maintain its claim to protecting concrete persons only if it remains open to their (self-determined) particularity.⁴¹

The reciprocal and general justification of norms, however, requires that *particular* claims to legal recognition be justified *generally*, that is, that it be possible to draw upon a reinterpretation of the norms of equal treatment. An existing "false" generality must be criticized and changed with the help of general and reciprocally justified arguments, which refer to instances of unequal treatment in concrete contexts.

The scars of a legal community, the history of the exclusion of certain groups from political and social life, determine whether the special consideration required by the equality principle can go so far as to grant, at the price of violating formal equality, to members of these groups—in contradistinction to other persons (as representatives of nondiscriminated groups)—preferential rights, for example, in the form of quotas. Can quota regulations be justified “neutrally”? The discussion between Dworkin and Sandel on affirmative action shows how liberal and communitarian arguments differ in this connection. The argument that preferential treatment on the basis of quotas is unfair because here too it discriminates against a person (a white student who is not admitted to the university because a certain number of places is reserved for African American and other minority students)⁴² because of race is not valid, according to Dworkin (1985e). Such a person is disadvantaged not on account of social prejudice against his or her race but in the name of the social end of bringing about justice. Here “justice” means to create conditions in which members of a heretofore (and still) discriminated minority receive the opportunities that they were denied owing to the history of repression, and would still be denied without the introduction of special measures. This justification makes of deontological principles a societal end state; that is, it seems to transform deontological arguments into teleological ones. Dworkin defends this approach, however, by denying that in this way deontological principles are sacrificed to the advantage of utilitarian ones. The policy of preferential treatment would be utilitarian if it were justified by an increase in the average utility that this policy would have for society as a whole and if it sacrificed the rights of individuals to this end—for instance, the discrimination of a certain part of the population could be justified with the argument of an increase in the wealth of society (1978c, 237–38). Yet the goal of bringing about a more just society, which is at the center of the policy of preferential treatment, is of a different kind: this policy is based not on utilitarian but on “ideal” reflections about a more just society. By distinguishing between a right to *equal treatment* and a right to be treated *as an equal* (227), Dworkin disputes that affirmative action violates the rights of individuals. The right to equal treatment concerns fundamental basic rights such as the right to vote or the right to an appropriate basic education, but not the right to admission to a university, for instance. Without violating the right to treatment as an equal, the university can introduce certain admission criteria that do not discriminate against a person as a member of a particular social group but pursue an end that helps realize justice—more social equality. This policy does not presuppose, as Sandel states (drawing on his objection to Rawls’s justification of the difference principle), a priority of society over individual subjects in the sense that society as the “wider subject of possession” (Sandel 1982, 141) has an an-

tecedent claim to the assets of individuals. Sandel derives this claim from the constitution of the self by the community, through which individuals see themselves as part of a communal undertaking, to which they do not sacrifice anything in the case of affirmative action, but the ends of which they recognize as their ends. However, if this were the justification for the preferential treatment of minorities, it would not only presuppose understanding the nation as a wider subject, to which individuals belong just as parts whose substance cannot be cognized without the substance of the macrosubject, it would also be unclear according to what criteria individuals' contribution to the common good could be legitimately determined and appraised. Sandel's "ethic of sharing" (144) leaves this question open. Moreover, when he discusses the civil rights movement, which advocates the rights of the African American population, he must call upon arguments of general *rights* with which the socially discriminating "self-understanding" of a society can be criticized, thus determining the foundation for the demand for justice in the first place (cf. Sandel 1984b, 17).

Liberal "neutrality" does not mean that "reasons that can be publicly defended" (Nagel 1984, 14) cannot speak for correcting a history of injustice by means of measures that especially promote the individuals of a discriminated group. Whether correction is justified in the specific case of a particular legal community, and how it is to be made, has to be judged ultimately in consideration of the particular circumstances. Constitutive here is the continued existence of past injustice; and it does not have to be demonstrated that individual persons are obligated to render direct compensation since they acquired an immediate "*net benefit*" from the discrimination—thus Robert Fullinwider's (1986, 176) objection to a "backward-looking" justification of affirmative action. Rather, what is needed is the justified assumption that (a) existing inequalities between social groups stem from the discrimination of one by the others (cf. Thomson 1973, 383; Sunstein 1993, 150), and that (b) no other measures are suitable to overcome these effects. Only in reference to this genesis and persistence of the present social distribution of power can the "prospective" end of effectively bringing about equal opportunity be justified and reasons advanced as to *what* group has a right to special treatment. On this basis, we ask of social institutions in a differentiated manner what measures—on a scale of weak to strong regulations for preferential treatment—are justified and promising.

To enable a discourse on making its basic structure more just, a political community must at any rate fulfill a substantive presupposition about how it ought to respond to the rights claims of discriminated minorities: these minorities themselves must have a voice. And this presupposition encompasses the possibility of participating in the political process as well as the means (education and social communication) necessary for it, which en-

able the members of the minority to raise their voice. Without a certain degree of social equality there cannot be equal political participation or formal legal equality (for instance, equal opportunities to take legal action). Equal “value of political liberty” (Rawls 1971, 226) requires that minorities be first of all able to articulate their interests before a political community decides what measures are justified.

At this point, the limits become evident that are encountered by a discussion of the “legal person” that focuses on the normative significance of the conception as “bearer of individual rights” and overlooks the fact that this is a legally positivized status that requires a political-legal configuration through *democratic* procedures of justification. “Legal person” is to be understood as a dynamic conception that is realized and developed within a political community; its content must be determined in discourses on the claims to legal recognition raised by citizens. The liberal principle of neutrality thus pushes *beyond* the self-understanding of liberal theories toward the supposition of an internal connection between the protection of rights and democratic self-determination. The principle of reciprocal and general justification requires a location, a forum where what is to be justified is concretely determined. Ethical persons, who as legal persons are to be protected under general norms in their integrity and identity, must be citizens too: they are not only *addressees* but also *authors* of the law. The political discourse of equally entitled citizens fills the vacuum created when the legal person is not identified with the moral person; instead, its concrete form is regarded as being institutionalized within a particular legal community. This concrete form does have to satisfy moral norms, but it is determined by the political discourse of autonomous citizens who have the authority to legitimately posit and change law. It is here where possible redefinitions of the “nonneutral” content of legal regulations have to be justified. Law is the concrete medium of mutual recognition as persons with a personal identity worthy of protection and with equal rights and liberties; political discourse is the place where these claims must be supported by general reasons. (I return to this in the following section.)

An additional problem must first be considered in a discussion of the protection of identities through individual rights. Is it possible—thus the question—in this framework to justify the *collective* rights of cultural minorities who claim protection for their culture? What is the basis of such claims? What rights can a cultural minority demand from the political community? And what rights have priority within such a cultural community—the rights of its members or the group’s rights to the preservation of its structure? Are group rights asserted only against the political community or also against individual persons within groups? Especially the suspicion that group rights grant collectives too much power over individuals sustains liberal skepticism about this type of rights (Waldron 1993d, 365–66). Will

Kymlicka (1989a), however, argues that the “colorblindness” of a liberal political community must not lead to ignoring minority cultures’ legitimate claims to the preservation of their culture. He attempts to justify this argument with liberal means by defending “cultural membership” as a primary good in the Rawlsian sense. He refers to a cultural context as a “context of choice” (1989a, 169), as being necessary for the development of an ethically autonomous identity within the cultural community to which a person belongs. Now if a cultural community is called into question by the decisions of another, more comprehensive community, as in the case of Native Americans, the decisions interfere with the possibility of these cultures’ members to live in a manner in which they can link their own life history to the history and practices of their origins. Indigenous peoples do have a special *moral* reason to demand the preservation of their own culture by virtue of the fact that this culture already existed in the territory *before* the culture that is now the majority culture developed there—as in the case of the United States and Canada. Their rights claim to cultural preservation and autonomy is sustained by this fact and by the moral obligation of the majority culture not to perpetuate past injustices of extermination, deportation, and discrimination. Their rights claim is therefore not of an ethical kind—the argument is not just that of the immanent “value” of a form of life. The fact that Kymlicka grants moral principles priority over ethical values is also evident in the example he discusses, that of a Native American culture that denies its members certain rights to personal autonomy (Kymlicka 1989a, 197). The liberal-individualist stress on conceptualizing the right to cultural membership as an individual right to the possibility of choosing a lifestyle leads to Kymlicka’s granting individual members of cultures general rights to personal autonomy, even against the self-understanding of the minority culture. Cultural membership is an option for such persons, not a duty. Membership in a comprehensive political community grants the possibility of exit to members of communities who can no longer accept these communities’ practices, insofar as the cultures do not prove to be capable of reform. In short, members of such minorities have as members certain rights *vis-à-vis* the comprehensive political community, the majority itself does not as a group have any particular rights *vis-à-vis* its members. Here, one could speak of an “individual group right.”

Accordingly, Kymlicka’s defense of the rights of a minority culture’s members presupposes not only that this culture can advance moral reasons for special legal respect, but also that there is a danger that, *against* the will of its members, this culture will be marginalized by the dominant culture and may cease to exist. If however a culture changes of its own accord, through the options of its members, then there is no duty to shelter it from this development.⁴³

In Taylor’s view, this argument falls short of the mark since it does in-

deed consider the “context of choice” of existing members of cultures but not “survival through indefinite future generations” (1992a, 40–41n. 16). We cannot, Taylor argues, in this way overcome the problem of a “difference-blind” (43), neutral-proceduralist liberalism according to which a collective end like that of preserving a form of life cannot be realized on account of the primacy of a wide interpretation of “neutral” basic rights. He elaborates this point with reference to the Canadian province of Quebec. Unlike a “politics of equal respect,” a “politics of difference” calls for a “nonneutral” recognition of difference insofar as the preservation of Quebec’s collective identity requires that, *contrary to* a strict application of the Canadian Charter of Rights, certain measures be taken to secure the survival of the culture (e.g., restricting the choice of school for the children of francophones and immigrants; language regulations for large businesses and advertising). “Policies aimed at survival actively seek to *create* members of the community, for instance, in their assuring that future generations continue to identify as French-speakers” (1992a, 58–59). Though the fundamental basic rights of persons are respected, exceptions are however made for the benefit of a politics of the good that serves a greater end: the survival of a culture.

Taylor’s critique of the procedural liberalism of equal rights as homogenizing and difference-blind is nonetheless problematic for the following reasons. *First*, as Habermas points out (1998a, 207–10), it is based on a one-sided interpretation of neutral liberalism that screens out the fact that the content of equal protection rights is determined reciprocally in political discourses, discourses in which those affected examine existing conditions with regard to instances of unequal treatment. Within a federal state, Quebec has political-cultural semi-autonomy—on the basis of a common constitution—as a province that for historical reasons has a special position in Canada. Yet this special position cannot, Habermas argues, lead to “a kind of preservation of the species by administrative means” (222) since the preservation of a cultural context remains an option for persons, not a duty.

Second, this position relates to the problem of the proposal to make Quebec, as a “distinct society,” an exception to the purview of the Canadian Charter of Rights. The politics of the good that Taylor has in mind could lead to a strong cultural-political dominance of a majority within Quebec. This outcome would in turn mean (a) that the recognition of difference within Quebec would be guaranteed solely by the remaining basic rights and (b) that it would be required of the political community of Canada as a whole to accept a procedural liberalism insofar as a particular politics of the good must not be imposed on a cultural minority (French québécois). Contrary to Taylor’s critique, therefore, the neutrality principle proves not to be difference-blind in these two respects; and yet the politics of the good,

which emerges from the “politics of difference,” does not rule out the danger of “homogenizing” tendencies.

The problem remains as to what degree a form of life such as Quebec’s may restrict the “context of choice” of some persons for the purpose of securing its future. To resolve it, one would have to show that no other measures, compatible with political federalism on the basis of a joint basic rights adjudication, are suitable to secure the possibility of persons freely deciding whether or not they want to continue belonging to the francophone form of life. Pointing to the fact that such measures are not sufficient to secure the existing character of this form of life “for all time” overshoots the mark because it ascribes to this character an independent ethical value that exceeds the value of this form of life for persons in the present.⁴⁴

The issue of multiculturalism, however, relates not only to “multinational” societies in which, as a result of conquest, colonization, or confederation, different cultural-historical communities form a common political community, but also to “polyethnic” societies in which different immigrant cultures live together (cf. Kymlicka 1991b). With regard to the latter, special regulations cannot be justified in historical-moral terms; however, there do arise two questions, that of the relation between the ethical “permeation” (Habermas 1998a, 215–20) of law by majority culture and minorities’ rights claims to representation and nondiscrimination,⁴⁵ on the one hand, and that of a possible withdrawal from the common political culture, on the other. In both cases, the concept of “citizenship” is at the focus of attention. What substantive implications does this concept have? How “formally” can it be determined? These debates focus particularly on questions of education. With regard to the legitimacy of a religiously motivated retreat from the modern world, Rawls’s “political liberalism” demands that as citizens members of such ethical communities be instructed in the course of their education not only in what constitutional rights they have, but also in a cultural knowledge that enables them to be active and cooperative citizens and members of the whole society (Rawls 1988, 268).⁴⁶ Membership in traditional forms of life must remain voluntary; it is however respected. Membership in the political community is thus not “neutral” in the sense that it is compatible in all aspects with all cultural (ethnic, religious) forms of life—through the “modesty” of the demands placed on the members of such communities to be citizens too, it is nonetheless compatible with different ways of life. This is a principle that leads to conflicts even in a “multicultural” society such as the United States (cf. Walzer 1992b), but more so in societies in which the political community has strong traditional-cultural, ethical characteristics and sees itself confronted by the participatory rights claims of minorities (see chapter 3). The division between ethical communities, on the one hand, and the legally constituted

political community, on the other, is always precarious and remains the object of political debate.

2.4. BASIC INDIVIDUAL RIGHTS

Consequences for a theory of individual rights follow from the preceding discussion of the question of law's ethical neutrality. The liberal conception of the "legal person"—as the subject of positive law and bearer of individual rights—was determined as being ethically neutral in the sense that it is not based on any ethical conception of the good. Its justification rests on general norms and not on ethical values. The liberal conception of the legal person is not however ethically neutral in imposing restrictions on ethical conceptions of the good or on particular communities; moreover, it is an enabling condition for the development and realization of the good through individuals and communities. Thus liberal theory draws from the "fact of reasonable pluralism" (Rawls)—that is, the decline of ethically integrated political communities—the necessary conclusion of a proceduralist theory of the justification of norms.

The normative-legal status of the legal person not only secures the equal recognition of all persons before general laws and thereby forms an external protective cover for particular identities, but as such it is also sensitive to the rights claims of those identities that, by standard norms of equal treatment, are treated in effect unequally on account of their difference. The claim of being *generally* and *reciprocally* justified obligates law to take into account the *particular* perspective of those who have so far been excluded from the community as a whole. Legal autonomy is the general framework for particular ethical autonomy; legally guaranteed "negative" liberty makes ethically "positive" liberty possible. Individual rights are not located outside contexts of intersubjectivity and are not ascribed to atomistic, contextless, individualistic subjects; rather, they secure general recognition as legal cohorts and the particular possibility of developing personal identities in different intersubjective-ethical contexts and communities.

Basic individual rights are therefore guaranteed by norms that "cannot be reasonably rejected," norms that conform to the *strict* criteria of reciprocity and generality. Thus no person can *reciprocally* dispute with good reasons another person's rights and justified claims that he or she asserts for him- or herself (e.g., the right to one's own way of life), and any argument that generalizes ethical values must be formulated in a way that can be accepted *generally*. Reasons that must be justified in strict reciprocity and generality legitimate norms that, by observing the "threshold" established by these two criteria, do not violate persons' elementary rights claims to autonomy and grant these claims—through the positivization of such

norms—a concretized, protective legal status. If a person attempts to cross argumentatively the divide between what is valid *for him or her* and what is to be valid *for all*, arguments have to be given in accordance with the different validity modes of ethical and general norms. As Nagel (1991, 159) aptly expresses it, “if you force someone to serve an end that he cannot be given adequate reason to share, you are treating him as a mere means—even if the end is his own good, as you see it but he doesn’t.” Put another way, this means that no one may be forced to advance general reasons for the values that are valid for him or her as long as he or she does not violate any moral principles or raise any moral claims.⁴⁷ Basic individual rights are rights to personal autonomy within the limits of generally justified principles—they can be *defended* or *restricted only* by strict, moral-universal arguments. In this sense, they are *justified* (and always justifiable), not simply “given” *basic* rights. Nongeneralizable reasons cannot serve as the foundation for legal principles. In this sense, law secures individual liberty: “*Freedom* (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity” (Kant 1991, 63). The rights of individual liberty—the right to respect for the integrity of the person and for the personal freedom to act—are rights to liberty that cannot be restricted by reciprocally and generally justified norms; in fact, those norms protect them. Liberty rights are thus not “innate” or primarily justified on the basis of “highest-order interests” (Rawls); they are moral rights of “reason” in the sense that they cannot be reasonably disputed inasmuch as persons recognize one another as authors and addressees of the norms to be justified. What is first of all determined in this way is just a mode of justification, not any concrete contents. Therefore, what is foundational is an individual basic *right to justification*, the right of moral persons to veto, as it were, certain norms (or actions).⁴⁸ This right corresponds to the *principle of practical reason* that only reciprocally and generally justified norms can claim general (or, in moral matters, universal) validity: no generality or universality can therefore disregard individuals’ justified rights claims. The right to justification is not to be understood as an “original” liberty right in Kant’s sense; rather, it is inherent in the principle of justification, which has to be “recursively” reconstructed, and which I characterize as a principle of practical reason (see chapter 4.2). Here, “practical reason” is to be grasped not as an authoritative source of moral norms but as the capability of “reasonable” persons to give in the appropriate contexts “good” reasons for (action-legitimizing) norms. Practical reason is understood in a nonmetaphysical sense as a reason *in* (and not outside) intersubjective contexts. This conception of reason, morality, and law makes it possible to provide a justification of the principle of equal individual rights, which corresponds to Rawls’s first principle of justice,

without calling on the thought experiment of the original position. In its revised form, Rawls's principle states: "Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all" (Rawls 1982a, 5; see chapter 3.4).

The conception of the "legal person" is however determined not only in the normative sense to be a person with *individual rights*, but also as the subject of *positive law*. Frequently, these two dimensions are not sufficiently distinguished in the liberal, natural-law tradition (which calls positivism into action); they do nonetheless draw attention to the fact that legal personality embodies only in essence moral norms, the realization of which requires institutionalization, concretization, and interpretation, however. Law is always the law of a particular legal and political community. We infer from the above-mentioned principle of the general justification of norms that legal personality embodies in its *core* moral norms of reciprocal recognition, yet its *determination* and *realization* require, in accordance with this principle, institutionalization within a political community and *legitimation* by this community. This requirement in turn means that procedures of "public justification" in political discourses among citizens are necessary to determine law in the legitimate sense.⁴⁹ The moral content of the principle of general justification must be politically "translated," a translation in which law does not duplicate a transcendental moral order and political discourses do not operate in a moral-free space: the criteria of strict reciprocity and generality do not ascribe content to these discourses but set conditions for the treatment of moral problems that appear in political contexts.

There thus emerges a complex picture of various "contexts of justice" (which still cannot be fully explicated here): norms that can be justified in strict reciprocity and generality are for every human being as a *moral person* obligating norms of action in light of which a person must be able to justify him- or herself in moral contexts to every other concrete person. In legal-political contexts these norms are to be translated into human and basic rights. These rights form the abstract core of the conception of *legal person* (as a general protection of the *ethical person*). Unlike morality, law is valid only within a legal community; it obligates persons to act not in a morally motivated manner but in agreement with the law; it is therefore—with its coercive character—addressed to persons' freedom of choice and stabilizes mutual expectations regarding external conduct (cf. Habermas 1996a, 112). As legal persons, people are the subjects of a certain, institutionalized law, which is the law of a political community. Legal persons are subjects and *addressees* of this law, and as *citizens* they are at the same time its *authors*. It is the consensus of the citizens that first creates (and later changes) law and that is the medium within which claims to recognition are discussed and recognized. This is not supposed to mean that the status of the "citizen"

is not a legal status too; in a normative respect, however, this status adds the dimensions of political rights to participation (*Teilnahmerechte*) and social rights to share society's resources (*Teilhaberechte*)—as enabling personal and political autonomy—to the individual rights to personal liberty. It thereby gives effect to the conception of political autonomy alongside that of personal autonomy and thus to a different dimension of the duties, responsibilities, and reciprocal recognition of “citizens.”⁵⁰

An example of the connection between various conceptions of the person proposed here can be found in Kant. He distinguishes the following “a priori principles” of a legal state: “1. The *freedom* of every member of society as a *human being*. 2. The *equality* of each member with every other as a *subject*. 3. The *independence* of every member of the commonwealth as a *citizen*” (Kant 1983, 72). He determines the first as the right of every human being to “seek happiness in the way that seems best to him [or her]”—that is, ethical-personal autonomy; the second as the right to be subject to general and identical laws irrespective of status or ancestry—that is, legal autonomy; the third as the right, as “co-legislator” (75), as *citoyen*, to pass laws that express the “public will”—that is, political autonomy. Reiterating Rousseau's idea, Kant regards this last one as an essential requirement for the legitimacy of law, since this is the only way to guarantee that law is general: what affects all must be decided by all, “for only to oneself can one never deny what is right” (76),⁵¹ as Kant says (cf. Maus 1992, 148–75). Law requires legitimation through all those affected, as citizens. Liberalism—as a descendant of the natural-law tradition—cannot content itself with justifying universal moral principles without establishing the necessary connection to the democratic constitutional state. Moral rights are not institutionalized and determined by themselves, and law's legitimacy cannot be explained by its being “covered” in its validity by natural-law norms.

This is overlooked by a liberal position that disputes a necessary connection between law and deliberative democracy; even a “liberal-minded despot,” as Isaiah Berlin (1969b, 129) says, could guarantee individual rights: “The answer to the question ‘Who governs me?’ is logically distinct from the question ‘How far does government interfere with me?’” (130). For law is legitimate only because the subjects of law (Kant's *Untertanen*, the subjects of the ruler) conceive of themselves as the authors of the law and recognize their interests in it; that is to say, they acknowledge it as *their* self-given law. There is no other way to answer the follow-up question to Berlin's, namely, what rights do persons concretely have as well as what interference can be justified, and how. General legitimacy and individual freedom to act are conceptually connected in this way in the framework of law. Personal and political autonomy refer to each other.

In his legal theory, Habermas terms this internal connection the “co-

originality” of the two conceptions of the autonomy of persons as the addressees and as the authors of law (1996a, 103–4). Below the level of a *discourse principle* (D) for the justification of action norms—“D: Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses” (107)—he draws a distinction between a principle of morality and one of democracy. The former refers to universally valid moral norms, the latter to the justification of legal norms. The discourse principle and the concept of “legal form”—according to which, as presented above, coercive law relates to the “external relation” of legal persons with freedom of choice—“interpenetrate” in the principle of democracy in such a way that there follows a “logical genesis of rights” (121, italics omitted) that persons as addressees and authors of law must grant reciprocally “if they want to legitimately regulate their interaction and life contexts by means of positive law” (122). These are basic rights to the greatest possible measure of individual liberties, to equal membership, to legal actionability, to political participation, and, in a derivative sense, to securing the material conditions for having equal opportunities to avail oneself of these rights to private and political autonomy. The internal connection between human rights and popular sovereignty means that there is no democracy without the exercise and institutionalization of political power in the form of law (and therefore not without the status of the privately autonomous *legal person*), and there is no legitimate law without democratic legitimation (by politically autonomous *citizens*). But nothing has yet been said about the content of these rights—it is “unsaturated” inasmuch as it is not politically “interpreted and given concrete shape” (125, italics omitted).

This argument rightly avoids the thesis of the priority of moral rights, which have to be determined in “transcendental purity” (129) and are given in advance as natural rights, “prior to the state,” so to speak; but it cannot avoid recognizing the moral core of individual liberties, which justifies speaking in the first place of “human rights” (104) and judging the legal order morally (106). The alternative between natural law, on the one hand, and individual rights as the positivized possibility of liberty without its own moral weight, on the other, is too narrow: the discourse principle itself, understood as the principle of reciprocal and general justification, requires that individual liberty rights be understood as moral rights that cannot be mutually disputed; moreover, these rights constitute the *abstract* core of the legal person and must be politically determined and interpreted in their *concrete* content. Thus no additional external moral requirement is imposed on law other than the one it has to meet in any event according to the criterion of general legitimacy. In its “translation” into political-legal contexts, the moral content of reciprocal justification does not mean that

all legal norms, which must be justified at the level of *restricted generality* with reasons that are in the broadest sense political (ethical or pragmatic ones, for instance), require moral reasons to be legitimate;⁵² this content does however mean that the criterion of *strict* reciprocity and generality requires that, in the case of moral questions that concern basic rights, *moral* reasons satisfying this criterion be given. Basic rights do indeed have a concrete legal content, but they require moral justification: they form the core of the protection of the person, and, for moral reasons, this core *cannot* be limited in favor of ethical or practical considerations. This morally justified primacy of basic rights within law is underscored by Habermas's *deontological* understanding of law (see Habermas 1996a, 256; 1998a, 216). This moral claim made on law does not come from without but is raised against it from within by the claims of those who, to defend their "person," demand strictly reciprocal reasons in the event of an infringement of their rights. *Within* contexts of political discourses, the members of legal communities require that law and morality "*substantively* intersect" (1996a, 207). This conception of a "threshold of reciprocity and generality," as I call it, which gives effect in a procedural-criteriological manner to moral points of view within law, justifies in the first place the demand for the "greatest possible" and "equal" individual freedom. The different validity modes of law and morality are thereby maintained; but moral demands are made on law, ones it must meet as legitimate law.⁵³

Thus the following constellation of personal-legal, ethical, political, and moral autonomy becomes evident. If morally autonomous persons are simultaneously (co-) authors and addressees of moral norms (see chapter 4), then persons are as citizens (co-) authors and as legal persons addressees of legal norms, which make ethical autonomy possible. Until now, the ethical and the legal dimensions have been at the center of the discussion; at the following points, however, reference was already made to the conceptual connection with the concepts of citizenship and political community.

First, without these dimensions the theory of the neutrality of law and of the public justification of legal norms, and their concrete political determination, is incomplete. Law is always the law of a particular political community and the subject matter of citizens' political discourses. This comprehension of law therefore raises the question of the nature of both this community and these discourses. What does the principle of justification mean in political contexts?

Especially the discussion of the feminist critique of liberalism and communitarianism makes it clear that law cannot be primarily the forum in which claims to recognition are raised.⁵⁴ In its discourses and institutions, the political community itself must be the forum in which the relation between generality (legal person) and difference (ethical person) is dis-

cussed and regulated, and in which groups raise their voices to protest against exclusions and to question power relations (operative in how “private” is defined, for instance).

Second, in the discussion of the question of affirmative action it became apparent that it is necessary to give formerly excluded groups certain possibilities to raise their claims politically. For that, not only political but also social rights are required. The status of the “citizen” not only requires formally equal opportunities to participate but also includes material conditions, which make personal *and* political autonomy possible. To secure and to determine these is the task of a political community.

Third, in the discussion of the rights of cultural minorities the question appeared as to what substantive conditions belong to the conception of the full citizen as a member of the political community. How formal or substantive can “membership” in a political community be determined if it is not to exclude cultural differences?

These systematic questions lead back to the debate between liberalism and communitarianism—the questions of political legitimation, of the forum for public discourses, of social justice and solidarity, and of citizenship and political-normative integration. And to analyze the debate on this level of the controversy, the discussion so far has provided conceptual possibilities—for law and ethics form paradigms within which liberalism and communitarianism deal with these questions.

With regard to the first question, that of political legitimation, this means that liberal positions predominantly understand democratic self-government functionally as the means to secure individual rights, whereas communitarian positions in the republican tradition are inclined to regard the democratic community and its practice of self-government as an ethical-collective value, since private “bourgeois” become political *citoyens* in this practice. According to the view of communitarian critics such as Taylor, the liberal conception of society corresponds to a “rights model” (1985k, 210) in which, in contrast to a “participatory model,” citizens conceive of themselves as individuals who have rights claims to equal liberties and defend these claims primarily through court action. In Sandel’s (1984a) and Walzer’s (1981) view too, the central role played by the Supreme Court in deciding essential political questions in the United States points to the democratic deficiency of a “procedural” republic in which citizens conceive of themselves primarily as legal persons.

The second question concerns the possibility of social solidarity and distributive justice. How, the communitarian asks, can there be in a liberal-individualist society arguments for solidarity that are grounded on the joint responsibility of citizens for their fellow citizens? Doesn’t the dimension of social citizenship belong to a conception of full citizenship, and how is this conception to be justified?

The third question refers to the fundamental problem of the normative integration of the members of a political community. What does it mean to be a “citizen” of a state—to be a member of a legal community integrated simply through equal rights and general principles, or to be a member of an ethically and culturally integrated “community of fate”? How can a political community survive that merely consists of a “heap” of atomistic and privatized legal persons, as Taylor (1979, 133), following Hegel (1967, 176–78 [§ 273]), asks. What is the nature of democracy’s *Sittlichkeit* (ethical life), its “ethos”?

THREE

The Ethos of Democracy

The principle of modern states has prodigious strength and depth because it allows the principle of subjectivity to progress to its culmination in the extreme of self-subsistent personal particularity, and yet at the same time brings it back to the substantive unity and so maintains this unity in the principle of subjectivity itself.

HEGEL 1967, 161 (§ 260)

The problem Hegel takes up, that of reconciling the moments of subjectivity and generality, must be regarded as a central issue of political philosophy. Since Hegel, however, the problem has become more acute. Modern states exhibit a pluralism of ethical convictions that calls into question the possibility of citizens identifying strongly with the political community, and yet these modern societies, where traditional bonds of solidarity and community have dissolved, require even more societal solidarity and democratic self-government (cf. Walzer 1990a). This dilemma is accompanied by a second one, for the burden of modern societies' decisions increases with growing complexity, but at the same time the differentiation and the particular logics of the spheres of administrative and economic power restrict the decisions' latitude (cf. Habermas 1976; Walzer 1984). How can modern societies meet these challenges in a manner that connects tolerance and solidarity, democracy and social complexity? What cultural presuppositions and institutional arrangements will they require?

At the center of the dimension of the communitarian critique of liberal theories to be dealt with here is the question of the sociocultural presuppositions of an intact democratic community, whereas the question of the necessary institutions plays a subordinate role. What is at issue here is the "ethos" of democracy: the manner in which citizens conceive of themselves as members of a political community, what they have in common and what responsibilities they bear. Especially the conditions of the possibility of a "public justification" of legitimate norms in democratic discourses as well as the manner of such a justification are the points in question.

The critique of atomism and of the priority of individual rights resurfaces here, not in reference to the constitution of the self or of legal neutrality but as the issue of the priority of individual rights over the common

good of a political community. The concepts of “ethical person” and “legal person” elaborated in the preceding chapters can serve as parameters for this discussion, as has already been remarked. If—to put it in ideal-typical terms—communitarianism conceives of citizenship as being ethically constituted and characterized by certain virtues oriented toward the common good, then liberalism understands citizenship as the primarily legal status of equal individual liberties. Correspondingly, a communitarian position takes social and political integration to be creation of societal unity through shared ethical-cultural values that link the identity of subjects and the collective, whereas a liberal position makes only minimal assumptions about the commonalities that integrate a political community, namely, the reciprocal assurance of basic rights and procedural principles.¹ Thus, in a communitarian reading, political legitimacy is a collective’s “ethical self-clarification” (Habermas 1998b, 245), whereas in the liberal view it is a fair settlement between competing individual interests. In short, the *political community* appears in one reading as a prepolitical, culturally integrated *ethical community*, and in the other as a community of social cooperation that is composed of a plurality of subjects with individual rights and reciprocal claims—thus, essentially, as a *legal community*.

In this context, the central communitarian critique of liberalism amounts to the thesis that liberalism cannot adequately explain the political-cultural presuppositions necessary for a democratic community; indeed, that it destroys these in its very practice. Yet the critique employs concepts from sociology and political science—the Durkheimian concept of anomie (Lasch 1988, 175–76; Barber 1988, 177; Taylor 1992b, 44), for example—primarily in a normative and very general manner. As a result, there arise certain unclarities such as the disparity, remarked by Walzer (1990a, 7) and Yack (1988), between, on the one hand, the critique that liberal theory is not appropriate to social reality and misrepresents it atomistically and, on the other, the critique that liberal theory represents social reality appropriately, but because of this reality’s atomistic tendencies, it has to be criticized normatively. What is common to all these critiques however is the thesis that liberalism is a self-undermining political theory: in a “dialectic of liberalism,” the “unencumbered” subject disengaged from social relations, whose defense liberalism once took up, becomes the “disempowered,” privatized citizen (Sandel 1984a, 94) who leaves concern for the common good to a benevolent, bureaucratic despotism. In his analysis of democracy in America, Alexis de Tocqueville pointed out this danger explicitly and is for that reason considered a trail-breaker by many communitarian critics.² Once citizens begin to conceive of themselves only as legal persons and believe they can neglect their political rights (and especially duties) as distinct from their individual liberty rights, they are in danger of even losing these too. There cannot be any

individual liberty without political liberty, and there cannot be any political liberty without an orientation to the common good on the part of democratic, virtuous citizens. The legal person, the communitarian thesis goes, must be sublimated in an ethically determined conception of the citizen.

In what follows, this debate on the ethos of democracy, presented here in a simplified manner, is to be discussed on the basis of an analysis of four different models of political *integration* and *legitimacy*, to which different conceptions of *citizenship* correspond in each particular case. The two liberal models are that of “modus vivendi” and that of “overlapping consensus” (3.1); the two communitarian ones are a “substantivist” and a “republican-participatory” theory of political community (3.2).³ These theories answer the question as to how extensive the commonalities between members of a political commonwealth must be so that this polity can possess stability and solidarity in various ways; finally, different conceptions of “public space” as well as of the conditions and function of political discourses also correspond to these theories. This discussion makes it possible to work out the central problems of the particular positions and leads in the end to a *tertium datur* of the controversy between liberalism and communitarianism: the model of “deliberative democracy” (3.3). Even this conception (as well as the theory of civil society that partially corresponds to it) still has some of those difficulties generally characterized by the problem of creating substantive “democratic ethical life” and social solidarity in a pluralist society without the substance of ethical-cultural homogeneity. They are particularly evident in the question of social, distributive justice (3.4). Here, the procedural theory of public justification must prove itself capable of delimiting a substantive concept of political recognition: the demand for a procedural conception of legitimacy does not banish ethical questions to the “private” sphere nor does it imply a purely “procedural” conception of normative integration. The levels of legitimacy and integration have to be distinguished.

3.1. MODUS VIVENDI AND OVERLAPPING CONSENSUS

The principle of the “public justification” of liberal, neutral principles has been discussed so far in reference to the justification of the basic norms that protect personal liberty; but it becomes evident that this principle’s central role in liberal theories at a legal-moral level necessitates its translation into political terms. This necessity points, however, to a serious problem in liberal theory. For though the latter was able to avail itself of the distinction between ethics and morality, between questions of the good life and questions of general principles, in order to defend the category of the person with equal individual rights, this distinction is problematic when it—conceived of as the difference between “private” and “public” questions—

leads to the restriction of *political* discourses to such questions that are regarded as “public” and general in a *moral*-principled sense that is too narrow for political problems. Thus the critique is that the liberal theories of Ackerman, Larmore, and Rawls (to different degrees) generally place too strict a criterion on discourses of political justification—a critique that, in emphasizing the political context of reciprocal justification, must not on the other hand neglect the strict criterion of justification in moral questions. The false alternative between the distorted picture of a liberal model of contextless hypothetical dialogue and a model of public discourses that is “unrestricted” in a moral respect must be avoided; rather, it is a question of weighing legitimacy criteria appropriately.

(a) *The Theory of Modus Vivendi*

Larmore’s theory does not refer primarily to questions of democratic legitimacy and political integration. His model of *modus vivendi* focuses on the justification of basic principles and does not deal with the question of democracy explicitly. Democracy seems to him merely to be “the best means for protecting the principles of a liberal political order” (Larmore 1990, 346n. 15). Nonetheless, in his discussion of the “rational dialogue” between citizens there are important implications for questions of legitimacy and citizenship, that is, for the realization of liberal principles; “political neutrality consists in a constraint on what factors can be invoked to justify a political decision” (1987, 44). And at this level, the problems of his minimal liberalism become evident. The theory, whose central objective is to secure the freedom and equality of legal persons, locates the social pluralism it wants to preserve primarily in “private,” nonpublic space.

Larmore’s *modus vivendi*, understood as a model of political integration, draws a clear dividing line between *citoyen* and *homme*, between the private (the “nonpolitical”) and the public (the “political”), between the good and the neutrally justified (75–76). Political neutrality means that the incompatible ideals of the good life play no role in the political realm (73), that they remain in the “private” sphere. Though he disputes that according to this model the role of public discourses is minimized since the possibility is still left open to argue for ethical convictions (47), his epistemological theory of the incompatibility of ethical ideals nonetheless permits at best “reasonable disagreement” in these debates (73). Moral-universal and ethical-particular arguments follow so to speak their own particular “codes,” which are not translatable. Citizens do not have ethical commonalities; rather, the “common ground” that serves them as the basis for liberal-neutral dialogue is recognition of the procedural rules of rational dialogue and the norm of equal respect, which have priority over ethical values. In this way, citizens preserve their society’s moral and social complexity and do not burden it with any irresolvable moral conflicts.⁴

In emphasizing moral mutual recognition Larmore disassociates himself from an interpretation of his theory as a Hobbesian *modus vivendi* in which participants observe certain general rules of compromise solely for strategic reasons. It is not only the “desire for civil peace” (60) that binds citizens but also the awareness of shared norms. Contrary to the assumption of being a mere “private” (Rawls 1971, 521) or “instrumental” (Taylor 1989b, 172) society, the political community presented here is more strongly integrated; Larmore speaks of a “common project” of the citizens: “They must already have a common life *before* they can think of organizing their political life according to liberal principles” (1990, 352). What belongs to this common life, Larmore says, is a common territory, a common language, and a common historical experience. The commonality, however, is a commonality of present and past conflicts: without a pluralism and the conflict of incompatible ethical ideals, there is no need for recourse to “neutral” principles.

The fact that the “common ground” of citizens has to be a “neutral ground” means, according to Larmore as well as Ackerman, that ethical controversies must be kept largely excluded from the political agenda of the liberal state. “Public justification” is understood here in a minimal sense, as a public dialogue in which the participants attempt to avoid ethical conflicts. Ackerman’s principle of “conversational restraint” thus states:

When you and I learn that we disagree about one or another dimension of the moral truth, we should not search for some common value that will trump this disagreement; nor should we try to translate it into some putatively neutral framework; nor should we seek to transcend it by talking about how some unearthly creature might resolve it. We should simply say *nothing at all* about this disagreement and put the moral ideals that divide us off the conversational agenda of the liberal state. (1989, 16)

Ackerman wants this rule of excluding ethical questions to be understood solely with reference to possible answers, that is, with reference to the justification of the exercise of power in a democratic struggle for political power (1990), not with reference to the possible questions that can be asked. His doubts about the “translatability” of ethical values into a “neutral” framework are misleading here; like Larmore, he assumes the possibility of recourse to “primary moral commitments” (Ackerman 1989, 18) on the basis of which “reasonable” answers can be found. Here, however, there is a problem for both conceptions. Since these primary commitments consist essentially of principles of mutual respect and discursive procedures, they contain *no* substantive criterion (going beyond these basic norms) that would suffice to exclude ethical arguments from political discourses. The exclusion of certain arguments cannot therefore be justified *a fortiori* on the basis of this “common ground”; moreover, the exclusion of *arguments* harbors the danger of excluding certain ethically and politi-

cally relevant *questions*. A decision to remove a controversial issue from political discourse and to impose “gag rules” (Holmes 1988) on oneself is itself in truth a political decision and is legitimate (and revisable) only as the outcome of a practical discourse. As Stephen Holmes (1988, 52) remarks, gag rules can exclude problems in a manner that is to the disadvantage of minorities (e.g., not dealing with the question of slavery in the United States during the first half of the nineteenth century). After all, the limits of good reasons can be determined only within *unrestricted* discourses.

Critics point out in this connection that inherent in the model of *modus vivendi* is a strict separation of “private” and “public” questions, which neglects the problem that many areas of the traditionally private realm actually hide inequalities that deserve to be the object of political debate (Benhabib 1992b, 81–85; Moon 1991, 214). The definition of privacy has itself become a political question. Even examples from what the liberal view regards as the “private” sphere of religion demonstrate—for instance, in questions of what may be taught in schools (the doctrine of creation or a particular religious or secular worldview)—that this sphere is a publicly regulated one.

Finally, the notion of citizenship that this conception incorporates is problematic. On the one hand, it presupposes just a small measure of substantive commonalities; on the other, it requires a “common ground” that is able to evade the controversies between incompatible ethical convictions. The cognitive requirements thus placed on the participants of discourses are contradictory: on the one hand, they ought to be able to have the insight to remove from the political agenda their ethically controversial positions as not being generally agreeable; on the other hand, they are not able to discuss their positions in an argumentative dialogue and to reach productive and fair compromises or consensual agreements. On the one hand, they have the capability to relativize their views but, on the other, they don’t.

These difficulties draw attention to the central problem of liberal theory: it is one thing to defend the primacy of the impartially justified basic principles of political justice, it is however quite another to thematize their realization in a political community. Larmore and Ackerman extend the moral-theoretic distinction between *ethics* and *morality* to the social- and political-theoretic distinction between *the private* and *the public*; in so doing they first of all neglect the distinction between questions requiring a strictly general justification and those requiring a restrictedly general one (see chapter 2.1) in favor of the strict criterion; second, they reify the *procedural* criteria of good reasons in justification discourses into *substantive* criteria of permissible arguments. They apply the idea of a moral justification of basic principles (and of the distinction between morality and ethics) to the justification of legal norms and political decisions in general in such a way

that ethical questions appear as “private questions.” Political discourses then have primarily the task of securing social coexistence by guaranteeing individual rights—the interpretation of these rights and the legitimacy of political decisions in argumentative discourse playing a subordinate role here. Defending the “neutrality” of the legal person leads to a certain “neutralization” of political discourses among autonomous citizens; ethical pluralism leads to a political-legal minimalism with regard to questions of political legitimacy and integration.

(b) *Rawls's Overlapping Consensus*

The problem of social stability and unity is a special problem for every liberal contract theory, and so too for Rawls, even though he, in contrast to classic contract theory, proceeds from a conception of the person with a sense of justice that—as can be assumed in accordance with a “reasonable moral psychology” (1987, 22)—under the conditions of a just society will motivate persons to behave cooperatively. In *A Theory of Justice*, moreover, Rawls assumed that there is a “congruence” between the subjectively good and the morally just inasmuch as, given the social nature of the human being, “participating in the life of a well-ordered society is a great good” (1971, 571; cf. § 79). A well-ordered society is stabilized by this congruence. Rawls now considers this view of social stability to be “unrealistic” (1993a, xvii) since it does not seem to be compatible with the “fact of reasonable pluralism” of ethical values within a democratic society. The problem that political liberalism faces is therefore the following one: “How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?” (xviii).

The two concepts with which Rawls has explained political unity and legitimacy since 1985 are “overlapping consensus” and “free public reason.” They belong to the “second stage” of his theory: contrary to the interpretation that overlapping consensus is a model for the justification of justice principles, Rawls distinguishes between the justification stage of the theory as a “free-standing” political-moral conception and the stage of explaining social stability.⁵ The overlapping consensus is to explain how a society can be pluralistic but nonetheless stable, not as much as an ethically integrated society but more than a strategic *modus vivendi*. The solution he proposes follows the “method of avoidance” (1985, 231): a political conception of justice must be compatible with a multitude of ethical values and forms of life and must therefore itself avoid ethical validity claims—it must be acceptable and reasonable for ethical conceptions without contesting their truth. “The question is: what is the least that must be asserted; and if it must be asserted, what is its least controversial form?” (1987, 8).

In an overlapping consensus (as already mentioned in chapter 2), “reasonable” comprehensive ethical doctrines accept the basic structure of their society on the basis of a *shared* conception of political and social justice. They are in agreement concerning the fundamental “reasonable” idea of social cooperation between free and equal citizens—an idea that they see *as part* of their own ethical convictions. The consensus is thus essentially a political-moral one between comprehensive doctrines—it being ethical only from the perspective of the particular doctrines.

We now assume citizens hold two distinct views; or perhaps better, we assume their overall view has two parts. One part can be seen to be, or to coincide with, a political conception of justice; the other part is a (fully or partially) comprehensive doctrine to which the political conception is in some manner related. The political conception may be simply a part of, or an adjunct to, a partially comprehensive view; or it may be endorsed because it can be derived within a fully articulated comprehensive doctrine. (1989a, 249)

Different ethical doctrines incorporate the justice conception and regard it as their own, so to speak, as part of their view of the good (cf. 1987, 9).

Rawls elucidates his conception of stability by taking up various objections. Against the criticism that the overlapping consensus is a mere *modus vivendi*, he says that the principles of justice as fairness are “moral.”⁶ Their acceptance is not purely strategic but normative; and the test for this status is the continued support for justice even in conditions in which the power position of a group, for instance, changes for the worse. In such a situation, the group would contradict its own conception of the good if it violated the principles of justice for the sake of its own advantage (1987, 11). Against the second objection that the overlapping consensus represents a skeptical theory of morality, Rawls remarks that “justice as fairness” does not question the “truth” of ethical doctrines but applies “the principle of tolerance to philosophy itself” (13). The “method of avoidance” leads to the circumstance that the claim of the theory of justice to be reasonable does not compete with the claim of ethical doctrines to be true. The conception of justice can of course be considered “true,” as part of the ethical convictions, but it itself only raises the claim to be “reasonable.”

Nonetheless, this terminology conceals the fact that the claim to be “reasonable” has unequivocal normative priority over the ethical truth claim in questions of justice. For ethical doctrines are put to the moral test so that they may be regarded as “reasonable”: they *have to* recognize the principles of justice, whereas they *can* fit these principles into their “comprehensive doctrines” in their own way. The strength and stability of the conception of justice depends in the empirical-practical sense upon ethical doctrines supporting it; its “free-standing” moral priority is not however thereby affected. The conception of justice is therefore not a “comprehensive doc-

trine" (the third objection against Rawls's conception of stability [15–17]) but is itself a demanding moral conception that incorporates particular virtues of tolerance and cooperation. That the theory is not utopian (the fourth objection) and can be accepted and implemented in a pluralist society does not make its normative validity on the basis of fundamental moral "ideas" dependent upon this acceptance. Rawls's talk of the "moral" acceptance (11) of the principles of justice on the part of comprehensive doctrines does not distinguish sufficiently here in conceptual terms between the "free-standing" *moral* validity of principles and their *ethical* acceptance. The political community is a community of "reasonable" citizens who accept the basic political-moral consensus for *shared* reasons, though they integrate them into their comprehensive ethical conceptions. In this sense it is a "reasonable" consensus that can be seen as justified. It does not presuppose that one has to relinquish one's own ethical perspective, but it does however assume that one expands the perspective in questions of justice.

Various consequences follow from the normative priority of justice for Rawls's conception of political legitimacy and political discourse. The realm of the political is governed by the principles that form the content of the overlapping consensus. They represent the limits that "public reason" must take into account. Rawls's "liberal principle of legitimacy" states: "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason" (1993a, 137). The idea of "public justification" corresponds to the concept of "public reason"—"the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution" (214). "Public reason" is reason among citizens as authors of law—their justifying reason in reference to generally valid norms. Citizens are reasonable in a political sense when they defend "public reasons" to one another.

According to Rawls, this reason (*Vernunft*) must—on the basis of the shared conception of justice—observe certain limits inasmuch as it refers to "constitutional essentials" or to "questions of basic justice." Constitutional essentials concern the structure of political institutions and questions of basic rights; questions of basic justice essentially concern problems of distributive justice (227–28). Not all political questions fall under these categories; the distinction is however a problem that Rawls leaves unresolved (214). Many political controversies could well reach a point where these categories are applicable.

The limits of public reason consist in the fact that good reasons must be able to refer to "political values": to "the values of political justice" and to

“the values of public reason,” that is, the substantive principles of justice and the guidelines for public inquiry that would be decided in the original position (224–27). These principles and guidelines constitute the criterion for what cannot be reasonably rejected by citizens; that is, they constitute both the criterion for public reasons and the common ground on which reasonable comprehensive doctrines in the sense of joint citizenship stand and present their arguments. In other social contexts, Rawls says, citizens can use “nonpublic” reasons, which are to be understood not as “private” but as “social” reasons (e.g., in communities and associations within the “background culture” of political discourses). In their capacity as citizens, persons are however bound to the limits of public reason—they “view themselves as ideal legislators” (1997, 769). It is only in this way, Rawls believes, that political discourses remain within the overlapping consensus between ethical doctrines and do not lead to irresolvable ethical conflicts, which would result in social instability.

Rawls can therefore grasp the practice of the Supreme Court as being exemplary for this model of liberal legitimacy (1993a, 231–40). It is concerned solely with fundamental questions of justice, and the reason of the Supreme Court’s decisions is “public” inasmuch as it relies only upon “political values” and argues in a manner that can be appreciated by the public. This example demonstrates the *liberal* element in Rawls’s model of restricted discourses: their primary function is to maintain the consensus on basic principles of justice; the function of enabling political self-government remains secondary to this. The principles of justice are substantivized into political values that are imposed upon the procedure of democratic discourses more than just as procedural restrictions. It is only in this way that the public reason of the Court exercised *for* the citizens serves as a model for the public discourse actually *conducted by* the citizens. Liberal legal principles have priority over democratic self-government—even if, as Ackerman proposes in his theory of “dualist democracy” (1991), these principles follow “higher lawmaking” when, at historical turning points, democratic citizens’ movements bring about a new orientation in the political system and constitutional interpretation, which is then maintained and given shape within the framework of “normal policy” by the system’s institutions, especially the Supreme Court (see Rawls 1993a, 231–40). It is evident that the antecedently justified principles of justice constitute a substantive basis for what cannot be reasonably rejected; in the context of political autonomy, the “burdens of reason,” whose recognition in ethical questions leads to mutual tolerance, seem to become burdens that call for a restriction of democratic discourses in terms of their content.

Rawls, however, wants to avoid a strict, “exclusive” theory of political discourses that banishes ethical arguments completely from the political agenda. His “inclusive” perspective mentions two instances for permitting

ethical justifications (248–49). In the first case, with regard to a conflict in which it is doubted that an ethical community still shares the central political values, this community is justified (or forced) to present its ethical convictions and refute this criticism. In the second case, it might be justified in an unjust society to appeal to “comprehensive” values—as those who opposed slavery in United States did or, later, as Martin Luther King did—in order to call for justice as manifestly and as appealingly as possible and to bring about a just society. In both cases, therefore, ethical arguments serve the strengthening of public reason.

But the inclusive perspective is also too narrow. According to it, religious *motives* on the part of citizens are not indeed illegitimate in political contexts, nor are *problems* that affect religious questions, but *arguments* or reasons grounded on religious convictions are. This perspective however presupposes too strong a division between ethical motives and political reasons; in political discourses, persons do of course remain ethical persons with particular values and attitudes—and their language and arguments reflect this background.⁷

In a recent article on this problem Rawls carries out a revision. According to it, citizens cannot and need not completely bracket ethical “grounding reasons” (1997, 797) in political discourses. These convictions play an unavoidable role in persons’ practical reflections. Nonetheless, a political office—that of a judge or a government official—requires that decisions be justified solely in a strictly “political” manner (on the basis of law and basic principles); in this sense, ethical values are bracketed. Yet, in a “wide” view of public reason, the office of citizen—the “duty of civility”—does not necessarily require a bracketing of this kind but allows us in political discourses to rely upon reasonable comprehensive doctrines, which are however to be connected “in due course” (784) to political values (cf. Greenawalt 1988, 215–30). In other words, persons must be in a position to gradually *translate* their arguments into reasons that are acceptable on the basis of the values and principles of public reason. It is only then that their reasons can be good political reasons, and it is only then that the justification discourse commences. This revision does not change anything at the core of his theory of the limits of public reason. Rawls objects to an “open” view: if ethical arguments were permitted without restrictions, the “criterion of reciprocity” (as Rawls [1997, 797] calls it now) would not be guaranteed—the condition according to which political reasons must be reasons that can be justified reciprocally.

This last objection does not however necessarily apply. For if the “criterion of reciprocity” is not substantivized into concrete “political values” but, in accordance with the requirements of strict and restricted generality (depending on the issues in question), is *procedurally* interpreted, there is no need for restrictions on the content of arguments but there is a need

for certain procedures of justification as the condition of reciprocally acceptable reasons. In any case, restrictions of content through certain values or “guidelines” of reason may be decided only *in* discourses: no basis of the reasonable can therefore be substantively prescribed to discourses.

Rawls’s conception thus amounts to a “private use of reason with political-public intent,” as it were, not to a truly public discursive use of reason. It is both too demanding and too undemanding for citizens in a cognitive respect—just like Ackerman’s theory. It is too demanding for them because they are supposed to be in a position to abstract from their ethical—“non-public”—identity and refrain from ethical-political argumentation in political discourse; yet it is too undemanding because it assumes that ethical convictions are not open to discursive clarification and mutual argument. On the one hand citizens are able to abstract from their convictions and on the other they are not. In neither respect is the possibility of a discursive translation—or *Aufhebung* (sublimation)—of ethical into general-political reasons considered. In contrast to this, it seems more plausible to locate in procedures of argumentation themselves the cognitive possibility of clarifying, defending, or changing ethical convictions (cf. Gutmann and Thompson 1990, 143–44). Public justification must be conducted not *prior* to but *within* discourses.

Thus even the “wide” view of public reason also remains bound to the notion that political discourses *interpret* principles and do not *generate* them. The principles justified in the original position are conceived of as norms whose content is determined and on the basis of which discourses operate as “forums of principle” (here Rawls adopts a term from Dworkin’s legal theory). Ultimately, this restricted conception of democratic legitimacy, which Rawls shares to a certain extent with Larmore and Ackerman, reflects a common problem of these liberal theories: too narrow a parallel is drawn between the justification of basic principles of justice and the justification of political decisions. The distinction between ethics and morality (or between “comprehensive doctrines” and “political” justice) is translated into one between the nonpolitical and the political; the strict criterion of the primacy of morality (in moral questions) is generalized and substantivized, with regard to political discourses, in the concept of particular, given “political values” and leads to a content restriction of these discourses that does not do justice to their plurality. The application of the neutrality principle to political contexts thus remains incomplete: *procedural* criteria of political justification become *substantive* criteria of the primacy of liberal justice principles. Thus no central role is left to political discourses and the political autonomy of citizens within the basic structure of society.

While Rawls shares certain problems concerning the question of political legitimacy with the model of *modus vivendi*, he nonetheless advocates a stronger theory of political integration. Though he clearly distinguishes

between different forms of (ethical, cultural) communities and the political community and emphasizes that the political community is not integrated through a comprehensive conception of the good, he nevertheless defends the thesis that the citizens of a well-ordered society regard the promotion of just institutions as a common end that they can realize only in a cooperative way. Citizens have not only personal but also collective ends: social cooperation in a joint project appears as a desirable good to them. The good of the well-ordered society, Rawls says, is one of the central conceptions of the good in a theory of justice.

A further idea of the good is that of political virtues. Though the citizens of a well-ordered society do not regard political life primarily as the location and realization of the good life (as in the “civic humanism” of a Rousseau), they nonetheless consider political virtues and participation in public life to be necessary for securing their basic rights and liberties. According to Rawls, the model for this conception is “classical republicanism” (1988, 272). Political virtues—willingness to cooperate, tolerance, reasonableness, fairness (263)—constitute an “ideal of the good citizen.” According to this ideal, citizenship is specified not as membership in an ethically integrated community, nor however solely through the conception of the person as bearer of individual rights. Nevertheless, it is clear here too that citizens’ political autonomy is conceived of not primarily as a necessary condition of the legitimacy and interpretation of the basic structure of society or as the self-government of a pluralist society but as the—joint—securing of individual rights (cf. Joshua Cohen 1989, 20; Baynes 1992a, 167–72). According to Rawls, citizens are persons with two moral powers—that of having a conception of the good and that of having a sense of justice—who live together in a system of mutual recognition and reciprocal cooperation; the basic structure of society is geared to this cooperation. This conception of the citizen is “thin” inasmuch as it highlights social pluralism and relates the overlapping consensus solely to “political” principles; it is however “strong” inasmuch as it visualizes political virtues that must ultimately extend far enough to help realize the difference principle of social justice. In the view of communitarian critics, there is a fundamental contradiction here.

3.2. SUBSTANTIVIST AND REPUBLICAN COMMUNITARIANISM

Central to a communitarian understanding of political legitimacy, integration, and citizenship is the thesis that a political community must be, in a strong sense, a culturally integrated, ethical community in order to make social unity, democratic self-government, and solidarity possible. The communitarian response to the outcome of the debate on the neutrality of legal principles runs thus: if the legal person can be regarded as a protection of

ethical identities and thus as a condition of the possibility of their development, then it is essential to ask what the condition of realizing a political community guaranteeing these rights consists in—and this condition can only be “strong” communality. Even if it is granted that a political community must recognize and secure the rights of individual persons, a society that just consists of a “heap” (Taylor 1979, 133) of privatized legal persons is in danger of being consumed by “administrative despotism” (Bellah et al. 1986, 211), of ending in “bureaucratic individualism” (MacIntyre 1984a, 71). How can such a society develop a public life that is strong enough to withstand these dangers? Liberal “public purposelessness” (Barber 1986b) does not permit a form of democracy that gathers the citizens around a common good in which they participate jointly and with which they identify. The liberal model lacks an “ethos” of political communality among citizens oriented to the common good. Moreover, such a legal-individualist society not only cannot survive in the long run, it cannot be just either. For even if it is in a position to recognize the equality of all citizens as a principle, it can realize this principle only by appealing to the common-good orientation and the solidarity of all citizens, to their sense of belonging together (Sullivan 1990, 154).

Aristotelian, Hegelian, and Rousseauian motifs flow together in this critique, and their differences are just as significant as their commonalities. For this reason, in what follows I distinguish between a substantivist and a republican-participatory communitarian theory, which determine the “ethos” of a democratic community in each case differently. For instance, is the “common good” conceived of as a community’s prepolitically existing “substance” or “essence” that must be affirmed, or as the outcome of a discursive process? That is to say, as a presupposition or as a result? Is citizenship conceived of as membership in an ethical collective that is constitutive of individuals’ identity (similar to a family) or as participation in a common political practice, a participation that presupposes certain virtues? Is political discourse understood as ethical self-understanding and affirmation of the antecedent bond of civic friendship or as a common practice of public action? Some theorists cannot of course be unequivocally categorized in one of these positions; Taylor, in particular, combines arguments from both directions.

Seen as ideal types, however, there are fundamental differences between the approaches. An Aristotelian position, for instance, conceives of a political community as a “regime” whose practices and institutions embody the character of a particular way of life and particular ideals, which form a unity (though a tense one) with the character and virtue of the citizens. Public virtues, regarded as the highest virtues, make it possible to assume public positions. A less “classical” but not less substantivist view can be traced back to Hegel. It assumes that there must be a strong unity between

the identity of individuals and the identity of the public as a whole, a unity that “sublimates” (*aufheben*) the difference between subjectivity and community. *Sittlichkeit*, ethical life, means this in Hegel: the “objective Spirit” of the political community’s institutions grants the citizens individual liberties; the liberties do not however place them in opposition to the state, which is in the first place their “reality”—the realization of their rights and liberties. Of course, the state is their reality in a “substantive,” not an instrumental sense: in the ethical—particular as well as general—values that the state embodies, a collective discovers itself first of all as a self-conscious one, beyond the individuality of its members. The state’s ethical life is not merely the sum of its parts but the embodiment of “strong evaluations” (Taylor), which bring about an identity between subjective and objective Spirit. Furthermore, Hegel ascribes to objective Spirit an objective will that goes beyond subjective wills, a will in whose substance intersubjectivity is in danger of being suppressed (cf. Theunissen 1982).

In contrast to this construct, a republican-participatory position inspired by Rousseau assumes not a substantive-ethical unity of citizens but a unity through participation. The common good is discovered, not merely affirmed, in a discourse between free and equal citizens. According to Rousseau, nonetheless, citizens are not private bourgeois but politically virtuous *citoyens* oriented to the common good, and their particular interests are subordinate to the “general will” of the “sovereign people,” who speak with a single voice. Here too, the concept of citizen is understood ethically—at least in part—and the intersubjectivity of the citizens corresponds to an objectivity of the people’s will.

The two leading concepts by which the differences between the two communitarian positions—the substantivist and the participatory ones—can be understood are that of *identification* and *participation*. One position emphasizes the necessity of a “strong” identification of individuals with the commonwealth, the other the necessity of general participation. Both however agree that the models of *modus vivendi* and overlapping consensus are too weak to grasp the ethos of the political community: “To have a viable society requires not just that I and others think it is a good thing, but that we come to a common recognized understanding that we have launched a particular common enterprise of this sort, and this creates a particular bond around this society, this tradition, this history” (Taylor 1989c, 863–64).

MacIntyre’s conception of the essence of a political community represents a paradigmatic example of an Aristotelian theory that attempts to justify a particular conception of morality and political community by means of a theory of the identity of the person. According to him, there cannot be a coherent conception of morality without a conception of the human good as *telos*, hence there cannot be an authentic political com-

munity that does not embody and aspire to these ideals of human life. Just as the modern conception of a “universalist” morality removed from particular-communal contexts is a chimera that is tantamount to being a “moral catastrophe,” so it is disastrous to attempt to establish a political community in which citizens are represented as individuals with their own particular incompatible conceptions of the good. The ideals embodied by the modern “regime” are the impoverished “characters” of the “rich aesthete,” the “manager,” and the “therapist”—all of whom are consequences of the decline of an objective value order that gives a life meaning, an end, and direction. In contrast to that, a “true” political community must represent a form of communal practice embedded in a moral tradition that individuals recognize as their own; the narrative of subjective life must be part of a superordinate narrative (cf. MacIntyre 1984a, 186–87). The ethically desirable telos of life follows from this trinity of practice, tradition, and subjective biography: the goods internal to social practices are what is worth striving for.

MacIntyre comprehends membership in a political community according to the model of family membership: obligation to one’s own community has absolute normative priority over “neutral” moral points of view. The virtue of patriotism is therefore the highest political virtue and as such “systematically incompatible” (1984b, 5) with the standpoint of impartial morality. The view that there can be an American patriotism is according to MacIntyre the result of a “conceptual confusion” that presumes the possibility of combining particular “ethical life” with abstract “morality.” He is however aware of the fact that the kind of community he is defending cannot be reestablished in view of the pluralism of modern societies. Only communities integrated on the basis of ethical-cultural and religious commonalities are in a position to create such a form of identity and virtuous life and to survive the new dark age “after virtue.”

In Sandel too, one finds the notion that membership in a political community, like family membership, is a relationship “constitutive” of the person’s identity, one from which immediate duties follow. To him too, the relationship between citizens appears as the bond of friendship, and the “pathos of politics” consists in recognizing a common good that reveals and strengthens a common identity (1982, 182–83). But unlike MacIntyre, for Sandel—as for Bellah et al. and Taylor—the “conceptual confusion” of modern societies is not that they fail to recognize the irreconcilable contradiction between patriotism on the one hand and morality and individual rights on the other, but that they fail to recognize that no democratic modern society can do without solidarity and patriotism—hence, liberal society lives on its citizens’ patriotism but in practice conceptually negates and constantly endangers it. Thus, Bellah et al. (1986) attempt to prove that the language of individualist liberalism cannot adequately grasp citizens’

orientation to the common good where it exists and cannot create it where it is needed. The result is both an impoverishment of the conceptual resources subjects use to describe themselves in their social life and an impoverishment of public space and the search for the common good itself. This result leads to a psychologically and politically disquieting self-centered privatism that endangers the “social ecology” of a political community (Bellah et al. 1986, 284). Even in a pluralist society, Robert Bellah says, there must be the possibility of a “deep pluralism” where citizens withdraw neither into themselves nor into their immediate ethnic or cultural communities, but where they understand the common good as part of their own good (Bellah 1991, 61; cf. Sullivan 1982).

Taylor also considers it an illusion to believe that liberal societies can do without the virtue of patriotism, citizens’ identification with the commonwealth.⁹ However, this identification is based not on the “regime’s” highlighting certain virtues that represent life ideals for the citizens, but on the fact that the political community embodies in its self-understanding and institutions values with which individuals can identify in their “strong evaluations.” Hence, though patriotism is a sign of a strong bond to a collective and is in this respect similar to membership in a family (1989b, 166), this collective is—contrary to MacIntyre’s view—the embodiment of particularist *and* universalist strong evaluations.

In his theory that the political system’s legitimacy crises are ultimately identity crises, citizens no longer view the system as embodying the values they consider essential, Taylor does however leave it undecided as to how one can weigh the universalist values of equal liberties against the particularist values that first weld a specific political community together. For, as he emphasizes, a political community’s “ethos” is always a particular *Sittlichkeit* that has its origins in a prepolitical communality of a history, a tradition, and, ultimately, a “common sense of what the good life is” (1989c, 864). Citizens have to be able to identify in their particularity with the political institutions, to regard them as “an expression of themselves” (1989b, 165). “Constitutional patriotism” (Habermas 1989a, 261) or an overlapping consensus cannot achieve this identification:

But we have to remember that patriotism involves more than converging moral principles; it is a common allegiance to a particular historical community. Cherishing and sustaining this has to be a common goal, and this is more than just consensus on the rule of right. Put differently, patriotism involves beyond convergent values a love of the particular. (Taylor 1989b, 176)

In Taylor’s theory of political legitimacy, both concepts are present: identification as well as participation. His “republican thesis,” which is central in this connection, states that a strong patriotic identification with the political institutions on the part of the citizens represents an indispensable

condition for the stability of a free regime. There cannot be any legal freedom, any democracy, without this kind of solidarity, according to which citizens regard the promotion of the common good as one of the highest goods of a virtuous life. The political community is an “‘immediately’ common good” of the citizens, which is regarded by them as a good for its own sake. Even though this identification is realized primarily in the exercise of political freedom, it nonetheless has its origin in a prepolitical unity: “Participation of all in a decision is only possible if there is a ground of agreement, or of underlying common purpose. Radical participation cannot create this; it presupposes it” (1979, 115; italics omitted). Accordingly, the “participatory” model of citizenship, which he contrasts with the “rights model” and in which citizens’ capabilities and dignity consist not in asserting their rights and interests but in being part of the self-governing citizenry, is founded on such a strong sense of commonality.

The condition for a successful participatory model is a strong identification with the fate of the community. . . . This identification can perhaps be described in this way: it exists where the common form of life is seen as a supremely important good, so that its continuance and flourishing matters to the citizens for its own sake and not just instrumentally to their several individual goods or as the sum total of these individual goods. The common life has a status of this kind when it is a crucial element in the members’ identity, in the modern Eriksonian sense of the term; hence my use of “identification.” (1985k, 213)

What is controversial about this model is not only how the patriotic attitude can distinguish between universalist and particularist strong evaluations, which a particular political community embodies, in order to decide whether it continues to deserve support, but also how strong the commonalities between citizens have to be in order to make democratic self-government possible. For if agreement on basic principles of justice as well as participation in political discourses are not enough to guarantee the loyalty of members, Taylor’s theory then seems to make very high demands on the homogeneity of a political population, demands that are very difficult to square with the “fact” of ethically, ethnically, and culturally pluralist societies.

This difficulty becomes apparent in his example of a “participatory” political community: Canada. He lists two conditions for the “strong identification” necessary for democratic self-rule, namely “an identification with participatory forms of politics as central to the community’s definition and a strong sense of a particular community as bound together in these forms” (1985k, 220). He can find only the first condition fulfilled in Canada, not however the second one. Though there is indeed a politically active population, there is not an ethically unified “national identity”; to presume this

would be “utopian,” according to Taylor. For this reason, he argues for the decentralization of political structures in order to make more unified and smaller-scale units of democratic self-rule possible but wants to preserve the Canadian state as a political unit (221–22; cf. 1991b). He thereby qualifies a central premise of his theory of democratic *Sittlichkeit*: the political community is not identical with an ethically, ethnically, and culturally integrated community, it can contain more than one of these communities. Political and ethical (ethnic, cultural) forms of community must be separated: one presents itself in the singular, the other (in *pluralist* societies) in the plural. In the text on the “politics of recognition” already discussed (chapter 2.3), Taylor argues explicitly for a “politics of difference” within Canada as a whole, which would grant Quebec as a “distinct society” a special “politics of the good.” In this “politics of recognition,” on the one hand, the political community of Canada as a whole recognizes a weak form of procedural liberalism and defines common citizenship not ethically, but so formally that even exceptions concerning individual liberties (in Quebec) are possible—these liberties being the core content of liberal citizenship. On the other, within Quebec “different” minorities must step back in consideration of the francophone form of life. Precisely the issues of school choice and language regulation, which Taylor (1992a, 52–53) addresses, are however particularly important for the symbolic recognition of ethical identities and for creating an inclusive political community (as discussions in United States demonstrate; see Citrin et al. 1990). Definitions of citizenship that generalize the ethical values of one form of life as the norm are in this case “difference-blind.”

If the thesis of a cultural-ethical, *sittlich* integration of political community has to be abandoned, can political life then continue to be regarded to such a great degree as a central component of the good life? Does this paradigm still do justice to citizens’ strong evaluations and to their conceptions of the virtuous life? The “virtues” of citizenship, in particular that of patriotism, not only have to be qualified by universalist norms, which according to Taylor a political community also has to embody; they must also be grasped as political and not as ethical virtues. Here too, a third element is needed: pointing out the necessity of political virtues required in public discourses (tolerance and willingness to argue, for instance) does not have to mean hypostatizing these virtues into indispensable, strong evaluations of the good life. Nonetheless, rightly emphasizing that the citizens of a democratic society must assume responsibility not only for themselves but also for the collective and thus for their fellow citizens—especially vis-à-vis other persons and collectives—does not mean that the citizens must identify with the political community in a way comparable to the loyalty to a family, to friends, or to an ethical community. Hence, in order to escape the “thin” paradigm of liberal rights relations, Taylor ethically overburdens

not only the conceptions of citizen and political community but also the procedure of political legitimacy. For in political discourses it is not primarily the case that a prior identity is affirmed; rather, it is changed and put into question, especially by groups hitherto excluded from the definition of this identity. A political community cannot affirm its history without questioning it—a history that is also the history of exclusion because of racial, class-defined, gender-specific, or also *sittlich* (in the sense of mores-defined) criteria. The idea of a common ethical identity does not give enough room to this necessity for calling into question the understanding of what does and does not belong to common identity (cf. Wallach 1987).

But even if Taylor's "republican thesis" does not do adequate justice to this kind of mediation between self-determination within social groups and the self-determination of all citizens, his question remains valid: how can a political community conceive of itself as *one* community, and what kind of virtues must citizens have? His answer is of course firmly guided by the Hegelian premise that the "alienation" of modern society among citizens and between citizens and state (Taylor 1979, 115–16, 125) can be countered by "strong identification" on the basis of common ethical strong evaluations and on the basis of a common sense of what the good life is. This kind of holistic reconciliation has been lost not in view of the "victory" of liberal individualism but in view of the plurality of forms of life and the accompanying conflicts about the definition of a common political community.

Walzer has examined the problem of the *e pluribus unum* of a modern pluralist society, using the example of the United States, and comes to a conclusion different from Taylor's. It is particularly the fact of ethnic plurality that leads Walzer to return to Horace Kallen's (1924) theory of "cultural pluralism" and to distinguish between ethnic communities and the political community as well as between ethical and political identity.¹⁰ The unity of the political community is guaranteed not through a common cultural identity but through agreement concerning political principles of liberal citizenship. "If the manyness of America is cultural, its oneness is political" (Walzer 1992b, 29). "Citizenship" is a political, not a cultural concept. "In these circumstances, republicanism is a mirage, and American nationalism or communitarianism is not a plausible option; it doesn't reach to our complexity" (47). Nevertheless, Walzer qualifies Kallen's division between *public*-political and *private*-cultural identity in that he remarks that an ethnic culture cannot survive in a pure form in American society and that ethnic identities play an important role at the political level too—and indeed especially insofar as ethnic communities demand political representation in the political community's self-understanding and symbols. Along with Kallen, however, Walzer is convinced that only a politically and not an ethically defined conception of political community and citizenship

is in a position to integrate a pluralist society politically; and so Rawls's conception of society as a "social union of social unions" appears adequate (Walzer 1990a, 21). Neither the liberal model of a division between private-ethnic and political identity nor the communitarian model of an ethically uniform identity can grasp a "multicultural" society: it has to find a mode of integration that mediates between necessary oneness and possible manyness, that does not exclude particular identities, and yet does not abandon a "comprehensive" identity. A multicultural society must find a collective identity that can resolve the dilemma of *substanceless substance*: on the one hand, not to understand political identity too substantively and marginalize minorities; but, on the other, not too weakly, so as to make political integration and social solidarity possible. The response to this problem must be a differentiated concept of citizenship that connects ethical difference, legal equality, as well as political and social inclusion.

The theory of a participatory-republican communitarianism, which is represented paradigmatically by Benjamin Barber, provides a radically democratic response to the problem of a pluralist society's substanceless substance. In contrast to substantivist communitarianism, Barber rejects the Hegelian thesis that a political community must have a cultural-ethical foundation and attempts to formulate, between a liberal-formal "thin" conception of democracy and a "unitary" one, the third position of a "strong" democracy. At its center stands the democratic self-rule of citizens as politically autonomous individuals who ascertain the common good discursively and argumentatively. Citizens are not "legal persons" or "brothers" here, but "neighbors," connected not through contractual relations or common values but through common practices. The consensus between them is not "generic" or "substantive," it is a dialogic "creative" one (Barber 1984, 219). The alienation and privatization of citizens, which Barber also recognizes as a problem in liberal societies, can be redressed not by reference to a deeper identity but through the common political practice of citizens. Following Rousseau, Barber writes: "We have lawyers, bankers, arbitragers, brokers, doctors, teachers and workers enough. We leave politics to the politicians. What need have we for citizens?" (1987, A21).

Barber defines "strong democracy" as

politics in the participatory mode where conflict is resolved in the absence of an independent ground through a participatory process of ongoing, proximate self-legislation and the creation of a political community capable of transforming dependent, private individuals into free citizens and partial and private interests into public goods. (1984, 132; italics omitted)

Both the advantages and the problems of Barber's proposal are captured in this formulation. The advantages lie in his separation of citizenship and ethical membership, such that citizenship is a concept that corresponds to

a common discursive practice. With regard to the realization of these discourses, Barber presents a list of measures that ranges from local democratic self-administration to democratic access to modern means of communication, from a voucher system for distributing social goods and opportunities (education, accommodation) to referenda and experiments with electronic balloting (1984, 267–311).

The proposal's problems lie in its realization, which depends upon a transformation of citizens from privately interested bourgeois into political *citoyens*, a transformation that comes about in political discourses. Citizens conceive of themselves as "comrades" (1984, 133) of a community that first gives them the possibility of self-development as individuals. "Without participating in the common life that defines them and in the decision-making that shapes their social habitat, women and men cannot become individuals" (xv). Participation "is a way of defining the self, just as citizenship is a way of living" (153). In political discourses, citizens are transformed into beings oriented to the common good; discourses are a medium of common living and experiencing, a medium with "the potential for empathetic and affective expression" (1988, 151), a medium of personal-communal self-development. By means of political participation, the identity of citizens is transformed in the same way as the identity of a bachelor is changed by marriage (1989, 63–4). Citizenship consists in this metamorphosis beyond the "hollow shell of legal personhood" (61).

Thus there are two central premises that Barber shares with Rousseau: (a) democratic self-government is based on the citizens' virtue to subordinate their individual interests to the common good and to regard this ability itself as a gain in freedom and self-development; (b) democratic self-government is the autonomy of a body, of a sovereign people who speak with a single voice, namely, the voice of the common good and common will that sublimates all individual interests, the voice of the *volonté générale*, which, as Habermas (1989c, 98) remarks, is "more a consensus of hearts than of arguments." The citizens' virtue sees to it that this will is not endangered by the plurality of individual interests. This compromise of Rousseau's between the classical-republican principle of rule by the virtuous and the modern principle of rule by all, a compromise embodied in the theory of rule by all as the virtuous, burdens Barber's model with an ethical overtaxing of the conception of citizenship.

Walzer criticizes this notion of citizenship, too. He advances a number of arguments (Walzer 1980a, 70–2; 1991). First, the Rousseauian conception presupposes that the political community is a uniform totality that expresses one will, and consequently the field of political decisions is grasped as a linearly structured field—a notion that does not take the complexity of modern societies adequately into consideration.¹¹ Second, Walzer points out that the political activity of citizens has its location not primarily

at the national political level but in the various associations and communities of civic life. For that reason he argues that citizenship at the national level is more a passive role. Third, according to Walzer, the plurality of projections of the good life in modern society does not let citizens regard political life as the realization of the good life. No conception of the good—thus runs his central argument for a pluralist civil society—be it a republican, socialist, capitalist, or nationalist one, can claim priority in a society that is both complex and fragmented in its political, social, and economic structures.

Walzer's idea of "critical associationalism" in civil society is an attempt to connect these conceptions of the good social life: active citizenship is possible in associations of social life that are integrated through communal concerns and that as a group introduce these concerns into the political process; associations also use the (limited) possibilities of a market society to change it by means of various initiatives (1991, 300); finally, Walzer sees in this form of society the possibility of a "domesticated nationalism" in which different ethnic, cultural, and religious communities and living experiments coexist and continue to exist as distinct communities that can tolerate one another on account of their enjoying certain liberties in their cultural reproduction. But Walzer sees the paradox of this civil society in the fact that the citizens in all these associations and communities are still in a particular way members of the comprehensive political community. And not only by virtue of the fact that they are dependent upon the state to assert their interests, but also because they shape the comprehensive community's "common life" and are therefore responsible for this community as a whole. Citizens are members of individual communities and also members of the comprehensive community; over and above the good of their community, they must attend to and promote the common good. "Hence citizenship has a certain practical pre-eminence among all our actual and possible memberships" (302).

Walzer thereby addresses a central problem of a theory that distinguishes between ethical communities and the political community. Unger (1975, 284–89) analyzes this as the "dilemma of communitarian politics," Bellah (1991) as a conflict between "communalist pluralism" and "deep pluralism." How is a "social union of social unions" possible if citizens are divided in their loyalty between different communities? Tocqueville's optimistic assumption that participation in associations and membership in small communities will lead citizens to participate in the welfare of the general community can be countered with the thesis that participation in smaller groups leads to a fragmentation of the political community. The problem consists not in mediating between the individual and the community, but in mediating between different communities, not in mediating between the "unencumbered," "atomistic" self and the citizen obligated to

the community, but in mediating between the communities to which a citizen feels obligated, a citizen who stands between “family,” “tribe,” and “nation.” Walzer circumscribes this dilemma, which communitarian theories disregard in favor of the conception of an ethically integrated political community, with the concept of “pluralist citizenship” (Walzer 1970, 219–20). “Pluralism builds loyalty not only toward the state but also against it.” This dilemma of divided loyalty, Walzer argues, is not completely resolvable; it can however become politically productive in that the members of particular communities recognize that they have a relation of mutual dependency with other communities and try to find a fair balance of political representation, which is brought about through procedures of argumentation and interest offsetting.

There is a further thought. Just as it cannot be assumed that all the citizens of a political community feel obligated to this community alone, so it cannot be supposed that they feel obligated only or primarily to one single ethical community or particular association. Loyalties are not then tragically divided but are in many cases multiplied (1992d, 171). The identity of a person is connected with different roles in different communities, and identity as a citizen is just one of these; it is however a general one, or rather the *only* one that all have in common. The connecting principle of common citizenship must be in a position to create an orientation to the common good without assuming more commonality than formally defined (though not “formally” perceived) membership in a political community (see Walzer 1992e, 295). A democratic state has the task of promoting associations and communities, but it cannot replace them. And, paradoxically enough, it is precisely the plurality of ties that citizens have in such a community that creates commonality: as members of certain communities, citizens in a democratic-pluralist society also make their demands on themselves as members of other communities. They are trade unionists, church members, members of political parties, and taxpayers all at the same time; that means that societal dividing lines are not drawn such as to create strict dichotomies. But where lines are drawn, as is the case in certain social conflicts, citizens are called upon as citizens of a state to present their arguments in a way that can be generally accepted: for such claims there is only one addressee, the community of all citizens. Hence, even in the absence of an ethical identity encompassing all citizens, they speak not a purely individualist or particularist language but one addressed to the community of all; and where they cannot appeal to common values or conceptions of the good, they appeal to agreement on the basis of a consensus on common basic principles of mutual recognition and responsibility. This responsibility cannot then be a responsibility just for oneself or a responsibility for a community substantively embodying one’s own identity; rather, it is the individuals’ responsibility for and to their fellow citizens with whom

they are connected in a political collective of responsibility; responsibility means here responding to one's fellow citizens and being able to justify oneself to them.

3.3. CIVIL SOCIETY AND DELIBERATIVE DEMOCRACY

From the discussion so far it follows that what questions of (a) political integration, (b) citizenship, and (c) political legitimacy require is a theory beyond liberalism and communitarianism, one that assimilates elements from both sides.

(a) At the level of political integration it has been seen that, in response to the problem of the "substanceless substance" of an ethically pluralist, but also responsible, solidary political community, an answer must be found that accepts the separation between "ethnos" and "demos" (Lepsius 1990) as the starting point; the political community is not an ethical, "constitutive" community in which the identity of subjects is formed in a way that constitutes their personality and self-image. The manner in which Hegel raised the topic of the political community permits of course only the following alternative:

Mind has actuality, and individuals are accidents of this actuality. Thus in dealing with ethical life, only two views are possible: either we start from the substantiality of the ethical order, or else we proceed atomistically and build on the basis of single individuals. This second point of view excludes mind [*geistlos*] because it leads only to a juxtaposition. Mind, however, is not something single, but is the unity of the single and the universal. (1967, 261 [addition to § 156])

A third element must be added to this dichotomy. The political community is neither a "convergent" good in which subjective preferences converge, and which is dissolvable in these, nor an "immediately" common good that, similar to friendship as a value, is a jointly shared good appreciated for its own sake (Taylor 1989b, 168–69). Neither a purely *subjective*, nor an *objective*, but an *intersubjective* good, the political community is a community of politically autonomous citizens who perceive it as a "good" to the extent to which it provides the (institutional and material) preconditions for all to be able to understand themselves as full members.

Just as the central Hegelian assumption of a political community as an ethically integrated macrosystem must be qualified, so must the Rousseauian assumption of a principle of popular sovereignty as a sovereign body constituted by the citizens and replacing the beheaded king. It is the plurality of ethical and associative communities existing within the framework of the political community that fills this framework and forms it into a totality that is in a continuous process of redefinition. Nonetheless, the

debate about the concrete determination of a political community's character and identity also presupposes the existence of such a political identity as the reference point and subject matter of the controversy.

(b) With regard to the conception of citizenship, this has the following implications. Even if citizenship must be defined "formally" insofar as the acquisition of the rights to be a full citizen cannot be connected to cultural, ethnic, or ethical criteria, and political life is not considered a special form of the good life, the concept of "political virtues" is still needed. These are not ethical virtues but "liberal" virtues such as tolerance and fairness; "dialogic" virtues like willingness to cooperate and argue as well as the effort to reach a consensus; finally, also "communal" virtues such as assuming responsibility for the community (of all fellow citizens). Mutual recognition as citizens thus encompasses not only recognition of ethical difference and legal equality but also of joint political responsibility. Finally, the status of full membership has in a certain sense inevitably "substantive" presuppositions: in respect of the social, material conditions of participating with equal rights in political and social life.

(c) According to the liberal theory of democratic legitimacy, the principles of justice as substantive criteria for what is arguable in discourses enjoy priority over the procedural principle of democratic legitimacy, whereas according to the substantivist, communitarian version, legitimacy can only mean congruence with an antecedent collective identity. The participatory position imbeds the procedure of discursive legitimacy in a collective of virtuous *citoyens* rather than understand political discourses restrictedly—in the liberal manner—or substantivistically—in the communitarian manner. It can be expected of discourses rather than of individual subjects (in their "private use of reason") that they bring "particular" arguments into a "public" form—a form that makes argumentation and refutation or acceptance possible. An ethically pluralist community does not collapse into a multitude of ethical worlds and languages. Conversely, neither identity nor participation can be conceived of according to the Hegelian model of a comprehensive substantive totality or the Rousseauian model of a collective as the unified sovereign with an all-encompassing will.

More recent approaches in democratic theory attempt to draw these "de-Hegelianizing" and "de-Rousseauianizing" consequences: the theory of "civil society" and the model of "deliberative democracy." Their objective is to replace the notion of an ethically integrated political macrosubject with the theory of a plurality of democratic forms and associations that treat questions of legitimacy argumentatively in institutionalized and non-institutionalized political-public discourses, questions that need to be tackled in a pluralist and complex society.

The concept of "civil society" can be understood in various ways. According to one interpretation, it designates an inner-societal subsection of

associations and public spheres in which citizens discuss common problems and interests and, if need be, interject their justice claims into politically institutionalized processes (see Habermas 1996a, 366–79; Cohen and Arato 1992, chs. 9 and 10). Here, however, a strict contrasting of civil society and the political system is to be avoided, for the political community is the *total context* of the forums of civil society, the context in which persons as citizens are *both* authors of normative claims (directed at the state) *and* the addressees of these claims. A more broadly grasped concept of “political civil society” therefore designates more than a social subsection: it is a “community of social communities” in which political action is conveyed through a plurality of associations and communities, a plurality in which persons are connected *as citizens*, however. Hence, Walzer (1991, 301–3; 1992e, 288–89) says, the priority of the role of citizenship: the state is neither a passive framework for civil society nor a realm strictly separated from it nor its active, all-encompassing center; rather, it is the location and instrument for jointly coordinating *generally* justified social life. Such a civil society requires the deliberative legitimation of law in procedures of “public justification” as well as a form of political integration that does justice both to societal plurality and to the necessity of certain conditions for the realization of deliberative democracy. The degree to which recent theories of democracy represent alternatives to liberalism and communitarianism in respect of these problems is investigated in what follows.

(a) *The Theory of Civil Society*

It was not by chance that the redefinition of the concept of civil society went hand in hand with the movement against totalitarianism (in the countries of state socialism) or that, in many of the guises in which the theory appeared, it had its origins to a certain extent in Tocqueville (though he himself did not so employ the concept). For Tocqueville, as Albrecht Wellmer (1998a) remarks, is the one who poses the Hegelian question of the possibility of institutionalizing freedom but unlike Hegel answers it not with the objective ethical life of the state but with the exercise of communicative-participatory freedom in associations of civil and political life. “Civil society” thus denotes not Hegel’s “bourgeois society,” the “system of needs” as the sphere of economic-legal relations between persons, but the sphere of citizens’ political freedom to practice democratic participation in manageable units. In the opinion of the aristocrat Alexis de Tocqueville, this communicative freedom has a double antitotalitarian direction of thrust. First, it creates those intermediate powers that once mediated in the form of aristocratic persons between the people and the ruler and brought about an infrastructure that faced up to absolute rule. In this way, second, not only is a bulwark against tyrannical rule erected, be it the rule of a monarch or

the “tyranny of the majority,” but also a “school of democracy” is created that confronts the main problem of democratic societies: the self-interest of individuals no longer differentiated and “taken care of” in the social hierarchies of feudal structures. Americans’ “self-interest properly understood” (Tocqueville 1988, 527) combats individualism with freedom; it combats egoism with the insight of mutual help and shared political responsibility in the self-administration of common affairs. The associations of local self-administration themselves become “aristocratic bodies” (697) that banish the great danger of democratic societies, namely, the victory of privatist selfishness, which prepares the way for a democratic Napoleon who promises “bread and circuses.”

Tocqueville saw the two crucial differences between the French and the American revolutions in the fact that in France the aristocratic infrastructure had already been absorbed by the central power and the revolution simply took over and strengthened this trend and understood itself accordingly as the head of a unified body that it just had to feed (see Tocqueville 1955, 203–11). In contrast to that, the Americans had three decisive advantages. The first was their situation: their relative prosperity, without external threats or impoverished urban population; the second, their laws: the separation of powers, independent courts, local self-government; the third, especially significant advantage was their “habits of the heart”: their Christian moral doctrine and their general and yet pragmatic education (Tocqueville 1988, 277–315). This catalog of items already comprises the central topics and problems of a theory of civil society. Is it the rational self-binding through a clever constitution (Elster 1986), or is it the mores and virtues of citizens (Bellah et al. 1986) that generate the participatory-integrative force of civil society?

In its central assertions, Hannah Arendt’s book *On Revolution* is a reception of Tocqueville’s contrast of the French and American revolutions—a reception that declares itself for the (spontaneous) communicative freedom and exercise of power of civil associations on the basis of a constitution guaranteeing universal and equal rights, and one that criticizes the self-understanding of the French revolution for incorporating the single will of a united people and for owing the solution of the “social question” to this public body. In the version of civil society presented by Rödel et al. (1989), this theory’s classical-republican elements—those neglecting questions of social justice—are retracted; the critique of the “self-legislation” (103) of an ethically integrated public body (the nation) is however sustained. The antitotalitarian emphasis of communicative freedom founded on a reciprocally guaranteed recognition of basic rights moves here to the center of the theory (cf. Preuß 1990). In opposition to Tocqueville’s emphasis on the necessity of an ethical *consensus universalis* and common “habits of the heart,” they follow Marcel Gauchet’s critique of the unifying ten-

dency of Tocqueville's theory: "Diametrically opposed to what its first American form had us believe, democracy means not deep agreement of minds but fragmentation of meaning and merciless antagonism of ideas" (Gauchet 1990, 141; cf. 134–36).¹² According to the theory of the "symbolic apparatus [*Dispositiv*] of democracy" that Rödel et al. (1989, 83–127) develop following Lefort and Gauchet (1990), civil society is interpreted as the autonomous "sphere of the public and the political over against the vacant place of power" (Rödel et al. 1989, 90), and it continually "institutionalizes" itself in a conflict-ridden process of competition for the democratic exercise of power. The shape of society has been in constant flux ever since it had to be legitimated on solely secular foundations: with the loss of the head of the public body, the public body itself is fragmented and is integrated purely via the conflict about and the competition for power (108). This competition is however conducted on the basis of the reciprocal recognition of equal rights, a "minimal consensus" (72) that owes its unifying force to the act of founding and of constitution making—the original act that must be renewed again and again (59). The constitution of the public-agonistic political space is based on this mutual obligation.

In its minimalist view of what citizens have in common, this theory is similar to the conception of *modus vivendi* but far distant from the latter's minimalist notion of the public realm. There is however a problem in this proximity and distance: how can such a civil society do justice not only to the high moral-cognitive demands on citizens to practice "militant tolerance," but also to the call for "civil solidarity" (188)? Can reference to the minimal consensus of a "reverence to a political-legal framework" (72) (cf. Honneth 1992b, 66) adequately explain the problem? In the final analysis, the theory interpolates more civil solidarity and attachment into the "founding act" and its powerfully effective force than its emphasis on weak integration through conflicts would allow. The ontology of absolute plurality seems only to permit the decision between a collective subject and the plurality of individual subjects (or groups, such as social movements, that conceive of themselves as subjects). What the theory neglects is the notion of the political community as a community of responsibility in which citizens recognize one another not only as legal persons and as actors with equal rights in a competitive public realm, but also as participants in a joint project that, contrary to Taylor's view, is not however integrated ethically through a general conception of the good life but through norms and self-understandings that are both generally acceptable and subject to possible revision. But this revision is a *possibility* of the critique of collective identity, not the substance or *reality* of this identity. The normative possibility of making collective identity less rigid does not mean that actual identity consists in this process alone. Citizens, after all, deliver their criticism at the

address of this political community as a totality and must correspondingly assume that there is a self-understanding in society to which they can appeal—critically. This self-understanding does not rest on a substance of common, ultimate values, but it does contain shared contents of the self-definition as a political community. A procedural theory of political legitimacy does not imply that a political community is integrated solely through common procedures of conducting conflicts—conflicts have *common* contents as their objects and as their objectives.

The problem of collective identity in a modern civil society also arises in the theory of civil society developed by Jean Cohen and Andrew Arato. In connection with Habermas's theory of system and lifeworld, they analyze civil society as a realm that is integrated not systemically but through the communicative force of social agreement and solidarity (under the protection of basic rights). The institutions of civil society include the family as well as ethical, ethnic, and cultural communities alongside voluntary associations and groups with political intentions (social movements being paradigmatic here). "We understand 'civil society' as a sphere of social interaction between economy and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements, and forms of public communication" (Cohen and Arato 1992, ix).

Cohen and Arato deal with the question of collective identity in the context of the problem of a proceduralist conception of democratic legitimacy: when is it justified to speak of a "general interest"? The answer given by Cohen and Arato is that every democratic consensus always has the function of also affirming a societal collective identity, a context of solidarity, and this collective identity therefore provides a "minimum criterion" for what must be affirmed in a consensus ("that which cannot be violated"). "Interpreted in this way, the discovery of generalizable interests in discussion implies something prior, namely that, despite our differences, we have discovered, reaffirmed or created something in common that corresponds to a general social identity (which is itself open to change)" (368). Legitimate norms validated in consensus must not violate the collective identity of a political community so as to be "really" legitimate; this identity is a "substantive referent" (369) of political discourses.

This theory does however leave undecided the extent to which this identity of the collective is prior to or the result of discursive processes and the degree to which it is "open to change." Cohen and Arato do indeed remark "that only those aspects of our collective identity and common tradition that are compatible with the principles of democratic legitimacy and basic rights can provide the content of valid political norms" (369), and they call such an enlightened and discursively examined identity "postconventional collective identity" (372). But then, of course, this substanceless substance

of a postconventional identity cannot add an antecedent, substantive normative criterion to the criterion of general (and revocable) consensus in determining legitimate general interests.

The “we” of democratic discourses and solidarity-based sociation is therefore the community of all citizens who conceive of themselves as members of a polity and form a common “collective identity” that implies norms of discursive legitimacy and basic rights but imbeds these in a particular context of common institutions and self-understandings. These concrete contents of collective identity are not unquestionably valid and can become the subject matter of political discourses; but the identity of a political community does not consist in this questioning and its entire contents cannot be put into question all at once. Though a “postconventional political identity” has as “ethical substance” a “*procedural core*” (Wellmer 1998b, 50), this core is nonetheless “situated” in the context of a particular political community. On the one hand, postconventional identity must be open to critique and to “formalization” in the sense of the legal and cultural inclusion of minorities; on the other, it creates in this way a spatiotemporal context of common membership.

This latter aspect is in turn overemphasized by approaches to a theory of civil society that determine it to be the location of a “collective self-consciousness” in which a strong “civility,” a sense of obligation to the common good, exists (Shils 1991, 14–15).¹³ In this theory, the “we” of collective identity is a “we” of citizens who understand themselves as being obligated to the creation of a “good society” (Bellah et al. 1991). This conception goes back to Tocqueville as a disciple of Montesquieu and not as one of Madison—more to the Tocqueville who sees in Montesquieu’s *corps intermédiaires* associations of civic virtue that, on the basis of common mores and ethical convictions, promote the common good, and not so much to the Tocqueville who regards a constitution of checks and balances as one of the means for banishing the dangers of the democratic form of government. Thus Taylor (1995) distinguishes between two traditions in the theory of civil society, one line going back to Locke (the “L-stream”) and one to Montesquieu (the “M-stream”), and categorizes Tocqueville in the second stream. He neutralizes the division—central to the L-stream—between the two societal spheres of the economy and public opinion, on the one hand, and structures of the political, on the other, insofar as he does not assign the institutions and associations of civil life to an unpolitical sphere but assimilates them into the infrastructure of a political community. Hence they ultimately acquire social-integrative and participatory functions and reproduce a political identity of society as a whole. “The danger is not actual despotic control but fragmentation—that is, a people increasingly less capable of forming a common purpose and carrying it out” (Taylor 1992b, 112).

Thus, in the theory of civil society, the central problems of the debate between liberalism and communitarianism return at another level. One version places the necessity of a constitution guaranteeing universal individual rights at the center of attention—a constitution that serves as the framework for a conflict-ridden “institutionalization” of civil society; another version attempts to mediate societal plurality and collective identity within the framework of a theory of democratic legitimacy; whereas a third one, finally, emphasizes the “habits of the heart” of citizens oriented to the common good. What still remains insufficiently determined here is the relation of missing ethical commonalities among citizens and a procedural mode of *legitimacy*, on the one hand, and the necessity of political-normative *integration* and mutual recognition and responsibility as citizens, on the other. The idea of a postconventional political identity presented above must be analyzed more closely in this respect. What “virtues” does such an identity presuppose, and what substantive implications does it have?

Claus Offe (1992) and Ulrich Preuß (Offe and Preuß 1991) suggest interpreting associations as institutions that do not count on virtuous citizens but nevertheless promote an orientation toward the common good. Offe argues that even Habermas’s view of the necessity of a rationalized form of life “accommodating” (Habermas 1996c, 487) discursive will formation (with certain postconventional socialization patterns) and a political culture “accustomed to freedom” continues to overemphasize the requirements individuals are expected to meet in contrast to the institutional arrangements that make deliberative democracy and responsibility possible (see Habermas 1992d, 452–53). “Associative relations,” Offe (1992, 76) argues, secure “a beachhead” for discourses in the social world. “Deliberation” in this context means “preference laundering” (Goodin 1986; Offe and Preuß 1991, 168): the argumentative problematization, redefinition, and reordering of citizens’ preferences, which are examined in this way in terms of their long-term and comprehensive consequences. To act responsibly, Offe (1992, 78) says,

is for the agent to evaluate his or her own actions by methodically taking the critical perspectives, simultaneously and in the *futurum exactum*, of the expert, the generalized other, and of himself or herself. By assuming this triple perspective, the actor validates the criteria of action substantively, socially, and temporally.

It is not solely the “self-binding” of a constitution nor citizens’ faculties of moral judgment that make this process possible, but rather institutions in which citizens have to respond to one another and thereby assume responsibility. The associative contexts of a “local concrete ethical life” are particularly suitable for this process; the three criteria of social commitment, temporal stability, and substantive information are most often ful-

filled in these contexts, for here citizens exist as members of communities that are reciprocal, lasting, and communicatively constituted (Offe 1992, 84); here individuals have a sense of “belonging.” These forums of argumentation and deliberation thus compensate the temporal, social, and substantive alienation of political processes within a system of political representation (Offe 1992, 85; Offe and Preuß 1991, 164–65). They do not just democratize processes of general will formation, they do this already to the formation of preferences and arguments.¹⁴

This circumstance places high rationality requirements on the particular associations, and not just insofar as the associations have to enable internally rational judgment but also inasmuch as they let arguments enter that go beyond the associations’ limited interests (Offe 1992, 90). Moreover, the mediation of particular and general interests is dependent not only upon an institutional “design” that enables argumentation but also upon individuals’ awareness of being members in a collective that encompasses all individual associations. Offe thus speaks of the “nation” whose continued existence is perceived as a joint task of citizens (82). Going beyond particular contexts, persons as citizens must be in a position to speak a *general* and *public* language—at this point, the central category of the theory of civil society, namely, the “public sphere,” takes effect, as does the internal connection between “responding” and “responsibility.” This means, first, that the principle of “public justification” must be realized within associations; but second, that these discourses must pass into politically institutionalized, general forms of argumentation and will formation; and finally, that political arguments as a whole appeal to a political public sphere of all citizens, which is the legitimate justification community in questions that concern all citizens. The idea of a public language presupposes the idea of a political public sphere in which citizens advance reasons, respond to counterreasons, and are argumentatively responsible for their reasons. Without this dimension of public sphere and responsibility, a conception of democracy lags behind the principle of public justification; and it is evident that this principle presupposes a political form of reciprocal responsibility on the part of citizens to and for one another. Citizens must assume responsibility for political reasons before the community of all citizens; and the community must be able to jointly assume responsibility for political decisions. It is not individual persons who are burdened with this responsibility but all persons as participants in discourses and as authors of law. In this sense, a procedural justification community is a community of responsibility that has at least the “substance” that citizens understand themselves as participants in such a community: to respond reciprocally and to reach decisions for which responsibility can be assumed collectively. This demanding form of *political integration* goes hand in hand with the idea of political autonomy. The question of what conceptions of citizenship and

political discourse are presupposed by this leads to the theory of deliberative democracy.

(b) *The Theory of Deliberative Democracy*

The idea of discursive deliberative democracy represents an alternative to liberal and communitarian theories of political legitimacy; in particular it avoids the latter's Rousseauian and Hegelian premises. Following Habermas, popular sovereignty is conceived of "as procedure":

The "self" of the self-organizing legal community disappears in the subjectless forms of communication that regulate the flow of discursive opinion and will formation in such a way that their fallible results enjoy the presumption of being reasonable. This is not to denounce the intuition connected with the idea of popular sovereignty but to interpret it intersubjectively (Habermas 1996a, 301).

In an institutional respect, this procedural theory presupposes an interplay of associations, voluntary organizations, and communities (limited public spheres), political institutions and a general political public sphere (mediated through the media).¹⁵ In accordance with the principle of public justification, this interplay must make it possible for reasons relevant to the political issue subject to regulation to enter into democratic will formation and for decisions based on the best available reasons to ensue. The reasons must stand the test of acceptance—of tolerance, at least—by those affected by a regulation. Accordingly, the possibility of general political participation is not an end in itself; rather, it is a condition for the assumption that the possible counterreasons of those affected were appropriately considered in a political question.

The communication between citizens is therefore to be called "subjectless" only in a metaphorical sense that stresses the *intersubjectivity* of procedural legitimacy. Viewed formally, it is in the *procedures* of reciprocal justification that the idea of popular sovereignty is embodied (cf. Maus 1992, ch. 9); and viewed materially, it is the reciprocally justified *reasons* that give norms their legitimacy. They are the common result of deliberative processes. "Communicatively generated power" (Habermas 1996a, 146–51, 301) is the intersubjectively and publicly generated power of acting "in concert" (Arendt 1970, 44); as a law-positing power, it leads to the legitimation of administrative power. If "power" is understood not concretistically but as the power of joint, *justified* action, there is then no necessary dichotomy between "public" and "institutional" power—procedures of justification must form the bridge for the legitimation of political-administrative power.

"Deliberative democracy" means that neither the sum of individual wills nor a "general will" is the source of legitimacy, but rather the process of

discursively, argumentatively, and deliberatively reaching a generally justified political decision that is always only provisional and revisable (Manin 1987, 352–53). Joshua Cohen gives the following definition:

The notion of a deliberative democracy is rooted in the intuitive ideal of a democratic association in which the justification of the terms and conditions of association proceeds through public argument and reasoning among equal citizens. Citizens in such an order share a commitment to the resolution of problems of collective choice through public reasoning, and regard their basic institutions as legitimate in so far as they establish the framework for free public deliberation. (Cohen 1989, 21)

Habermas emphasizes, moreover, that a new theory of comprehensive societal self-organization is not thereby established, one which would not do justice to the complexity of modern societies. Public discourses replace neither procedures connected to the rule of law nor systemically integrated spheres of society, rather they denote the dimension of opinion and will formation upon which a democratically constituted society depends in principle. “Discourse” does not take the place of the sovereign “macrosubject” (Habermas 1996a, 372) of the people; rather, discourses appear in plural, and claims and reasons must pass into certain institutional procedures (1989b). Of course these in turn remain in need of public justification. The “public sphere” is to be understood not monolithically but as the space in which political arguments evolve and must prove themselves—from which in turn certain consequences follow for the structure and organization of public communication (communication rights, access to the media, etc.).

The principle of deliberative democracy is a principle of democratic legitimacy: only those political norms and decisions may claim legitimacy that can be questioned in respect of their particular and general consequences and accepted in a discourse of free and equal citizens. Only in this way, as Habermas says, can they can enjoy “the presumption of being reasonable” (see above). This principle ascribes to political discourses three essential functions and properties, which will be dealt with in what follows under the headings (i) rationality and fairness, (ii) critique and conflict, and (iii) reconciliation and solidarity. The first one implies certain presuppositions of the (in this sense not “subjectless”) deliberative principle on the part of citizens, namely, the capacity for the discursive formation of the will, judgment, and preference as well as the willingness to understand, accept, or tolerate the position of others. The second complex refers to the task of permitting and recognizing the claims of hitherto excluded groups. The third one, finally, relates to the necessity of reconciling the fissures in a political community and of realizing, on the basis of solidarity, general recognition of full membership. It is, to put it briefly, a matter of (i) *finding*, (ii) *problematizing*, and (iii) *affirming* a public language among members of a political community.

(I) RATIONALITY AND FAIRNESS

In various ways, the theory of deliberative democracy makes stronger cognitive assumptions than the liberal and communitarian models of political legitimacy. In comparison to Rawls, for example, (and more so in contrast to the *modus vivendi* model), it presupposes more, as Amy Gutmann and Dennis Thompson (1990, 143) remark, insofar as it assumes the possibility of rational discourses in ethical, political, and moral questions in a sense that surpasses the agreement concerning “constitutional essentials” and “questions of basic justice” in Rawls’s political conception of justice. In contrast to communitarian theories, it attributes the possibility of consensus neither to an antecedent substantive *Sittlichkeit* and its values nor to the orientation toward the common good on the part of virtuous citizens. Consequently, it assumes at the same time both *more* and *less* agreement than these proposals: more agreement in the sense of more possibilities to secure rational arguments and reach consensus or compromise, less agreement however in relation to the substance that carries this consensus. In an important sense, it is always “provisional” and the result of discourses that can be questioned by citizens (cf. Gutmann 1993, esp. 191–93).

The rationality of the result of a political will formation is linked to the proceduralist criterion of having been formed in a public discourse of free and equal citizens—in accordance with the Kantian principle of the “public use of reason” (cf. Bohman 1991). Democracy is the rule of generally justified reasons. “Good reasons” for a political norm or decision must be general and public, must not evade counterarguments, and must be able to give the best possible explanation of themselves. From participants in argumentation they require the capability and willingness to explain their reasons, compare them with other ones, and change them if necessary. “Citizens put their moral beliefs to the test of public deliberation, and strengthen their convictions or change their minds in response to the arguments in which they engage” (Gutmann and Thompson 1990, 143). The cognitive assumptions of this model therefore refer to citizens’ capability to act communicatively and to adopt others’ perspectives; yet they also imply that “social issues liable to generate conflicts are open to rational regulation, that is, regulation in the common interest of all parties involved” (Habermas 1992d, 447). In this connection Bernhard Peters raises the objection that the procedural criterion of the publicness and generality of will formation is not sufficient to guarantee the rationality of the outcome of the procedure (Peters 1991, ch. 7). This does not imply that “good reasons” (271) are insufficient to justify legitimacy but that given reasons always have a fallibility proviso, even if they are the reasons of a majority. In the absence of substantive social rationality criteria or of infallible specialist knowledge on the part of “neutral” observers, however, it can only

be concluded from this that the greatest possible (but factually always restricted) generality of consultation is guaranteed and therefore also the possibility of critically questioning reasons. Thus the *openness* of political discourses is a necessary requirement; arguments and decisions too must be examined in the light of learning processes and revised if necessary. Political decisions are in this dilemma: not to destroy in principle the possibility of their revisability but to be understood as provisional and at the same time valid decisions.

A deliberative model of democracy does not start out from an epistemological conception of justification, according to which democratic procedures are the best way to find an objective political truth (see Coleman and Ferejohn 1986–87), or according to which democracy is the best reaction to the impossibility of identifying the few who could discover this objective truth (see Estlund 1993 and, for critical comments on this, Copp 1993). The concept of truth is misleading here: in democratic decisions it is a matter of questions of rightness or justice. Material correctness here is an essential dimension of normative rightness—material information plays a central role in the genesis of normative decisions and their concrete implementation. But how this information is formulated and how it is weighted are questions that cannot be adjudged without those affected; they are already normative questions. “Correct” and “rational” democratic decisions therefore rely upon the informative and critical objections of those potentially affected—in this respect, epistemological and normative questions cannot be separated. What remains fundamental here is the normative element: good reasons must be able to be generally recognized by the authors of the law, who are also its addressees. For this “rational acceptability” one can specify procedural criteria—and procedures of argumentative weighing and examination—but not general substantive criteria.

According to David Miller (1992), the deliberative ideal of democracy differs from a liberal model through the assumption of the possibility of a discursive alteration of preferences in the direction of converging judgments. The preferences of individuals must be introduced into procedures of public justification with general reasons, which implies not that they are detached from the individual’s own interests but that a connection between the individual’s own ones and general ones can be established. Purely self-referential interests are thereby excluded (61)—but not primarily because of strategic considerations but out of insight into what is reciprocally defensible. In this way, individual preferences are expanded into common judgments and form the basis of the democratically legitimated will (66). Accordingly, persons’ preferences are not regarded as solidified blocks that have to be aggregated in political procedures,¹⁶ nor are they understood as a mass that has to be molded and from which a uniform common will emerges. The reasons that are generally recognized remain connected to

persons' and groups' claims and interests; they do not constitute a "pure" language.

The deliberative formation of preferences, judgments, and will means therefore the following. Persons' or groups' preferences must be justified with their own reasons to others in public discourses. This process presupposes first of all an examination of these preferences in respect of their public defensibility on the part of the persons possessing them. In procedures of argumentation, a second examination considering the claims and counterreasons of other persons and groups commences, one that could make it necessary to redefine, qualify, or reorder one's own preferences. By analogy with Harry Frankfurt (1971), one could say that first-order preferences are examined in the light of second-order ones, second-order preferences that rest on general reasons. They include a perspective that is materially, temporally, and intersubjectively broadened. In this way they are *translated* into a general language, a language of reasons on the basis of which common judgments are possible. These judgments are "reflective" in the Kantian sense: they ascend from individual perspectives up to a common one that is neither the sum of the individual ones nor the perspective of a macrosubject. The capacity for reflective judgments presupposes according to Kant (1987, 160–61) a way of thinking that is "unprejudiced," "broadened," and "consistent": "(1) to think for oneself; (2) to think from the standpoint of everyone else; (3) to think always consistently." According to Arendt (1977a), it is particularly the capacity for "broadened" thinking that constitutes the core of political judgment as an intersubjective achievement. It must be emphasized, however, that the translation of particular arguments "sublimates" these arguments by preserving them; they continue to be identifiable against the background formed by their context of emergence. A general will is thus not the will of a collective subject but an argumentatively generated agreement based on general reasons that continue to be reasons *for* persons. In the final analysis, "sublimating" arguments into truly general reasons remains the ideal case of deliberative procedures, which must be presupposed as the goal in order to keep discourses open to reasons, in order to demand justifications, and, in the event of persons with conflicting interests not being able to agree on jointly justified resolutions, in order to make *justified* compromises possible through fair procedures. They are founded not on *shared* but on mutually *tolerated* reasons (cf. Habermas 1996a, 166).

In the context of the debate between liberalism and communitarianism it is important to emphasize that according to this model citizens do not cast off their ethical identity. The "burdens of reason," which lead to "reasonable disagreements" between incompatible ethical conceptions, have to be attended to—precisely because it is often the case that ethical questions cannot be taken off the political agenda. In this connection Thomas Mc-

Carthy (1991, 196–99) emphasizes the necessity of distinguishing between moral and political criteria of legitimacy. In political conflicts, “rationally motivated consensus” can follow on the basis of (nonstrategic) compromises or certain procedural rules that are generally recognized. “Direct” justification is based on accepted, shared reasons, “indirect” justification on accepted procedures, without the outcomes of these procedures being regarded as the best possible (1994, 56). Here, however, the following must be borne in mind. The “indirect” acceptability of a decision (that came about by majority vote, for instance) does not presuppose that it must be justified in the sense of “strict reciprocity and generality” (see chapter 2.1 and 2.4) according to the model of basic norms or can only be valid thus; but it does presuppose that the decision does not *violate* norms that are justified in accordance with this criterion. It must transpire on the basis of certain “strict” rights and procedures in order to claim for itself the “presumption of being reasonable” in the sense of a “fair” compromise or a “fair” decision. This precautionary measure does not remove procedures or arguments or the outcomes of discourses from political contexts, as McCarthy fears, it does however impose certain criteriological conditions on them (which can be asserted by persons in these contexts themselves as an appeal to their basic civil rights).

In political discourses, ethical, pragmatic, and moral points of view meet one another; they do not constitute discourses in their own right but present different aspects of practical problems that have to be weighed (compare Habermas 1996b, 452 [esp. n. 3] with Habermas 1996a, 167–93). These aspects are connected in complex but not inexplicable ways. Particularly with problems in which moral questions play a role—the death penalty is an example, or constraints on forms of life that cannot be justified reciprocally—the moral points of view must take precedence; they must not be sacrificed to ethical or, even worse, pragmatic considerations. The emphasis on this strict criterion thus derives not from the neglect of the ethical constitution of persons and the contextless ideal of “pure” discourses but from the special significance of the moral protection of persons in their concrete identity. Political discourses are not moral discourses but are concerned with diverse material; they must not however give wrong answers to moral problems. A procedural theory of justification must connect “liberal” and “democratic” elements in the right way when it is a matter of the conception of a common language among citizens. Here, however, the question arises as to how “general” such a language can be in the first place.

(II) CONFLICT AND CRITIQUE

Inherent in every language is the potential violence of excluding those who do not speak in it but in whose name others speak. This possibility applies

in particular to the language of law: it claims to speak in the name of the general public and adjudicates for and on all citizens but cannot do so in the name of those who were excluded from processes of judgment and will formation (cf. Lyotard 1987; Derrida 1992; for a critique, see Maus 1992, 209–15; Benhabib 1994). How is it possible to find a general language that does not silence the voices of “difference”?

This question was already discussed in connection with the feminist critique of the neutrality claim of the liberal legal person (chapter 2.3). From this critique, the consequence of reconceptualizing the legal person was drawn, according to which legal personality is now to be understood as the protection of particular, concrete, and therefore also “different” identities. Rights claims to recognition were however referred to the forum of political and not juridical discourses, for this is the place where citizens as authors of law reach agreement on the recognition of groups and identities, and where they must translate their agreement into law and realize it. However, the problem reappears here: how can the language of public political discourse be “polyglot,” how can the expulsion of the particular from the public-general language be prevented? Can “public reason” speak with more than one voice?

The discourse-theoretic model of deliberative democracy can respond to these questions more appropriately than the liberal or communitarian models of democratic discourses and “public space.” Both, liberal and communitarian conceptions, limit to a certain extent the possible questions that can be raised and answered in political discourses. The liberal model does this insofar as it continues to be bound up with a problematic distinction between “public” and “nonpublic” questions (cf. Pateman 1983; Okin 1989; MacKinnon 1989). “All struggles against oppression in the modern world begin by redefining what had previously been considered private, nonpublic, and nonpolitical issues as matters of public concern, as issues of justice, as sites of power that need discursive legitimation” (Benhabib 1992b, 84; 1989b). “Privacy” designates not a social space in which existing conditions are conserved but a space of possibility for developing one’s own identity in reciprocal relations. The principle of the neutrality of justification must not be translated into politics in the wrong way.

Nor does communitarian theory do justice to this problem complex. It establishes too close a connection between the fact that a self is constituted in a community and the self’s obligation to maintain this community—not doing so at the price of losing its own identity. It is therefore the traditional concrete identity that communitarian theory recognizes, not the changed, self-determined identity of the “concrete other” (see Benhabib 1987; Friedman 1990; Rössler 1992). Communitarian theory is a carrier not only of particular conceptions of traditional role relations, but also of notions of an ethically integrated political community with a comprehensive identity

and a comprehensive common good that embodies the good of all virtuous citizens. Both are unacceptable to feminist theories: talk of an integrated political identity shrouds the exclusion of those who as “nonidenticals” drop out of this identity, and emphasis on civic virtue and the common good conceals the chasms within a society founded on relations of power (cf. Fraser 1992, 118–19; Young 1990, 118).

A theory of discourse, so it seems, avoids these strong presuppositions of a uniform identity as well as those of the virtue of citizens and the acceptance of traditional identities on the part of communitarians; moreover, it is not obligated to a model of restricted public space. Political discourse is the medium in which concrete claims to recognition call existing structures and norms into question and can lead to a form of general language (possibly reconceptualized) that guarantees the recognition and realization of these claims. Feminist theories, however, dispute this thesis. According to them, deliberative theory suffers from three illusions: the illusion of the reality, the possibility, and the desirability of such a general language.

The reproach that the theory assumes the existing reality of a language that is—in the true sense of the terms—general, legitimate, and capable of assimilating all interests does not do justice to the claims of this theory: the principle of the openness of political discourses states that an already accepted norm or decision is subject to the permanent qualification of being provisional; that is, it can be changed by reason of better arguments and a more comprehensive consideration of the interests of those affected. With this emphasis on provisional character and openness based on the claim to generality, the theory remains critical.

The criticism that the possibility of a “truly” general language is an illusion sets in at this point. Jane Mansbridge (1990, 127) points out that

the transformation of “I” into “we” brought about through political deliberation can easily mask subtle forms of control. Even the language people use as they reason together usually favors one way of seeing things and discourages others. Subordinate groups sometimes cannot find the right voice or words to express their thoughts, and when they do, they discover they are not heard.

If this objection is radicalized, the possibility of a general language founders on the plurality of perspectives, the particularity of “real” discourses, and the violence contained in discourses and their language. This criticism is directed at central assumptions of a theory of discourse, for this theory must presuppose that discourses of argumentative debate and deliberation are the appropriate means to regulate, in a generally justified sense, social conflicts. What is decisive here is that the “transformation,” the “translation” of particular values, interests, and arguments into a “general language” is understood not as a “process of becoming one,” as the character

transformation of individuals, or the complete fusion of perspectives, but as agreement on the basis of commonly shared or tolerated reasons. The idea of an all-encompassing language is not foremost here; rather, the idea of a language that is at all times criticizable and inclusive, one that can still be generalized and becomes, for that very reason, more concrete. It sublimates difference not in the sense of negating it but by taking it up in such a way that individuals can still recognize themselves as individuals in the generality of the language. Beyond the alternatives of incompatible subjective perspectives and an objectivism that sublimates everything in it, common argumentation creates a language that presupposes a process of perspective taking and brings this process to bear in agreements in such a manner that individual arguments and reasons continue to be recognizable. A general political language is not a “pure” language, it remains tied to the (idiomatic) contexts of particular identities. That it becomes “more” general as an inclusive language means not that it moves away from these contexts but that it takes them into consideration by revising and differentiating its vocabulary.

This idea does of course presuppose the normative desirability of a general language, which a more critical version of the impossibility objection undercuts: even if a general language were conceptually imaginable as an open language, every “provisional” closure (and decision) would be unavoidably and necessarily violent, not “truly” general. It cannot therefore be a normative goal to pursue the idea of such a general language (cf. Young 1990, 98–99). However, this conclusion rests on a normative fallacy: it is contradictory to infer the normative disqualification of the idea of a generally justified language from the diagnosis of hindrances and social restrictions that oppose “true” discourses and consensus because it is only the standard of “truly” general discourses and consensus that makes the critique of these restrictions possible; for when the disguising of particularity as generality is criticized, this critique does not imply that this disguise is necessarily and legitimately so structured that under changed circumstances (if one were oneself in the position of power to define generality), it would be acceptable from one’s own perspective. Otherwise the false ideology of equality or generality could not be normatively criticized: there is no critique of false equality without the “regulative idea” of a “better” equality. Only the principle of legitimacy, namely, that those norms are legitimate that can be accepted by all those affected as free and equal persons, opens the possibility that those affected raise their voices and articulate their dissensus and that this, *prima facie*, brackets the validity claim of the norms criticized.

Here, the idea of an “ideal” generality of discursively reaching understanding must not be placed in false opposition to “real” discourses. An example for the confusion of these dimensions is the critiques of discourse

theory advanced by Walzer (1990d) and Barber (1988, ch. 8). In a misunderstanding that amounts to a self-misunderstanding—since Walzer and Barber also regard democratic discourses among free and equal citizens as the only medium of legitimacy (cf. Barber 1984; Walzer 1983, 304)—Walzer places “real talk” over against “ideal talk” and “hypothetical conversations . . . in asocial space” (1990d, 185). Discourse theory, Walzer says, replaces unconstrained, open, and unstable democratic discourse with a model of ideal discourse in which all participants have the same information and introduce into the discourse only those interests and values that are universalizable: “the universalization requirement is a powerful constraint” (186). The discourse approach drafts discourses according to the model of the Rawlsian original position; there is no room there for real conflicts between interests and values. Ultimately, Walzer argues, it is fear of democratic plurality that gives “philosophy” priority over “democracy” (Walzer 1981; Barber 1988), that grants artificial argumentation precedence over real argumentation.

This critique misunderstands normative concepts as a description of or surrogate for democratic discourses; it does justice neither to Rawls’s nor to Habermas’s theory. According to Rawls the original position is to be understood under no circumstances as democratic discourse but rather as a reformulation of the Kantian universalization test for answering the question of what justice principles are in the general interest, that is to say, also in the interest of those who have *no* voice in existing societies. Rawls leaves the implementation, realization, institutional and interpretational concretization of these principles to democratic discourses, which are no longer behind a “veil of ignorance” (Rawls 1971, § 31). His theory of legitimacy discourses is, as has been demonstrated, indeed limited, however not to the extent that “differenceless” beings with identical interests encounter one another here, but to the extent that he highlights a particular conception of the person and, correspondingly, particular justice principles that, as their foundation, constrain political discourses.¹⁷

On the other hand, Habermas’s explication of the presupposition of universal consensus, which is normatively necessary in discourses, is closer to Walzer’s ideal of “unconstrained” talk—“unconstrained” in respect of the possible topics and arguments of political discourses and with regard to their inconclusiveness (“real speech is always inconclusive; it has no authoritative moments” [Walzer 1990d, 194]). Habermas’s specification of democratic discourses is a specification that Walzer must accept in order to give these “unstable and restless” discourses a legitimacy criterion on the basis of which a decision on the part of those involved themselves can be accepted or criticized (cf. Warnke 1990a, 202). To provide universal reasons for the discourse conditions of freedom and equality does not mean arguing for discourses among beings who are indistinguishable from one

another and are without bodies or interests. It means knowing what the formal validity criterion of a norm consists in.

It is essential to distinguish the following: (a) the normative demand for unrestricted discursive generality, which prohibits the exclusion of participants and justifies the openness of content; (b) the criterion of strict reciprocity and generality in moral questions; (c) the criterion of restricted generality in political justification discourses (which are concerned with issues that are not to be treated as moral ones in the strict sense). Neither (a) nor (b) implies that in (c) persons are considered as “generalized” others (Benhabib 1986, 339–40; 1987) or that the intersubjective character of political discourses is not grasped. Rather, the generality criterion requires that none of the “concrete others” be disregarded because of his or her otherness, which Seyla Benhabib’s “interactive universalism” also demands.

As has already been pointed out, the distinction between moral validity (b) and political generality (c) means furthermore that the separation of moral and ethical questions does not lead to an antecedent exclusion of ethical questions from political discourses (on this critique, see Benhabib 1992b, 89–90). For insofar as “private” areas of social life conceal power relations, discourse theory demands, *first*, that such power relations be exposed by showing that they can be criticized but not defended with general arguments; and, *second*, that in political discourses not only can such hitherto “private” questions be permitted but also arguments from the experiences, interests, values, and needs of concrete, heretofore excluded and unheeded identities (cf. Fraser 1986, 426). These arguments of a “critical” language enter into an argumentative process in which the “old” language is criticized and reformulated in order to make a “new” general language possible. This criterion, the creation of a new *general* language, cannot be avoided, either by the old or by the critical language. The distinction between questions that are to be generally legitimated and ethical questions concerning the good life of a person does not imply the problematic separation of public and private questions (cf. Habermas 1992e, 243), but it does involve the general justification of norms for the reciprocal recognition of personal-ethical autonomy (chapter 2)—thereby touching upon an open problem in feminist theory, that of specifying “private” autonomy.¹⁸

Benhabib’s immanent critique of the exclusionary tendencies of discourse theory is ultimately sustained by a particular conception of political discourse (c). According to it, individual needs are introduced into discourses, redefined, and translated not only in the form of arguments but are first of all brought to the consciousness of individuals as needs by means of a “moral-transformative process” (Benhabib 1986, 313–14). This process ultimately leads to a new level of conscious subjectivity and commonly shared intersubjectivity, a “community of needs and solidarity” in which

subjects recognize that they are dependent upon one another. "The moral categories that accompany such interactions are those of responsibility, bonding, and sharing. The corresponding moral feelings are those of love, care, sympathy, and solidarity" (341). Discourses not only mediate between individual perspectives in search of a common language, they also realize a higher form of individual, concrete identity and solidarity-based communality that goes beyond the recognition of reciprocal rights. Here, however, political discourses are ascribed a function of consciousness-raising and of forming individual and collective identity that assimilates them too strongly to ethical discourses (cf. Fraser 1986, 427; Moon 1991, 220-21; White 1991, 109). To open political discourses to arguments of need interpretation does not mean turning them into the place of identity formation for persons.

Iris Young also criticizes the discourse-theoretic neglect of concrete identities, but unlike Benhabib she proposes not an ethical reformulation of political discourses but the model of a "heterogeneous" public that represents groups as groups. Against the norm of impartiality she argues that "it reinforces oppression by hypostatizing the point of view of privileged groups into a universal position. Instead of impartiality, I argue, we should seek public fairness, in a context of heterogeneity, and partial discourse" (Young 1990, 112). Partial discourse does not however mean that political discourses founder on the impossibility of a common language; rather, it means that this language mediates individual or collective claims and needs generally, it does replace them with a false generality. This element of impartiality is inescapable and deserves to be designated as such at the outset, as opposed to the distorted picture that Young presents of a perspective completely removed from contexts (107).

Young's emphasis on the difference between various social identities leads to a principle of group representation that serves to guarantee the possibility of general and equal participation in discourses. According to this principle, a political community has the task both of making the self-organization of social groups possible and of creating institutional contexts in which they can assert their interests and can veto decisions that concern them in a special way ("such as reproductive rights policy for women, or land use policy for Indian reservations" [184]). In this way, Young argues, hitherto excluded groups acquire the possibility of gaining truly just recognition within a "heterogeneous," yet jointly decision-making public (190). The problems of this proposal, however, lie not only in its institutionalization but also in its distinction between "social groups" (which are defined through common practices or a common way of life) and "interests groups or ideological groups" (186). Only the former, Young says, should have representation rights, and of these groups only those who have not yet been sufficiently represented. But these criteria are too imprecise to

specify what groups for what reasons should enjoy what kind of rights (a hitherto underrepresented religious community, for instance, would fall under her criterion).

Nonetheless, this proposal does point to the important problem of the conditions of the possibility of *forming* and *defending* the interests and perspectives of excluded groups. In this connection, Nancy Fraser (1992) has proposed a reformulation of the classical theory of the democratic public sphere whose core is the idea of “subaltern counterpublics” (123) that serve both as forums of particular interest formation and as starting points for exercising influence within the comprehensive public sphere and the “strong publics” (134) of politically institutionalized procedures. For example, the proposal thematizes “need interpretations,” which lead to political measures in the welfare state, first among those affected and ultimately in the general public sphere (cf. Fraser 1989). It must however confront the problem of connecting the discursive, solidarity-based infrastructure of particular publics with the comprehensive political public sphere. How strong is the common language between the counterpublics and the general public sphere (as a field of social conflicts)? It seems that, from the standpoint of the “collective concrete other” (1986, 428), the “discourse ethic of solidarity” locates solidarity primarily in particular social groups, whereas solidarity at the level of society as a whole is left out of conceptual consideration (cf. White 1991, 109).

Accordingly, a general language of political discourses is permanently exposed to the suspicion of declaring particular interests to be general interests and must therefore be seen as a “contested” language. Claims to recognition call this language into question; they do nonetheless lead into a “new” language that must be strong enough to guarantee and *realize* this recognition. Generality and solidarity are unavoidable conditions for recognizing particular, diverse identities and for realizing this recognition in a political community’s institutions and practices.

(III) RECONCILIATION AND SOLIDARITY

A republican reading of deliberative democracy is a response to the requirement that the political community as the place of struggles for recognition can, only as a solidarity-based and reconciled community, be the place where this recognition becomes reality. According to this reading, a deliberative democracy is based on the virtue of citizens to be able to consider carefully and discursively how to place their individual interests under the common good. In discourses, it is not just arguments that are “laundered”; persons themselves are changed. Cass Sunstein (1988, 1548–58) formulates four principles of such a democratic conception as “liberal republicanism.” The first principle is that of deliberation itself. It states that citizens are in a position to regard their interests and preferences not as

given but to subject them to a discursive examination. Sunstein understands this willingness as “civic virtue,” as the subordination of one’s own interest under the general interest. The second principle is that of political equality: all citizens must have equal access to the political process and be able to exercise political influence. In this instance, “political” equality also has consequences for the distribution of social goods such as income, education, and so on. The third principle is that of “universalism.” It states that the possibility of reaching a consensus on the common good must be accepted as a “regulative ideal” and that citizens must be assumed to be capable of perspective taking in order to understand the other’s position even where no agreement is possible. Finally, the fourth principle of citizenship consists in recognizing political participation not only as an instrumental value but as one constitutive of a virtuous life. Accordingly, deliberative democracy not only makes cognitive demands of reciprocal argumentation on its citizens; it also expects them to promote the common good as a superordinate good; this conception, as Wolfgang Kersting (1991, 162) characterizes a “communitarian democracy,” asserts “that communality is intrinsically valuable and that the form of life making it possible is a collective good” that has to be protected for its own sake (cf. Kersting 1992, 147–48).

Modern “liberal republicans” like Sunstein¹⁹ or Frank Michelman do not ignore the conflict-ridden character of modern societies but believe that the ideal of deliberative politics cannot do without a strong conception of “civic sense.” “The *persuasive* character of the process depends on the normative efficacy of some context that is everyone’s—of the past that is constitutively present in and for every self as language, culture, worldview, and political memory” (Michelman 1988, 1513; cf. Perry 1988, 152–60). Democratic-communicative action is therefore the affirmation of a “common life” or even “a process of personal self-revision under social-dialogic stimulation” (Michelman 1988, 1528). The possibility of reaching consensus presupposes an antecedent communality of citizens as communal beings. The *sensus communis* of judging jointly, as Arendt (1977a, 223) too understood this, is the affirmation of a common world and at the same time persons’ “disclosure” of themselves in the “sphere of public life.” The subject matter of deliberation, says Ronald Beiner (1983, 138, 152), is the two questions Who are we, and Who am I?

Yet this conception assimilates the political community too strongly to an ethical community (as the place of self-realization). The general language of consensus, compromises, or majority decisions is not an ethical language of joint self-discovery but one resting on reasons and one in which the particularity of “individual languages” continues to be recognizable. This conception presupposes citizens who want to regulate their social life together according to norms that are in the best possible interest of all.

The *sensus communis* implied here consists in the mutual recognition of citizens as fellow citizens to whom one must rationally justify one's own claims and who have the right to put forward and defend their own claims. Citizens must be capable of exercising *political autonomy*—of rationally and responsibly binding their actions to self-given laws. The political responsibility of citizens as “co-authors” of law has both a *dialogic* dimension—having to “respond” to fellow citizens in a responsible manner—and a *collective* one—citizens are jointly responsible for the actions of the collective.

MacIntyre has laid emphasis on the latter dimension. In his opinion, individualist or proceduralist concepts do not adequately explain actions of the collective: without belonging ethically to one's own nation, citizens cannot assume such a responsibility:

I may legally be a citizen of a certain country; but I cannot be held responsible for what my country does or has done unless I choose implicitly or explicitly to assume such responsibility. Such individualism is expressed by those Americans who deny any responsibility for the effects of slavery upon black Americans, saying “I never owned any slaves.” [T]he young German who believes that being born after 1945 means that what Nazis did to Jews has no moral relevance to his relationship to his Jewish contemporaries, exhibit[s] the same attitude, that according to which the self is detachable from its social and historical roles and statuses. (1984a, 220–21)

Here MacIntyre identifies a problem that relates to a complex connection between of historical-political and moral points of view. For, on the one hand, he rightly refers to the fact that persons as “situated” citizens have concrete obligations that follow from their membership in a spatiotemporally located and acting collective, and to the fact that these obligations are of a *historical-political* nature: one has them as a member of this political community. In a normative respect, on the other, these *special* responsibilities—for instance, for the “crimes” (MacIntyre 1984b, 16) of the political community—grow out of the *universal moral* duties one has to human beings as *human beings*. With his ethical monism, MacIntyre cannot however adequately spell out what the universal standard is for the crimes that a collective perpetrates on “other” persons or collectives since he recognizes only standards that are located *within* traditions and collectives. Citizens born later do have a certain indirect responsibility for such deeds as members of a political collective and its history (“as” Germans, “as” Americans); they have it however *by reason of* a moral responsibility *to the victims* (a moral responsibility judged according to universalist standards). In that sense it is not ethically grounded. Here it becomes apparent not only to what extent citizens as members of a political community have substantive obligations of a mutual kind and ones to third parties, but also that political collectives must live up to certain moral principles. The content of such—direct or

indirect—obligations to third parties is ultimately a question of concrete cases in consideration of their temporal and moral dimensions.²⁰

Responsibility as members of the political community does however have a further collective dimension: as citizens' responsibility for one another in the sense of the *realization* of accepted claims to recognition in the form of rights and benefits. Here lies the significance of civic solidarity: a political community is a community of the recognition *and* realization of equal rights and duties, which constitute the status of a "full" member of the community. This dimension leads to the question of a theory of social justice, which will be dealt with in the next section.

To sum up, it can be said that the discussion of the various interpretations and aspects of a theory of deliberative democracy has demonstrated the possibility of reformulating liberal, feminist, and communitarian concerns within the framework of a process of finding, problematizing, and redefining a general language. The general language of political discourse must be *general* enough to guarantee rationality and fairness, *open* enough to permit critique and claims to recognition, and *strong* enough to realize recognition in a responsible and solidary manner.

The *legitimacy* of political norms and decisions presupposes, in the sense of the requirement of general justification and "public reason," processes of deliberative preference and judgment formation within and between associations and communities, processes that enter into institutionalized procedures of will formation and decision making.

The normative *integration* of a political community is constituted by a plurality of communities, associations, forms of life; it itself cannot therefore be understood as an ethical community in the identity-constituting sense. Though its members do not share a conception of the good life, they do have a common past, present, and future. The commonalities of all citizens are to be found in a shared political practice and in values and self-understandings that must be justifiable over against the claims of those who were excluded from this common identity. The collective identity of an ethically, ethnically, and religiously pluralist society consists of more than the mere *principles* of inclusion (equal rights and common political institutions), it consists of the *history* of exclusion and inclusion, the history of common experiences. This qualification applies not only to a "multicultural" society like the United States; it is not only in the sense of "polyethnicity" or "multinationality" that many countries today are "multiethnic," but also in the sense of a plurality of religions and forms of life. In a normative sense, however, a political community is not already "multicultural" when it consists of different cultures, but when the common political identity represents these particular identities appropriately.²¹

Against this background, *citizenship* is a complex concept, for it must simultaneously encompass ethical-cultural difference, legal equality, and

political commonality. Citizens must recognize one another as *ethical persons*, as *legal persons*, and as *fellow citizens* in their difference and their sameness. Civil rights thus comprise individual rights to personal autonomy, political rights to participation, and social rights to share society's resources, which constitute the status of full membership in the political community. "Citizenship" can therefore be understood on the one hand as a *status* defined by certain rights, but on the other as a *process* of acquiring and extending rights (cf. Marshall 1992).

This theory of the different dimensions of the concept of citizenship is a response to the *dilemma of the substanceless substance* of a pluralist democracy: how is this democracy to create a political entity that is neither so strong that it marginalizes identities nor so weak that it rules out social stability and solidarity? In view of the plurality of ethical conceptions, a politically inclusive community cannot be understood in an ethically substantive manner—in this sense, political membership is to be understood formally. And yet, to avoid material exclusion through social inequality, membership in the political community must be understood substantively in another sense: in reference to social rights. This *legal* and *social* inclusion makes it ultimately possible for the citizens to participate in a *politically* substantive sense in justification discourses and to conceive of themselves as part of a political community of responsibility. In the two latter respects, membership in a political community is not "substanceless."

The material social significance of this concept of citizenship, which leads to the question of social justice, is to be examined more closely in what follows. This question is an inseparable part of the "ethos" of a democratic political community.

3.4. CITIZENSHIP AND SOCIAL JUSTICE

The question of social justice revolves around the significance and implications of the principle of full membership, a principle that is indispensable in a democratic community. Thus T. H. Marshall (1992, 18) writes:

Citizenship is a status bestowed on those who are full members of a community. . . . [S]ocieties in which citizenship is a developing institution create an image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed. The urge forward along the path thus plotted is an urge towards a fuller measure of equality, an enrichment of the stuff of which the status is made and an increase in the number of those on whom the status is bestowed.

Marshall emphasizes, furthermore, that the twentieth century has had the task of realizing the principle of citizens' "equal social worth" (24) as an "absolute right to a certain standard of civilisation" (26) in respect of the

dimension of *social rights* (cf. Barbalet 1988; D. Miller 1989). To be recognized as a citizen with equal rights means having social rights to participate in social and cultural life, it means having the means to lead a “social” life, that is to say, one worthy of recognition according to the standards of the particular society—having the means to realize “liberal” and “democratic” rights.

The principle of equal citizenship forms the core of both Rawls’s and Walzer’s theories of social justice, the two most far-reaching conceptions in this respect. Their differences are located in the interpretation of this principle. What goods are to be distributed according to what criteria in order to fill out appropriately the social dimension of equal civil rights? Walzer’s critique of Rawls in *Spheres of Justice* (1983) represents a communitarian counterproposal but is designated “social democratic” by Walzer himself (1990a, 6–7; 1992e, 287) and claims to rest on *liberal* principles of the separation of spheres (1984). Here it is remarkable that Walzer does not highlight the ethically and culturally pluralist nature of political communities in his theory of distributive justice but determines them as “communities of character” (1983, 62), as communities with particular, historically developed conceptions of the good, with a “substantive life” (313). The pluralism at the center of the theory of “spheres of justice” is a pluralism of spheres of distribution on the basis of “shared understandings.” This conception of pluralism is distinct from an ethical-cultural pluralism, as Walzer (1992e, 290) remarks self-critically, and there is a certain tension between the two, one that does not lead to a contradiction only if the shared understandings of the political community and its “character” are not determined ethically. This latter point suggests an interpretation of his theory on the basis of the principle of political-autonomous and social membership, an interpretation Walzer himself (1993b) puts forward. Hence, despite important differences, a common intention on the part of the theories of Rawls and Walzer can be identified: it puts what Marshall refers to as “ideal citizenship,” the ideal of a self-respecting recognized member of a pluralist political community, at the center of a conception of social justice.

Rawls’s theory attempts to justify principles of equal liberties and principles of social equality from the same root: from the thought experiment of choosing principles in a fair initial situation, the original position. With the help of the “moral geometry” (1971, 121) of this initial situation, he attempts to conceptualize an “ideal theory” (9) of justice but admits however “that for each traditional conception of justice there exists an interpretation of the initial situation in which its principles are the preferred solution” (121). Hence, Rawls’s “ideal theory” is based on a particular justification of the fair original position, and this justification is located in an “ideal of the person” (1975a, 94)—characterized by the two moral powers—to which there corresponds an ideal of social cooperation among per-

sons who have incompatible conceptions of the good and a common sense of justice.

Rawls restricts his initial assumptions in a twofold manner: the justice principles to be agreed refer just to the institutional *basic structure* of a society (“the way in which the major social institutions distribute basic rights and duties and determine the division of advantages from social cooperation” [1971, 7]); and only particular social *primary goods* are to be distributed, namely, “rights and liberties, powers and opportunities, income and wealth” (62) and, as “the most important primary good” (440), the social conditions of self-respect. This list of primary goods fulfills a central function: it presents the goods that are sufficiently defined in formal terms to serve as “all-purpose means” (1982b, 167), as necessary means for realizing one’s own individual notions of the good; and are sufficiently defined in substantive terms to provide a criterion for equal opportunity in society. The list of primary goods forms the foundation for the decision of the parties in the original position to find principles that distribute these goods as justly as possible without sacrificing individual liberty to equality, or vice versa.

The parties in the original position are equipped with the capacity to reflect rationally, and to do so on the basis of certain information about the “circumstances of justice” (127–28) and about basic questions of economic and societal organization (137–38): scarce resources, conditions of economic efficiency, subjective interests, plans of life, and the capacity for social cooperation are presupposed. By means of the veil of ignorance the parties are forced to put themselves in the place of every human being existing in this society, whether he or she is a talented, wealthy, successful, or unsuccessful human being, whether he or she is in this or that generation. This construction of the original position results in all persons finding themselves in the same situation and in choosing principles of equality that ensure (a) that every human being can realize his or her talents and plans of life and (b) that this realization takes place in conditions of social justice that prevent inequalities from developing to deny part of the population these opportunities. Thus the parties of the original position choose the following principles:

FIRST PRINCIPLE

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

SECOND PRINCIPLE

Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity. (1971, 302)

These principles of justice do not guarantee an equal distribution of *all* primary goods; however, they call for *absolute* equality in basic rights and liberties, the *greatest possible* equality of opportunity, and a *relative* equality of resources, according to which inequalities need to be justified and can indeed be justified under certain circumstances (cf. 1982b, 162–63). The first principle thus enjoys priority over the second (the first part of which he calls the “difference principle”). There is however an internal normative connection between the two: the second principle, that of equality of opportunity and social justice, is required for the *realization* of the individual rights of the first principle. Rawls discusses this connection as a problem of the “worth of liberty”: “liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups is proportional to their capacity to advance their ends within the framework the system defines” (1971, 204). The members of the society not having sufficient resources to be able to realize their ends adequately within the framework of their liberties do not enjoy equal liberties to an equal extent; their liberty is worth less. This point applies to individual liberty rights as well as to political rights to participation: it is essential to ensure “fair value of political liberty” (226). Economic and social inequalities must not lead to political disadvantages. In an important revision of this approach, Rawls himself interprets the guarantee of the fair value of *political* rights and liberties as an integral part of the first principle of justice (1982a, 41–46). In this way, the first principle is already a material principle of justice.

Furthermore, the primary goods guaranteed by the second justice principle secure in the form of opportunities and material resources the primary goods of equal rights and liberties in a complete sense; together they all thus serve the “most important” (1971, 440) primary good of *self-respect*. The concept of self-respect is employed by Rawls in various contexts. At one point, self-respect is secured through the “status” guaranteed by the “public affirmation . . . of equal citizenship for all” (545), and is connected to the “sense of political competence” (234) of citizens as persons exercising political rights. At another point, however, he determines the concept more closely in the context of individual plans of life (§ 67). Here, self-respect has two sides: first, a “sense of one’s own worth” (self-esteem) from having a conception of the good that is recognized as valuable by other persons (of a particular group) and by the person him- or herself; and, second, the self-confidence in one’s own ability to be also able to realize this notion of the good. The political dimension of self-respect thus consists in being recognized as a full fellow citizen, the ethical dimension in being valued as a person with a plan of life that is worthy of recognition (cf. 1982a, 34).²² The principles of justice therefore correspond to citizens’ efforts to create social conditions in which the possibility exists for persons to lead a

life that is conducive to self-respect (cf. 1982b, 166). The primary good of self-respect can thus be termed a “second-order primary good”: securing the primary goods of equal rights and liberties, social opportunities, income, and wealth contributes to achieving this good.

In recent writings, Rawls presents his theory of primary goods more strongly within the framework of his conception of the “moral person” and this person’s “highest-order interests” in living a life that, in realizing moral powers, is worthy of general recognition. The question raised by H. L. A. Hart (1989, 240–44) concerning the criterion that justifies talk of the “most extensive total system of equal basic liberties” in the first justice principle and that permits in particular a concretization of this principle is answered by Rawls with reference to the formal and reciprocal character of this specification, and he replaces it with “an equal right to a fully adequate scheme of equal basic liberties” (1982a, 5). The principles of justice make possible an “adequate” development and exercise of the two moral powers—“adequate” in social contexts—and for this purpose distinguish in a formal sense certain liberties as being central (according to Rawls, their centrality has certain consequences at the level of the concretization of these liberties in a constitution [46–49]).

What is important is that Rawls’s increased emphasis on the “political” character of his theory no longer makes it necessary to regard primary goods in general as serving “the satisfaction of rational desire” (1971, 93) but facilitates specifying these goods in reference to the needs of *citizens*. Thus the list of primary goods is aimed solely at providing citizens with the means necessary for full membership in a political community. “[A]t the basis of the parties’ reliance on primary goods is their recognition that these goods are essential all-purpose means to realize the higher-order interests connected with citizens’ moral powers and their determinate conceptions of the good” (1993a, 76; cf. Hirsch 1992, 36–44). With this political conception focused on equal citizenship, Rawls (1993a, 188) tries not to have to take a “comprehensive” theory of the good as a foundation but nonetheless be still able to provide criteria according to which the distribution of social resources can be measured. In Rawls’s view, the theory of primary goods has the advantage of making measurements of the social equality of opportunity easier insofar as, following the difference principle, it is necessary to investigate only what share of primary goods the socially least advantaged have. “It is fairly straightforward to ascertain what things will advance the interests of the least favored” (1971, 320; cf. 91–95). This conception is of course less straightforward in respect of the question of how to identify the group of the least advantaged and whether Rawls’s primary goods are sufficient for their needs (Sen 1985). Don’t groups like the handicapped fall out of the economically determined worst-off group (Dworkin 1981b, 339)? How big are the income differences permitted be-

tween the two extremes? What is the minimum of self-respect that must be guaranteed (Michelman 1989)?

Rawls assumes that these questions relate to the implementation and *application* of the principle of social justice proposed by him, not to its core. In his view, the theory of primary goods can be nothing more than a formal theory of necessary goods, whereas questions concerning which goods must be distributed in what way in certain societies in order to do justice to the difference principle are questions of concrete application in political discourses (1982b, 163). According to Rawls's theory of the "four stages"—from the justification of the two principles, through the constitutional convention, to legislation and the concrete interpretation of laws in courts and administration (1971, § 31)—the equal rights and liberties of the first justice principle are implemented already at the level of the constitutional convention, but the second principle of social justice is not applied until the level of legislation and judicial interpretation has been reached (cf. 1982a, 52–55). For example, questions such as that of the ownership of the means of production cannot be decided on the basis of the principles of justice but in consideration of "the traditions and social institutions of a country and its particular problems and historical circumstances" (53). Ultimately, therefore, it is the responsibility of political discourses in particular contexts to decide (a) which primary goods are to be distributed (b) in what way, and (c) to which social groups. The difference principle requires interpretation and concretization in the discourses of a political community. A principle of *social* justice can be discussed, determined, and concretized always only in *a particular society's* political discourses, in which it is a question of what social rights are citizens of this society entitled to. And in such discourses, a theory of primary goods is an important viewpoint—as their subject matter, however, not as their *a priori*. Hence, the application problems he addressed point to problems in the *justification* of Rawls's theory.

Rawls's response to Amartya Sen reflects those problems. According to the latter, the orientation toward primary goods must be given up in favor of an orientation toward a person's capabilities for realizing certain human functionings (see Sen 1985; 1993; 1995, 81–84). An equal distribution or measurement of resources according to primary goods does not do justice to unequal persons who can utilize these goods differently on account of unequal capabilities. This discrepancy does not pertain to the ethical differences between persons or to the problem of "costly" conceptions of the good for which there is no equal opportunity of development, but to problems of handicapped persons for instance: "[A] disadvantaged person may get less from primary goods than others *no matter what comprehensive doctrine he or she has*" (Sen 1995, 83). Rawls (1993a, 183), however, points out that the aim of the theory of primary goods is to guarantee the basic ca-

pabilities of persons to be cooperating members of society. In cases of illness or disability, special measures are necessary to restore these capabilities or—as in the case of permanent disabilities—to secure as much as possible a form of social cooperation. In these cases, a “sufficiently flexible index” (185) of primary goods can be established at the “legislative stage.”

Here it is evident that the assumptions made in the original position about “citizens’ needs” (187) have only a provisional character: not only can the list of primary goods be expanded—for example, to include goods like leisure time (181–82) or health—the list’s content and importance can be determined in reference to the worst-off only *within* contexts. Now, this argument follows the difference principle insofar as only those arrangements may be called just that can be justified to this group, in accordance with the principle of equal membership. In this sense, primary goods are “the best available standard of justification of competing claims that is mutually acceptable to citizens generally” (188). Yet in this way the difference principle *itself* is contextualized: as a principle of reciprocal justification among citizens with the claim to equal membership. By means of this *proceduralized* interpretation, the normative content of the difference principle—that distributions of social goods must be justified to the worst-off—is preserved *without* having to fall back upon the construction of an original position for its justification. It thus becomes a “political” principle of social justice that is grounded in a conception of practical justification among citizens. Citizens’ needs are not first abstracted, to be then contextualized in a second step but are justified “politically” in contexts of reciprocal justification—following a political-discursive principle of normative justification with the aim of realizing equal citizenship, which is considered the main qualitative standard (and which includes the possibility of a list—yet to be concretized—of social primary goods or basic capabilities). Therefore, like the first principle of justice (see chapter 2.4), Rawls’s second one can also be captured in a theory of reciprocal justification without losing its core content. The problems with constructing an original position, as identified by Sen and others, can thus be avoided.²³

These problems expose the difficulties in attempting to justify universal principles of equal rights co-originally with a principle of social justice that has substantive presuppositions and implications (see chapter 4.2). Already the heterogeneity and the different context dependency of primary goods point to the difficulty in justifying moral claims to mutual recognition at the same level as claims that can be justified only within concrete social circumstances. Primary goods are “social” to different degrees: basic liberties are not jointly produced concrete goods but are the core of individual rights that must be morally recognized; material goods are socially produced concrete goods that are to be distributed in consideration of concrete circumstances. The priority of the first principle over the second (and

the distinction between “constitutional essentials” and “questions of basic justice”) reflects this diverse status of moral and social principles of justice. The distribution of social goods is justified on the basis of basic claims to equal rights and their “worth”—and this justification is a matter for political discourses, a matter of claims raised by citizens *as* citizens and *directed at* citizens of a political community.

Against this background, nonetheless, three essential points for a conception of social justice are to be drawn from Rawls’s theory:

1. The difference principle can be interpreted on the basis of a procedural principle of general *justification*: social inequalities have to be justified to the social groups that benefit least from a society’s wealth.

This principle follows Rawls’s view (see chapter 1) that a just society can accept natural and social “contingencies” only “when doing so is for the common benefit” (1971, 102), and that treating human beings as ends not as means has the meaning of “forgo[ing] those gains which do not contribute to everyone’s expectations”²⁴—that is, the gains that cannot be justified to everyone. In questions of social justice, the principle of general justification means taking the perspective of those who are worst off. They have, as Rawls says, a “veto”: “those who have gained more must do so on terms that are justifiable to those who have gained the least.”²⁵ Social circumstances are, as socially generated and changeable circumstances, in need of justification; the principle of equal membership does not imply here a strictly equal distribution of income and wealth but it does entail the necessity of justifying unequal distributions (cf. Waldron and King 1993).

2. A proceduralist theory can provide not only arguments for this procedure of general justification but also substantive viewpoints and arguments for social rights; for they are necessary for the equal “worth” of individual liberty rights or political rights to participation. They are rights for the *realization* of rights and are not to be separated from them. They prevent economic power from becoming political power, and avert social inequality from leading to social and political exclusion (cf. Baynes 1992a, 159–60).
3. In justice discourses, finally, it is a matter of the self-referential determination of citizens, what it means to be a “citizen,” to be a full member of the political community.

Rawls rightly points out that the good in whose light all other primary goods have to be seen is that of *self-respect*. Political communities must guarantee the possibility for citizens to recognize themselves as full members of society and to be recognized as such. It is a question, as Sen (1987, 17) says with Adam Smith, of “not being ashamed to appear in public”—of having the

means to lead a life that, according to the standards of the particular society, does not stigmatize a person. In every society, Sen argues, certain capabilities are necessary for an average “good” life (25, 32). To lead a life worthy of recognition in society A can require material resources different from one in society B. The “quality of life” is determined by the possibility of leading a life without exclusion, without shame—a negative determination that leaves the positive determination of the good life open and, by emphasizing general and basic recognition, rules out personal idiosyncrasies as standards.²⁶ To interpret this determination concretely in a society, however, the first two principles, that of general justification and that of the worth of equal rights, are required; in the concept of self-respect itself—or in Sen’s concept of capability—there is no independent standard.

Hence, a theory of social justice has the idea of equal membership in a political community as its core; this status implies certain rights and liberties as well as the goods necessary to exercise them. They make it possible to develop capabilities that turn persons into social participants. Which claims to which goods are legitimate for realizing which capabilities must however be justified reciprocally (cf. Scanlon 1993, 198). Lists of goods—be they “thin” in the Rawlsian sense, or “thick” in Nussbaum’s sense (1990a; 1992)—represent neither “political” nor “essentialist” a priori viewpoints of the good that would per se suffice to evaluate reciprocal claims in the sense of social justice. Questions of social distributive justice remain dependent upon the political contexts in which it is a matter of determining full membership. In emphasizing this relativity there is no relativism, in a twofold sense. First, certain claims to moral recognition highlighted by Nussbaum (1992, 226–27) are justified in every society; they belong to the recognition of the rights of *moral persons* (see chapter 4) and are preserved in basic rights. Beyond these universalist, basic forms of respect claimed by human beings as human beings, questions of social justice are concerned with certain claims to social goods raised by persons as *citizens*. They are answered relative to the particular society and in reference to the standard of equal membership—they are thus not answered relativistically.²⁷

The three viewpoints—that of the general need for justifying social inequalities, that of the necessity of realizing rights, and that of guaranteeing the possibility of recognition and self-respect—form the core of a simultaneously general and contextual theory of social justice. It is founded on general principles of justification and on rights that have substantive implications in political contexts. The principle of equal citizenship is both formal and material here: formal with regard to participation in political discourses on the legitimate distribution of goods; material with regard to the conditions for realizing this participation and participation in social life as such.

Walzer's substantive and "communitarian" theory of social justice, as is to be shown in the following, is also based on such an ideal of "inclusive citizenship" (1983, 77). It is the ideal of a citizen in a society where goods are distributed according to *generally* shared understandings and principles, where the "worth" of citizens' liberties and rights is secured, and where a life in self-respect is possible. Walzer's theory also combines general principles and context sensibility. Just where Rawls's basic assumptions relate to concrete contexts and "rational" needs, namely, in the conception of primary goods, he expects of his theory at a fundamental level justifications that can be provided only in political discourses; Walzer, however, who emphasizes especially this political dimension of distributive justice, is mistaken about the presence of general principles of individual and collective self-determination in his theory (which forces him to make certain revisions).

The most important methodological difference between Rawls and Walzer lies in Walzer's critique of the attempt to conceive an "ideal" theory of the distribution of a priori fixed goods. Rawls (1971, 227) thus writes: "We are in the way of describing an ideal arrangement, comparison with which defines a standard for judging actual institutions, and indicates what must be maintained to justify departures from it." Walzer, by contrast, considers it wrong to justify an "ideal" theory of distributive justice in an "ideal" initial situation on the basis of a "thin" theory of the goods to be distributed (1983, 5). On the contrary, a theory of distributive justice must begin *within* the "shared understandings" of a political community, *in* Plato's cave; and it must do justice to the particularism of this historically developed community and its "spheres of justice," within which particular *goods* correspond to conceptions of *the good* and must be distributed according to their own criteria. "Every substantive account of distributive justice is a local account" (314). To a theory of "simple equality" that knows only a single principle, Walzer opposes his theory of "complex equality" that knows the "shared meanings" of distributive spheres and goes by them. The theory takes its principles from these spheres: "one might almost say that goods distribute themselves among people" (7).

Walzer's theory attempts to combine pluralism and particularism; it recognizes the pluralist character of spheres of justice on the basis of their internal, collectively shared values and principles. He thereby takes up an Aristotelian notion: justice means distributing equal things equally, it means having a sense of what is appropriate in a given context. "The just is something proportional" (Aristotle 1984, 1131a29). In this sense Williams (1962, 120–31) also argues for a theory of distributive justice in consideration of what is to be distributed and its social meaning. And Taylor (1985h, 245) underscores: "It ought to be clear . . . that no single-consideration procedure, be it that of utilitarianism, or a theory of justice

based on an ideal contract, can do justice to the diversity of goods we have to weigh together in normative political thinking" (cf. 1985j).

This theory is therefore *affirmative* insofar as it follows the shared, traditional understandings of a society; it is however *critical* insofar as it (a) maintains boundaries between these spheres and (b) illuminates the shared understandings within these spheres in the light of an interpretation of their meaning. "Good fences make just societies" (1983, 319) is Walzer's critical principle, a principle that serves to protect one sphere from being "colonized" (282) by another. But that is not all: it is Walzer's aim to reconstruct the "shared understandings" of the American political community in such a way that a "decentralized democratic socialism" can appear as the "appropriate arrangements" in its spheres of justice (318). The idea of an egalitarian society is still "hidden" in "our concepts and categories" (xiv), but the attentive theorist will find it.

There is a subtext in Walzer's book that becomes evident when one looks at the difficulty located between this affirmative intention and the critical one of his theory. Joshua Cohen (1986, 463–64) called Walzer's problem the "simple communitarian dilemma":

If the values of a community are identified through its current distributive practices, then the distributive norms subsequently "derived" from those values will not serve as criticisms of existing practices. . . . On the other hand, if we identify values apart from practices, with a view to assessing the conformity of practices to those values, what evidence will there be that we have the values right?

Either the self-understandings of the spheres are to be accepted *prima facie* or else a meaning is extracted from them that was both present and hidden. However, this extrapolation is itself a particular normative interpretation whose claim to validity is only partially covered by the society's practices up to now in this "sphere"; it cannot completely conceal an "external" normativity. Dworkin's (1985d, 218–19) critique is that, in the absence of truly "shared" understandings, Walzer—who insists on arguing immanently (Walzer and Dworkin 1983)—drafts a theory of "Platonic spheres" that he projects onto a society and thereby deludes himself in respect of his own methodology.

It can be demonstrated that Walzer is able to avoid the communitarian dilemma (between critiqueless immanence and Platonic transcendence) only if he falls back upon the three central viewpoints that were elaborated in connection with the above discussion of Rawls's theory—implicitly in *Spheres of Justice*, explicitly in a more recent essay (1993b). Accordingly, shared understandings are legitimate reference points for normative theory only to the extent that they are really *general* and shared by individual citizens out of free conviction and are consensually legitimated. Moreover,

they are reconstructed and interpreted on the basis of an overarching principle: that of equal and full *membership* in the political community. All spheres are examined with regard to whether they are conducive to a life in *self-respect*. “Membership” is regarded by Walzer as the primary good (1983, 31), that is, “equality of membership” (84) in all spheres relevant to this: “The self-respecting citizen is an autonomous person. . . . He is autonomous in his community, a free and responsible agent, a participating member. I think of him as *the ideal subject of the theory of justice*” (279; italics added). Walzer’s theory is carried in and through all spheres by this ideal of “inclusive citizenship”; it is the ideal that allows him to formulate his own ideal of a just society and to criticize the existing shared understandings of his society. Inclusive citizenship is a principle *above* the individual spheres; as such, it reduces the (aforementioned) tension between the concept of sphere pluralism founded on shared conceptions of the good and the thesis of the ethical pluralism of political communities without general conceptions of the good; and it does so inasmuch as the spheres of justice are not to be understood ethically but are based on *politically* “sharable” values.

The following eleven spheres (a–k) are the ones distinguished by Walzer with reference to the goods that are to be distributed in them according to specific criteria; and they are the spheres in which a particular interpretation of the meaning of “membership” in a democratic political community is decisive for his conception of the distribution of goods—this, however, only in those spheres that are, according to Rawls, part of the “basic structure of society,” thus not in the spheres of “kinship and love” or “divine grace,” for instance.

(a) With regard to the question of membership in the political community—the most important good of all spheres—it is particularly evident that the above mentioned reduction in tension between the two concepts of pluralism does not remove this tension entirely. Walzer’s Aristotelian emphasis on political communities as “communities of character” that, like clubs or families (42), freely decide others’ access to their community, is indeed constrained by various moral assumptions. Accordingly, political communities have the right to defend their way of life against those who desire admission only if they are willing to share the “superfluous” resources of land or wealth necessary for a “decent life” (47) with those who need these resources. A political community can still seclude itself but would probably have to be satisfied with a smaller territory or export enough material goods (the criterion for “superfluous” resources is left open here, however). States are, however, obligated to accept persons fleeing from repression, for “every victim of authoritarianism and bigotry is the moral comrade of a liberal citizen” (49). It remains imperative that all persons who have gained admission have equal civil rights; “guest workers,”

for instance, must not be denied political rights. According to Walzer, this corresponds to the basic “principle of political justice”: the addressees of law, legal persons, who live and work in a country must be able to become citizens, the authors of law (cf. 60).

Despite these constraints on the rights of a political community to regulate immigration, naturalization, and the granting of civil rights under the terms of maintaining its form of life, Walzer’s Aristotelianism is questionable particularly in the context of the United States. In his article “What Does It Mean to Be an ‘American’?” (1992b) he criticizes the “nativist” view according to which the United States has a particular ethical-cultural character—an argument advanced in the past against the immigration of religious or ethnic groups who supposedly could not be assimilated socially (cf. Higham 1985; Fuchs 1990). Instead, he underscores the ethical-cultural openness of this political community and the formal understanding of citizenship. Now this does not mean that a “multicultural” political community does not have “character”; rather, it means that the comparison between a political way of life and individual life plans (Walzer 1983, 47) is not permissible—whereby, however, the complex question of the (non-ethical) legitimacy criteria of admission restrictions, which cannot be dealt with here, is left open (cf. Walzer 1992a; Habermas 1998a, 226–32).

(b) The sphere of “security and welfare” relates to the question of social welfare and health care—Walzer considers the distributive criterion of “need” to be appropriate here (1983, 75). *All* citizens have equal claims to social security and welfare according to need. To find arguments for an American welfare state, however, Walzer proposes understanding the relations between citizens as the “moral bond” of a social contract whose “deepest” meaning it is to defend “the rights of the poor” (83) in accordance with the following principle: “From each according to his ability (or his resources); to each according to his socially recognized needs” (91). Of course, it is not primarily the hitherto shared understandings of American society that are decisive for this interpretation, but the ideal of citizens with equal rights who enjoy recognition and who respect themselves.

(c) He therefore argues in the sphere of “money and commodities” for a system of “blocked exchanges” (100) that serves to prevent “market imperialism” from undermining civil rights as well as the political and social spheres and switching them over to the “medium of money,” to speak with Habermas (1984–87, 2:264–67). Money and economic power must not become totalitarian forces that devalue the principle of equal citizenship; drawing the boundaries correctly between economic and political power also includes, according to Walzer, examining on this premise the ownership of the means of production and subjecting it to public control (122). The “worth” (Rawls) of civil liberties must not be reduced by social inequalities and economic power (see esp. Walzer 1984, 321–22).

(d) In the sphere of public office Walzer argues for the distributive criterion of best qualification; he nonetheless connects this to a demand for a redistribution of social resources in favor of groups that have no possibility of acquiring the relevant qualifications. (e) Hard work must be distributed as equally as possible among citizens, also in the form of a general “national service program” (175). (f) The distribution of free time also has to follow principles of equality. (g) In the sphere of education the “ideal of membership” (203) is best satisfied if all future citizens are to receive a school education of equal value; neighborhood schools must not lead to an increase in social inequality (225). Here too, an ideal of democratic citizenship, and not the shared understandings of the white American middle class, serves Walzer as the normative standard. (h) In the sphere of “kinship and love,” distributive criteria apply that follow the feelings and self-understandings of individuals. (Here it nonetheless remains open as to how a legal community can relate to the practices of a cultural minority that educates its children according to different shared understandings and—more or less—exerts pressure on them.) On the one hand, Walzer says, the family must be protected from the imperatives of the market; on the other, however, it must not itself cement unequal power relations between the sexes inside or outside this sphere (240–41; cf. Okin 1989, 111–17). (i) “Divine grace” is distributed according to the convictions of believers and their religion.

(j) In the discussion of the sphere of recognition Walzer distinguishes explicitly (unlike Rawls) between self-esteem and self-respect (cf. Sachs 1981). Self-esteem is the result of others’ recognition of oneself as a human being with especially esteemed characteristics and capabilities. Self-respect, on the other hand, is measured not primarily in terms of others’ acknowledgement of oneself as a particular human being but in terms of a “standard” of generally recognized dignity. This standard is not however a primarily moral one—the dignity of humanity in general—but the standard of full membership in a political community (Walzer 1983, 276–77). To be able to respect oneself means to be recognized as an equally entitled member of a political community. Accordingly, a political community cannot distribute self-esteem, but it can distribute rights and the forms of recognition that make self-respect as a citizen possible. The membership that enables self-respect is endangered by exclusion: by legal, political, and social exclusion. “The welfare state is an effort . . . to guarantee effective membership. But even when it does this in the best possible way, meeting needs without degrading persons, it doesn’t guarantee self-respect; it only helps make it possible. This is, perhaps, *the deepest purpose of distributive justice*” (278; italics added).

(k) Finally, political power, the “most dangerous . . . good” (15), must be institutionally distributed in such a way as to permit discursive self-rule—

“the rule of reasons” (304): “What counts is argument among the citizens” (ibid.). Citizens must have the possibility of being co-authors of the law, and this as participants in political discourses among free and equal persons (ibid.).

From a reconstruction of the self-understandings of the spheres of justice Walzer claims to have gleaned principles for the separation of the spheres and for the internal distribution of goods that lead to a “decentralized democratic socialism” in which citizens with equal rights control political and economic power. For this he believes to be able to do without “external or universal principles” and formulates the following principle: “A given society is just if its substantive life is lived in a certain way—that is, in a way faithful to the shared understandings of the members” (313). This, says Walzer (314), is a consequence that follows from human beings’ attribute of being “culture-producing creatures”: justice requires *universally* that the *concrete* ideas of justice held by the inhabitants of different social worlds be respected.²⁸

The discussion of the spheres of justice presented by Walzer shows however that he must recognize various universal principles in a formal sense in order to give them a substantive content. These are the basic principle of the general and public justification of norms that apply equally to all members of a political community; and the accompanying principle of the general and equal rights of membership in a democratic community of self-respecting citizens. These two principles are at once formal-general and substantive-contextual: they represent a framework for the validity of norms that has to be filled out concretely. It is not predetermined how a political community understands itself or what political decisions it will make; it is however determined that the community will make decisions jointly and democratically.²⁹ It is not predetermined what it means to realize the “worth” of equal political membership rights; it is however determined that such a rights claim exists on the basis of political membership. It is not predetermined what conditions exactly help make self-respect possible in a particular society; it is however determined that the task of a political community is to guarantee those conditions by safeguarding rights.

Walzer underscores this interpretation when taking stock of his theory on one occasion. There he emphasizes, first, the joint—and thereby critique-permitting—determination of distribution criteria in the individual spheres:

All the people, every man and woman, are or are supposed to be equal participants in all the spheres of justice, sharing, as members, in the distribution of welfare, security, wealth, education, office, political power, and so on—and also joining in the debates about what that sharing involves and how it ought to be managed. (1993b, 55)

All spheres now have an eminently political meaning. Thus Walzer emphasizes, second, the central aim of creating an “inclusive society” in all spheres and stresses that disadvantaging citizens in *one* sphere becomes a general political problem since the principle of equal membership is thereby violated. This emphasis on political membership as the main principle of all spheres has led to the structural insight that the state has a special role to play in maintaining justice within and between the spheres, a role underestimated by Walzer in *Spheres of Justice*. The political sphere is a superordinate one: “Politics is implicated in all distributive disputes; the state cannot disregard what is going on in the different spheres of justice” (63). Questions within spheres must be jointly regulated by citizens, be it in allocating office, questions of economic policy or education. “And all these decisions are, in something close to a *foundational* sense, warranted and (partly) determined by an understanding of citizenship. Inclusion begins with citizenship, which then serves as a value reiterated through democratic political activity in *all* the spheres of justice” (64; italics added).

Hence, equal membership is (as it were) the formal and material “master principle” of the spheres of social justice, a principle according to which the plurality of distributive criteria for certain goods continues to exist; however, these criteria require *political* justification—insofar as they concern political questions—and do not themselves speak a language of the good that the theorist could just listen in on. The language of the spheres is the (differentiated) language of the citizens. With this (partial) revision Walzer has put his theory unequivocally on a political footing. The *context of social justice* is, therefore, the political community of equal citizens.

To sum up, the outline of a theory of social justice developed in connection with Rawls and Walzer thus combines liberal and communitarian arguments. The idea of a dialogic justification of social relations (cf. Ackerman 1980) is preserved and contextualized in political discourses, which do justice to the particularity of a society and the plurality of social goods. *General* principles of justification uncover the *substantive* implications of the concept of “social citizenship.”

To return to the dilemma of “substanceless substance,” it requires that citizens understand themselves in political discourses not only as reciprocally “responding” participants who assume joint responsibility for political regulation and actions but also as those who are mutually responsible for guaranteeing equal membership. They are the addressee of the critique of exclusion.³⁰ Therefore, reciprocal recognition as citizens cannot be grasped ethically in the communitarian sense, nor can it be explicated, as in a particular interpretation by liberal theories, primarily according to the ideal of the mutual recognition of legal persons. It implies (a)—as a reflection on the pluralism of ethical communities—tolerance and respect for “different” forms of life that (b) are protected by reciprocally safeguarding

individual rights; furthermore, it includes (c) recognition as an equal participant in political discourses with whom one must jointly assume responsibility for political decisions and their consequences vis-à-vis fellow citizens as well as other persons affected. Finally, this implies (d) that no fellow citizen may be excluded from full membership in a political community for ethical, social, or political reasons, and that certain social goods are necessary for the purpose of their inclusion. Citizens' claims to the recognition and realization of their individual liberty rights, of their political and social rights are not directed at an ethical value system shared by all citizens but are determined by what it means to be a "citizen" in a particular society. The *ethos of democracy* consists in realizing this dimension of citizenship.

Combining the general principle of reciprocal justification with specific contexts of ethical or political self-determination, which this suggests, leads to a further level in the debate between liberalism and communitarianism, one at which various systematic questions must be clarified: at the center is the conception of practical reason employed so far and the meaning of "moral person" and "moral community." And here again, communitarian counterarguments interject: can there be a universalist morality and corresponding conceptions of reason, person, and community "beyond" ethical and legal-political contexts? These issues lead not only to the thematization of a further, fourth context of justification and recognition: the context of morality. In a methodological respect, they necessitate an analysis of the conception of practical reason on which the differentiation of all normative contexts is based.

Universalism and Contextualism

The debate between liberalism and communitarianism returns again and again to a central point: the question of the priority of the good or the just. So far this problem has appeared on three levels. First, with regard to the constitution of the self, more specifically, on the basis of Sandel's question as to whether Rawls's primacy of deontological principles of justice is not perhaps founded on a notion of the person that ignores the constitutive role of the good as regards the identity of the self and its normative relations to others. The response to this was the distinction between the "ethical" person, who is constituted communally and through particular conceptions of the good, and the abstract "legal person"—a distinction that comprehends the two conceptions as being in a relation of complementarity and not of competition.

At the second level, this distinction was examined critically, more specifically, in reference to the question of whether there can be the possibility of a general justification of legal norms without favoring or marginalizing certain conceptions of the good or certain ways of life. The possibility of a theory of the legal person as the "protective cover" for ethical identities and of a corresponding notion of individual rights was demonstrated within the framework of a proceduralist theory of the justification of legal norms. Only if these norms are not constitutively based on particular conceptions of the good do they remain open to the rights claims of ethical persons. Only if law speaks a language that is general, and one that is to be continually generalized, can it be sensitive to the particular voices of the good.

This result had to prove itself at a further level of the discussion: the principle of general justification led to a theory of political legitimacy that redeems law's claim to generality but at the same time counters liberal doubts about the possibility of consensus formation in society, communi-

tarian doubts about the viability of this “substanceless” political community, and, finally, feminist doubts about the possibility of a truly general language. The response to these doubts and to the question of the justification of a theory of social justice was a theory of general legitimacy that avoids both the liberal minimal and the communitarian maximal conception of political community and proposes a differentiated conception of citizenship.

Here, however, a point in the debate has been reached at which communitarians again raise the question of the good as the foundation of the theory of justice. The objection runs: even if it could be shown that a distinction can be drawn between the ethical person, the legal person, and the citizen as dimensions of recognition or of the normative justification of values and norms—if a distinction can be drawn between *ethical* conceptions of the good (that are constitutive of the identity of a person or a community) and generally justified norms—the principle of general justification may nonetheless be founded on a *moral good*, for example, that of unimpeded individual freedom and self-determination. How else could the procedure of general justification make sense if not as the explication of this basic value of individual freedom? And how else could the validity of norms be appraised if not on the basis of this value? All proceduralism and all universalism draw on this source—one of the sources from which “modern identity” (Taylor) draws its “strong” identity-determining and constitutive evaluations. All legal and moral norms, however general they may be, are located in a cultural-ethical context of “our” identity.

This objection leads the debate to the level of a moral-theoretic reflection of fundamental character. Can the procedural conception of practical reason, according to which only norms that can be reciprocally and generally justified are generally valid, make do without constitutive conceptions of the good? To what extent does this conception of reason remain tied to concrete contexts?

This final round of the debate will be analyzed in four steps. First, Walzer’s hermeneutic doubts about a proceduralist theory of morality and justice will be taken up and his counterproposal discussed. It will be seen that his principle of “reiterative universalism” is compatible with the above-mentioned principle of practical justification, that it is itself an explication of this principle—an application that connects individual and collective self-determination with each other (4.1).

From the discussion of the principle of general justification there emerges, at the moral level, a further conception of the person, that of the *moral person*. It designates not the person in his or her ethical identity, as the subject of law, or as a citizen, but the human being as human being, as a “mere” member of the human community. On the one hand, this conception is necessary in order to explain the concept of “human rights”

(Walzer's "minimal moral code"). Political communities must respect some form of basic recognition of moral persons in their self-determination and their legal constitution in order to be able to raise the claim to moral legitimacy.

On the other hand, the conception of moral person points beyond this specific problem complex of the connection between law, politics, and morality to the question of the justification of moral action, which is indeed action in concrete contexts but whose justification requires "shared" reasons that are also valid beyond ethical or legal-political contexts (for instance, between "strangers"). Moral norms refer to action toward persons "in general" in a context of common humanity—toward one and, at the same time, all individual moral persons.

In a second step, Rawls's proposal of a "constructivist" theory will be examined (4.2). The discussion of his justification program beyond realism and relativism has the task of investigating more precisely the conception of moral person as an "idea of practical reason" and of questioning it in respect of the "political" assumptions that enter into it. Rawls's approach will be contrasted with an alternative conception of practical reason that not only understands the conception of moral person differently (and explains the already mentioned differences to Rawls's theory) but also serves as the general basis for the differentiation of various "contexts of justice." For this I have recourse to further constructivist (O'Neill's) and discourse-theoretic (especially Habermas's) approaches.

The conception of communicative-practical reason and the moral person explicated in this connection finds itself exposed to MacIntyre's fundamental objections. According to him, such a context-transcending conception of reason and such a "placeless" conception of the person cannot be meaningfully defended. There are only context-immanent standards of reason, with the possibility of rational comparisons not being ruled out. MacIntyre's theory itself does however make borrowings of a moral kind that question his thesis of the nontranscendability of ethical worlds (4.3).

Taylor does not contest the validity of universalist moral principles, but in his opinion they are themselves grounded in the value horizons of the "modern identity." They are based on moral goods, ethical goods of the highest order, as it were, that represent orientation points for the modern question of morality. Even where "our" moral principles go beyond particular contexts, they still move within "our" value context. In this case, however, different validity criteria for what is valid "for us" and what is valid "for all" must be taken into account. It is in these terms that Taylor's conception of practical reason is to be critically examined (4.4).

4.1. A CONTEXTUALIST UNIVERSALISM

Nor will you think it strange that anyone who descends from contemplation of the divine to human life and its ills should blunder and make a fool of himself, if, while still blinded and unaccustomed to the surrounding darkness, he's forcibly put on trial in the law-courts or elsewhere about the shadows of justice or the figures of which they are shadows, and made to dispute about the notions of them held by men who have never seen justice itself.

PLATO 1974, 321 (STEPHANUS 517)

Justice, says Plato's Socrates in the *Republic*, is an idea that is trumped only by the highest idea of the good, which is "superior to it [i.e., to being] in dignity and power" (302, 309 [504, 509]). Participating in the divine idea of the good, justice is an eternal and unchangeable idea according to which all "surrounding figures" can be measured; ultimately they are images, shadows of the idea, without ever reaching its purity. And it is the philosopher who, in a long climb out of the cave of shadows, sets out to view the shining truth and who, having returned to the cave, is in danger of being condemned by the ignorant as being tainted. Therefore, within the confines of *doxa*, which prevails in the cave, *episteme*, philosophical knowledge of the truth, must remain placeless, *u-topos*.

This Platonic theory of the relation between philosophy and truth, as well as between politics and public opinion, is confronted by Aristotelian skepticism about the notion of an idea of the good as "form without content," which negates the plurality of goods. "[E]ven if there is some one good which is universally predicable of goods or is capable of separate and independent existence, clearly it could not be achieved or attained by man" (Aristotle 1984, 1096b30–35). Thus it is meaningless to want to measure conceptions of the good and the just according to a "good in itself," for they always refer to a particular community in which the good life of different members is realized in different ways. Justice is the mediating, compensating element in the midst of human relations; it is a practical virtue of the right and the appropriate. "[T]herefore justice is essentially something human" (*Nicomachean Ethics* 1137a30); in Walzer's words: "Justice is relative to social meanings" (1983, 312).

If one understands the core of the Aristotelian theory of justice as the thesis of the irreducible *plurality* and *sociality* of goods and recognizes that only an immanent theory, only a theory that is *in* and not *above* the practices of a political community, can do justice to this social plurality of the good, then the essential concern of Walzer's theory of justice and that of his hermeneutic method become apparent. The details of the theory of distributive justice have already been discussed; in the present context it is a matter of examining his objections to universalist and "abstract" theories of morality. His anti-Platonic theory of the contrast between "philosophy"

and “democracy” and his thesis of the priority of the “cave” over “ideal” theory constructions are central here. Walzer thereby links up with the classical problem of political philosophy concerning the relation between philosophical truth and social reality, a problem that has been transformed but at the same time has persisted since Plato and Aristotle, through St. Augustine’s two states, up to Hegel’s critique of Kant, and then the critique of Hegel himself and of universalist-“fundamentalist” theories. If in Aristotle’s case critique is directed against Plato’s ideal state, in modernity it is against abstract theories of social contract, and in postmodernity against all theories that raise the universalist normative claim of wanting to conceive standards of the good or the just independently of context (cf. Lyotard 1987; Rorty 1991). What is important according to Walzer is to find a form of political thought that both evades the fundamentalism of moral-realist theories and avoids abandoning a theory critical of concrete communities.¹

Walzer refers to the topos of the contrast between truth and politics just as Arendt (1977b, 263) explicates it: philosophical truth, impartial in the Homeric sense, is lonely and removed from social reality, whereas the communicative play of opinions and interests in the political realm is discursive but remains in the sphere of “opinion.” “Truth is one, but the people have many opinions; truth is eternal, but the people continually change their minds. Here in its simplest form is the tension between philosophy and democracy” (Walzer 1981, 383; cf. Barber 1988, 9–14). The philosopher believes he or she is in possession of an eternal truth that only he or she recognizes fully but is binding for all human beings. The philosopher does not want to hand over responsibility for this truth to democratic and, in principle, open discourse; he or she prefers to discuss his or her norms in an “ideal speech situation” (Habermas), an original position (Rawls), or a spaceship (Ackerman)—of course, in a constrained and idealized discourse.² But the norms justified in this manner are too far from the contexts of concrete communities to be able to claim validity for them; they are abstract and general hypotheses that do not do justice to the plurality and sociality of existing conceptions of the good.

The methodological status of Walzer’s critique of the priority of philosophy over democracy, which Barber (1988) and (with important differences) Rorty (1991) also formulate in a similar way, is, however, unclear. Walzer presents this critique on the one hand as a differentiation of modes of *social criticism*, on the other as a differentiation of paths in *moral philosophy*. “Good” social criticism is “connected” criticism in contrast to “detached” criticism and, in the same way, he says, moral philosophy can only be an immanent reconstruction of the shared understandings of a political community, not a “view from nowhere” (Nagel), nor a theory *sub specie aeternitatis* (Rawls). A further level also addressed by Walzer in his critique

of universalist moral theory is, finally, that of a normative *theory of democracy*. According to this, abstract, formal, and universalist conceptions of morality are undemocratic since they are removed from political discourse. He attempts to illustrate the latter with the example of the philosophical rule exercised by the Supreme Court of the United States (cf. 1981, 387–93). All three viewpoints are based on a common hermeneutic-normative intuition, namely, respect for the plurality and integrity of communities. On the one hand, however, it is questionable whether Walzer's position is appropriate within each of the dimensions of social criticism, moral theory, and the theory of democracy; and, on the other, even if it is plausible, a particular form of moral philosophy cannot be derived from the thesis that a social critic must speak the language of his or her community and be "connected" with it. The social critic is concerned with convincing a particular community of the correctness of certain norms or actions; moral philosophy is concerned with the general question of the good and the right. It will however be seen that a theory of "good" social criticism cannot manage without availing itself of universal principles. Furthermore, neither a particular form of social criticism nor a form of moral philosophy can be concluded from the democracy-theoretic principle that only the citizens of a particular political community decide, on the basis of their historically developed values, what is to be valid in their political community. A distinction has to be made between the following: the question of the philosophical justification of moral principles, the question of the best path for social criticism, and the question of the self-determination of a political community. Their interconnection—which (in contrast to what Walzer asserts) consists in the fact that they represent different application contexts of the principle of reciprocal and general justification—can be recognized only in this way.

(a) *On the Relation between Philosophy and Democracy*

In Walzer's view, Rawls's theory is an example of an undemocratic theory of democracy: it conceives a theory of justice for a political community in an abstract situation of rational choice based on certain capabilities of abstract persons and on certain abstract primary goods, which are to be distributed justly. The citizens of a concrete community do not however ask themselves, Walzer says, what individuals would choose under ideal conditions but rather: "What should we choose against the background of our conceptions of the good and our identity?" Not only does Walzer criticize Rawls for leveling "complex equality," which (considering the different nature of goods) prevails in a political community, in favor of "simple equality," he also finds fault with the Platonic feature of the theory, namely, that Rawls anticipates the discourses of those involved on how goods (and

which ones) are to be distributed. By contrast, “political” as distinct from “philosophical” knowledge inquires: “What is the meaning and purpose of *this* association? What is the appropriate structure of *our* community and government?” (Walzer 1981, 393). Political theory speaks not only for but also within a particular community and becomes involved in its particularity, its shared understandings.

Walzer himself does however build an important premise into his theory of shared understandings: that “shared” implies a process of developing practices and institutions intersubjectively, a process into which certain conditions of reciprocity enter.

Arguing with one another, we interpret, revise, elaborate, and also call into question the paradigms that shape our thinking. So we arrive at some conception of a just society (say) through a conversation that is constrained, indeed, by the ordinary constraints of everyday life. There is no design. Real talk is unstable and restless, hence it is ultimately more radical than ideal speech. (1990d, 195)

The “we” Walzer speaks of is an “interpretive community” (1987, 30n. 21) of all citizens, and what counts in political discourses is “the rule of reasons. Citizens come into the forum with nothing but their arguments” (1983, 304). Implicit in Walzer’s usage of the terms “shared understandings” and “real talk” is the normative presupposition of the principle of the general justification of general values and norms. This principle alone gives him a way out of the “communitarian dilemma”—as has been seen with reference to social justice (in chapter 3.4). Those distributive criteria are “just” that are shared, and shareable in that they guarantee the status of equal membership. Despite important methodological differences, both Walzer and Rawls hold these normative premises; the contextualization of the difference principle, which brings Rawls’s theory closer—in the sense of these premises—to Walzer, means that the principle does not dissolve in the immanence of social contexts but maintains its content and certain general conditions under which distributions can be called just at all. These “philosophical” premises of reciprocity, of democratic and social equality are not external to but *immanent* in the idea of “democracy.”

If Walzer were to recognize the difference between a (procedurally interpreted) *Kantian* and a *Platonic* universalist theory—the first one formulates universal principles of individual and collective self-determination that have to be filled out, the second identifies binding substantive values—the opposition between “philosophy” and “democracy” would collapse: without the cited formal principles of self-determination and equality, a meaningful concept of democracy is not possible. Particularly his critique of Habermas’s theory of the normative, “ideal” presuppositions of concrete discourses is mistaken in assuming that such presuppositions mean some-

thing other than that it is required of “real talk” to make a “rule of reasons” possible. Democratic discourses do not take place in “ideal” space; rather, they cannot be called “radical” in Walzer’s sense until the principle of general justification can be laid claim to by all those who are members of the democratic community (and are always in a position to question resolutions). This “philosophical” demand is the normative and critical sense of “democracy.”

(b) *On the Problem of Social Criticism*

Another problem, but one connected to the appropriate relation of philosophical principles to democratic practice, is that of the relation between the critic of a society and the society itself. Social criticism has to rely upon certain principles that it holds up to a society. Here it is concerned neither with a theory of morality nor a theory of society; but it can nonetheless—in the sense of a “critical theory”—be based on such a theory. It is the interest of the social critic to get a society in a particular situation to recognize certain norms or, to be more specific, to carry out or desist from certain actions; the social critic’s interest is a practical one. But where are the critic’s principles supposed to come from?

Walzer’s central thesis that societies form entities and that each entity speaks its own language with certain social meanings leads him to the view that the “natural language of criticism” must be the language of the folk (1988, 9). The standards of criticism must come from a specific community’s universe of discourse and the critic must be very closely connected with this community. “We criticize our society just as we criticize our friends, on the assumption that the terms of the critique, the moral references, are common” (230). Critics speak to a community in its own language, they hold its own standards and its reality up to it, without believing that they themselves are in possession of the absolute truth; the criticism is an immanent criticism. Here, there is both a *conceptual* and a *functional* argument (which Walzer does not clearly distinguish): criticism can be critical only by comparing social ideals and social reality and by making use of the particular community’s language, for it cannot fall back upon another, superordinate language or upon transcendental values; in addition, criticism can be effective only if it speaks the language of the folk: if it is authentic and appears credible. Critics must be loyal and patriotic to the society as a whole, holding it close to their hearts, as it were.

This theory contains important presuppositions: a society must have certain general beliefs to which a critic can appeal in a generally intelligible sense; these beliefs must satisfy certain moral standards, which give moral weight to the critic; and, finally, there must be the prospect of finding in society a receptive ear for the critic’s appeal. In short, a society must provide

a morally acceptable possibility for the concerns of the critic. But what can his or her legitimate moral concerns consist in? Solely in improving his or her society? What triggers criticism? The intention of the social critic that Walzer has in mind is an intuition that he obliquely calls “moral sense” (299): the protest against oppression, exploitation, violence, and cruelty. Hence, the critic is concerned with improving society not solely for its own sake but for the sake of its (possible) victims. To the extent that Walzer introduces this premise—that there is “universal value in opposing oppression” (227)—his theory plausibly holds that a critic, intent on defending possible victims of a community, has only the option of appealing to the community’s values, believing that they accommodate the critic’s moral concerns. Thus it is not the critic’s “connectedness” to his or her community that is a criterion of the moral quality of the criticism, but the question of on whose behalf the critic speaks, namely, on behalf of the *victims* of a community. The critic is not primarily a connected, but a “connecting” critic; critics connect their moral protest with the political-ethical contexts in which they raise this protest; they appeal to *those* social values that can be morally justified.

For that reason, Walzer’s objections to universalist criticism can be directed not at the universalist core of the critic’s concern—this is actually presupposed—but at the manner in which this core is realized in concrete criticism. This distinction becomes clear in his comparison of the prophets Amos and Jonah. The two do not differ in the moral content of the divine message they proclaim, but Jonah speaks to the inhabitants of Nineveh as a stranger, as God’s messenger who demands that the path of “violence” be abandoned. Amos, in contrast, speaks to the people of Israel as a member of this community, and his talk of divine justice appeals to the values and practices that constitute this community in its core. He speaks to them in a different way than to other peoples: to other peoples he can only appear, like Jonah, as the representative of the moral “minimal code.” Jonah is a “minimalist critic” (90), whereas Amos is a member of the community he criticizes. Jonah speaks in the name of universalist values against “violence,” Amos in the name of particularist values against “oppression.”

The rules against violence arise from the experience of international as well as internal relations; the rules against oppression arise from internal relations alone. The first rules regulate our contacts with all humanity, strangers as well as citizens; the second regulate only our common life. (1987, 93)

Nonetheless, Walzer cannot avoid moderating this distinction between an external and an internal normative perspective, for even if immanent protest against oppression is directed at a particular community’s practices and values and tends therefore “toward particularity” (*ibid.*), the prescript against oppressing the poor, of which Amos reminds us, is without doubt

a “universal rule.” The only difference between the “external” and “internal” criticism of oppression is that Amos can speak differently to Israel than to Syria, “not with the same words, images, references” (91)—but still on the basis of the same moral prescript. A distinction must be made between the *moral validity* of norms and the *social possibility* of bringing these norms to bear in such a way that the critic also appeals to existing self-understandings.

In Walzer’s view, it follows from the necessity that “good” social criticism (a) always speak the *language* of a particular community, that it also (b) appeal to its *values*. One of his paradigmatic examples of “connected” critics shows however that this is not a necessary conclusion and is not sufficient to explain legitimate criticism: the example of the South African writer Breyten Breytenbach, who appealed to his fellow countrymen and women in their language to abandon apartheid and did this without denying his own identity as a South African. This attitude thus fulfills the first requirement, (a). But what about (b)? It is evident here that Breytenbach did not rely primarily upon the “shared values” of white South African society. The standard of his criticism must be characterized solely as opposition to “injustices” (1988, 216): in advocating the self-determination of the black population, equal legal and political treatment, and a more just life together of blacks and whites. Though he believed that he could identify “efforts” among some of his people to satisfy these demands, he was nonetheless aware of his fundamental opposition to the self-understanding of his people. His avowal of being an Afrikaner was a moral avowal of the historical guilt of this, his society; this allowed him to say at the same time: “I am not an Afrikaner” (219). In the light of moral standards, the critic presents an interpretation of *social reality*, not primarily an interpretation of *social values*. It is not connectedness with the community criticized that is the primary criterion of good criticism but connectedness with the suffering.

“[I]n matters of morality, argument simply is the appeal to common meanings” (Walzer 1983, 29)—this central normative statement of Walzer’s must be modified accordingly. Shared “meanings” of a linguistic kind are not yet justified, *shareable* values—criticism may speak a particular language, but it speaks to a particular society for the benefit of those “oppressed” by this society, from which it follows that it can rely upon only those “common meanings” that satisfy the minimal moral demands of basic forms of recognition; and it also follows that “common” meanings can be a basis for normative criticism only if they are truly “common” and not excluding. Social values and practices are judged on the basis of an *external* and an *internal* criterion. The external criterion—in the form of a moral “minimal code” (1987, 24, 45, 93)—calls for norms that must be observed in all societies; the internal criterion calls for social relations that can be

justified to all the members of a society. "Violence" is the disregard of moral persons' claims to rights, "oppression" the disregard of a community's members' justifiable claims to full membership in a substantive sense. Thus criticism continues to be related to shared values and norms, but the criterion of the "shareable" becomes the reference point for criticism. Criticism requires a "more general" nonexclusive language that continues to be the "thick" language of a particular society but must not however contradict a "thin" moral language.

In this way, social relations, practices, and institutions, *as well as* values and self-understandings become criticizable. Criticism demands reasons for existing social relations; and it examines these reasons, first, in respect of whether they are in a basic sense morally acceptable and in a general sense socially shareable; and, second, in respect of whether existing social practices can indeed be legitimated on the basis of them. The community of all members remains the "effective authority" (30) for the criticism of values as well as practices; shared understandings are themselves the object of interpretation and justification discourses, not the fixed and unequivocal starting point of criticism. The victims of oppression (and criteria of moral criticism) rely upon only *those* ideas of the ruling classes (40–42) with which the overthrow of this rule can be justified—and they rely upon these ideas because they are the right ones, not because they are the ruling ones (or those of the rulers). Immanent criticism remains "situated" in contexts; it calls not for a "pure" language but for one that *all* members of a community can speak and one that contains minimal standards of a *moral* nature. Without these elements of generality and universality, immanent criticism is not critical: social relations must be reciprocally and generally justifiable.

For all the substantivist-"thick" charging of the concept of "common meanings," the principle of justification in an internal and external sense continues to be the leading principle, without this external sense imposing "foreign" concepts upon particular contexts. This circumstance thus points to the possibility of a connection between universalism and contextualism, one that Walzer himself elaborates in later articles—without however recognizing the above-mentioned elements of practical reason as such.³

(c) *Four Paths in Moral Philosophy*

Walzer distinguishes three paths in moral philosophy: those of "discovery," "invention," and "interpretation." The path of discovery presupposes a divinely created reality revealed to human beings or a moral reality that discloses itself to a philosophical "view from nowhere" (Nagel) that is free of all particularity. God-given, objective, or natural values and rights are not created by human beings, they are discovered by them; the moral facts discovered herein—Walzer also includes the utilitarian conception of mo-

rality—are by definition universally valid. No less universalist, but based on the opinion that moral norms are constructed by human beings, is the path of “invention.” A “design,” an abstract thought experiment, helps construct norms that can raise a claim to universal validity. Rawls’s theory (but also Habermas’s discourse ethics and Ackerman’s approach) is paradigmatic for this. The participants in the thought experiment are themselves idealized and located in an ideal world in which they draft an ideal theory of the ideal society. They tell the people who live in their own particular homes to move into a Hilton Hotel in which all the rooms are identical. Walzer disputes that this kind of morality can be relevant to “our own homes,” which are the starting and end point of all moral questions; he is nonetheless aware that for “strangers,” who do not have their own homes, the most pressing problem is to find shelter in such a hotel. He is therefore forced at this point to distinguish between a universalist morality for strangers and a particularist morality for natives.

Walzer’s argument against the paths of discovery and invention is a hermeneutic one: morality cannot be founded in an objective or ideal world; it must be present if a moral question is to arise at all. Nor can the first two conceptions break out of the hermeneutic circle: “The claim of interpretation is simply this: that neither discovery nor invention is necessary because we already possess what they pretend to provide” (1987, 19). Discoverers may well understand themselves as the executive of morality and the inventors as the legislative, but interpretation remains the judiciary, leaving the final word on what is to be considered moral to those who have always lived in the moral home. In reality, discovery and invention are simply “disguised interpretations” (21) that cannot cast off the particularity of their premises. To argue morally is to interpret a specific community’s principles and practices (and the contradictions among them). For this interpretation of existing morality, conceived of as argument among participants, there is no authoritative endpoint: each interpretation must be publicly justified to those for whom this interpretation is supposed to be valid. This requirement implies that the more comprehensively an interpretation reflects the interests of this community’s participants, the better it is. And in point of fact: “Insofar as we can recognize moral progress, it has less to do with the discovery or invention of new principles than with the inclusion under the old principles of previously excluded men and women” (27). This argument however presupposes that these principles permit inclusion and are as such justified—which may require a radical moral reinterpretation (in intersubjective contexts). The internal principle of general, *consensual* justification consequently states that the communal “cave” orients itself by the light of legitimate principles. This is the first philosophically central outcome of a consistent interpretation of Walzer’s considerations.

The second consists in a reflection on the difference between the indigenuous morality of particularity and the universalist morality of strangers, the “minimal and universal moral code” (24). The morality of strangers, *the morality of humanity*, does not stand, unconnected, alongside a concrete *morality of community* but constitutes its formal framework (25). According to Walzer, these minimal moral norms of recognizing all human beings as *moral persons* do not represent an ethical-political form of life: they do not predetermine specifications of ethical person, legal person, or citizen; they assume concretely different forms but nonetheless constitute an indispensable framework for individual self-determination within the concrete, collective self-determination of a community.

Therefore, the value of respecting the integrity of collective forms of life, which Walzer continually emphasizes, has to be supplemented by principles, namely, that these forms of life must—from an internal perspective—be generally justified and must—from an external perspective—recognize certain moral rights. Collective self-determination must not be at the expense of individual self-determination. According to Walzer’s conception, the moral world thus consists not only of incompatible internal moralities but also of norms that all communities have to *recognize*. This understanding is grounded on the insight that persons are not only ethical persons in local communities, legal persons in particular legal communities, citizens in particular political communities but also, and first of all, strangers who are nothing more than “human beings.” The moral minimal code can be found also, and in particular, by a “single person, imagining himself a stranger, detached, homeless, lost in the world” (24), indeed, it is the language in which a moral person as a *human being* appeals to other human beings. Arendt forcefully pointed out the moral necessity of such a Hilton Hotel for stateless persons, who have lost the security of membership in a political community. In her call for “one human right,” namely, the right to have rights that are politically guaranteed (Arendt 1949), she takes into account the insight that human beings as moral persons are in need of protection precisely when they have lost the shelter provided by their state, when they are no longer legal persons. However, states have not only to grant strangers this protection; they also have the duty to guarantee their citizens at least the standards of such a hotel. Human beings have moral rights, but these rights become concrete and actionable rights only in legal communities.

Individual rights may well derive, as I am inclined to think, from our ideas about personality and moral agency, without reference to political processes and social circumstances. But the enforcement of rights is another matter. . . . Rights are only enforceable within political communities where they have been collectively recognized, and the process by which they come to be rec-

ognized is a political process which requires a political arena. (Walzer 1980b, 226)

This conception of moral rights becomes manifest in Walzer's treatment of international justice. His theory of just and unjust wars defends on the one hand the right of political communities to the self-determination of their "common life" but roots this right in a notion of individual rights that is also the foundation for his theory of just wars (1980b, 209). The basic rights of states in international law, says Walzer, the rights of territorial integrity and political sovereignty, "derive ultimately from the rights of individuals, and from them they take their force" (1992a, 54). In essence, it is the right to self-determination of each member of a political community that is attacked when the community is attacked, not the right of the abstract unity of the state. "The rights of states rest on the consent of their members" (ibid.). This principle has far-reaching consequences for a state's legitimacy and its claim to sovereignty and for the possibility of intervention from without, for instance, in the case of grievous human rights violations.⁴

Individual rights (to life and liberty) underlie the most important judgments that we make about war. . . . [T]hey are somehow entailed by our sense of what it means to be a human being. If they are not natural, then we have invented them, but natural or invented, they are a palpable feature of our moral world. (ibid.)

This determination of universal human rights shows that Walzer's argument for a particularist theory of justice cannot be "radically particularist" (1983, xiv) in respect of moral questions. Even in *Spheres of Justice* (xv) he remarks that he understands the conception of human rights on which his treatment of just war was based as being complementary to the problem of extrapolating "spheres of justice"—"distributive justice is not all of morality, it does not even cover the whole of justice" (1992e, 291).⁵

Walzer's moral hermeneutics cannot avoid providing *universal* conditions for why and for what forms of community are to be respected or criticized and in what their moral claims vis-à-vis their own members and strangers are to consist. This consideration leads to his theory of "reiterative universalism." It connects formal universalism and substantive contextualism by means of the idea that universal principles establish a formal framework that is constantly reiterated in a different manner in contexts of political communities, in their self-understandings, practices, and institutions. By reason of this idea, Walzer abandons the flawed opposition between universalism and contextualism and comes to a *contextualist universalism* that sees in the very formality and universality of moral norms the possibility of incorporation into various contexts and space for these contexts of self-determination. "Contextualist" is therefore to be understood in the sense of "contextualized" or "context-sensitive"; this form of universalism respects

the limits of social contexts but does not regard them as the limits of morality as a whole.⁶ There is every indication here of the possibility of a *fourth path* in moral philosophy that connects the first three differentiated by Walzer.

He distinguishes two kinds of universalism. A covering-law universalism believes that it can explain principles of justice as well as standards of the good individual and political life by one universally valid root. One source of moral knowledge covers, as it were, all possible moral phenomena in the world. These phenomena do not have their own right but are simply reflections or preforms of true justice. The second kind, reiterative universalism, however, assumes a plurality of moral sources and phenomena that are to be heeded according to the universal prescripts of tolerance and respect. Moral worlds are universes of discourse that cannot be *reduced* to one language; yet in essence they *contain* certain principles that enjoy universal validity but are brought to bear only particularistically. "Independence, inner direction, individualism, self-determination, self-government, freedom, autonomy: all these can be regarded as universal values, but they all have particularist implications" (1990b, 518). Human creativity reiterates, renews forms of human life within the framework of these universal values. The value of self-determination assumes a special position here: the attempt to dispute this value is as morally condemnable as the attempt to give an a priori specification of what the self-determination of a people or a human being must mean. "People have to choose for themselves, each people for itself" (519). The more abstractly the universal value is understood, the greater the latitude it provides for its substantive reiteration.⁷ "[P]eople should be treated in accordance with their own ideas about how they should be treated" (530).

The highest principle of reiterative universalism consists in the reciprocal recognition of others as "moral makers" (532), as self-determining beings in and with a community. Already in *Spheres of Justice* (as remarked above in chapter 3.4), this principle pointed to two different conceptions of justice in Walzer: a universal one of the moral necessity of respect for jointly produced cultural contexts, and a concrete one of respect for the contents of various social understandings of the just. "To override those understandings is (always) to act unjustly" (1983, 314). Respect for the autonomy of "culture-producing creatures" does however refer to respect not primarily for communities but for individuals in communities; *persons* have "rights to reiteration," as Walzer emphasizes (now more strongly than in *Spheres of Justice*):

We act immorally whenever we deny to other people the warrant for what I will now call the *rights of reiteration*, that is, the right to act autonomously and the right to form attachments in accordance with a particular understanding of the good life. Or, immorality is commonly expressed in a refusal to rec-

ognize in others the moral agency and the creative powers *that we claim for ourselves*. (1990c, 535; italics added)

According to Walzer, this moral respect for persons is based on a reiterative core of common human experiences, on the moral minimum of *all* communal contexts.

Stuart Hampshire's (1983, ch. 6) proposal to proceed from a "deep structure" of the justice norms of rational argumentation—a structure on which all particular languages of ethical forms of life are based—is regarded by Walzer as correct in its intention, on account of its "minimal" moral claim; but he raises the anthropologically grounded objection that this minimal concept can be obtained not from a linguistic, universal deep structure, but from an interpretation of what moral claims are recognized in various cultural contexts and can therefore be regarded as universally valid. Walzer considers it possible to lay hold of a concept of "minimal natural law," as proposed by Hart (1961, 189–95; 1984), but he is skeptical, first, about a "transcendental" justification of this "code" and, second, about a definitive determination of its content. Walzer's universalism thus remains a hermeneutic universalism: he proceeds from an analysis of the moral claims that are raised by human beings finding themselves in distress, need, and suffering and that are recognized in various human cultures. The acknowledgement of "family resemblances" between human experiences and norms—and the "extraction" of universal values—is "additive and inductive . . . and so it does not require an external standpoint or a universal perspective" (1990b, 527). Knowledge of universal values is founded on moral experience; as if passed through a sieve, certain "minimal" values are filtered and abstracted from a multitude of "maximalist" cultural practices: these values can raise a claim to universality (see 1994a, 15). "Though we have different histories, we have common experiences and, sometimes, common responses, and out of these we fashion, as needed, the moral minimum" (1994a, 17–18). We can, Walzer says, intuitively recognize the demonstrators' signs on which "truth" and "justice" are written; we are marching with them, however unfamiliar to us they and their country may be; but there isn't for us any real non-maximal notion of these minimal norms. We are marching with the demonstrators but we are really marching in our own understanding of these words. There is no moral Esperanto, just a multitude of languages that are based on common human experiences. This understanding explains Walzer's elucidation of the minimal moral code, which, though it can in his view be philosophically constructed, follows nonetheless from a consideration of norms that "have been accepted in virtually every human society" (1987, 24). The "odd anthropological example" might call this outcome into question, but our moral experience points to these minimal values.⁸ It is the *human* experi-

ences in all cultures that call for the conception of a *human morality*, which is nonetheless never encountered in a pure form. We feel with (and how) others who suffer oppression and pain, and from this empathy we underscore the same moral rights claims that follow from these negative experiences. Thus Hampshire (1989, 107–8) writes:

Humanity is united in the recognition of the great evils which render life scarcely bearable, and which underdetermine any specific way of life and any specific conception of the good and of the essential virtues. The glory of humanity is in the diversity and originality of its positive aspirations and different ways of life, and the only universal and positive moral requirement is the application of procedural justice and fairness to the handling of moral conflicts between them.

Unlike Hampshire, however, Walzer does not want to restrict the moral minimum to procedural norms; not only these norms, which make difference possible, can be morally distinguished, but also norms and values that prove to be common ones: for example, values of political responsibility, norms of conduct in war, honesty in bilateral trade. There are no procedural limits to a hermeneutic-inductive universalism (cf. Walzer 1994a, 14–15).

Thus the fourth path in moral philosophy, that of contextualist universalism, seems to lead back into the third one, that of interpretation—only this time the shared understandings not of one but of many, and, in principle, of all cultures, are interpreted in terms of a common core about which all human beings as human beings can agree. The minimal moral code grants moral persons the possibility to object in cases in which their basic moral rights to inviolability of person are endangered.

The criterion of justified universal moral claims is not however sufficiently clarified in this way. The cited common negative experiences of oppression and injustice as well as—to put it positively—the common desire for a life free of these experiences do constitute the *foundation* for moral claims (and for a common language of being human), but the *validity criterion* of these claims is located in their general and reciprocal non-rejectability. Universal moral claims appeal to the other (in his or her capacity as a human being) to recognize persons as *human beings*, as moral persons—that is, in a way that no human being can reasonably and *reciprocally* deny another without denying him or her the basic “right to justification” (or to reiteration), which human beings have by virtue of their membership in the *human community*. To recognize a person as a *moral person*—as an end and not as a means, to put it in Kantian terms—means therefore recognizing him or her as a representative of the moral authority of humanity, and it means acting toward him or her in accordance with norms that are based on *shared* reasons and are justified in the strict sense

of practical reason (and reasonable justification). It is only in this way that one can make sense of Walzer's concept of a universalist morality as a "human morality" beyond a (weak) quasi-empirical or a (strong) metaphysical justification and can fill it with a content that does justice to the demands and experiences of concrete persons.

On the basis of this conception of reason, the notion of moral person cannot be explicated without the *right* and the *criteria* of moral justification. The correct path in moral philosophy is not that of the interpretation of existing notions of morality (1987, 22) according to the question "what is the right thing *for us* to do?" (23), but the path of reciprocal and general justification between concrete persons as human beings, as members of the common *context of being human*. That the community of all human beings is the "justification community" of moral norms must not however be understood in an abstract manner. It does not mean that these claims do not originate in moral experiences and are not raised in concrete contexts, or that moral "minimal" norms are not anchored in a "maximal" form in social contexts. It means that communities must not fall below "minimal" standards of moral recognition and that persons as human beings have a basic right to justification. Moral norms are not "context-transcending" norms in the sense that they are valid only for "ideal," bodyless beings; rather, they are valid for all, and that means for every moral person *vis-à-vis* every other.

Accordingly, a contextualist universalism imposes two essential moral restrictions on social contexts.⁹ One is the restriction—called "internal" above—that a community has a claim to legitimacy and to respect for its integrity only if its "common life" is generally recognized by the members themselves as justified. This restriction does not mean—in accordance with Walzer's reiterative universalism—that the normative requirement contains substantive implications as to how the community ought to live and understand itself; it simply requires that all participants be able to identify with the common life. Walzer has made this reading clear in a critical reflection on his concept of "social meanings" as social constructions within a community. With regard to the recognition of persons in social contexts, these constructions are not "free"; individuals can "nullify" constructions of themselves if they cannot share them:

We might say, looking at the idea itself as something we have made, that the construction of social-construction-with-human-agents has certain moral entailments. Among these is the right of subjective nullification, the right of the agents to refuse any given object status—as commodities, "hands," slaves, or whatever. (1993a, 173)

The second restriction amounts to the observation that not only must a political (or ethical) community have the support of its members, it must also embody certain minimal moral norms that are indebted to the rec-

ognition of the humanity of human beings as moral persons per se. This “external” viewpoint follows from the “internal” one insofar as the latter already requires observance of the “right of subjective nullification”; it is therefore not in an abstract sense “externally” justified. It makes possible criticism from “without,” which means from the perspective of nonmembers; and it implies certain standards for treating “strangers”—a dimension that a theory of justice must not ignore. Moral criticism of a community is justified, says Walzer (in his theory of international justice), when these minimal criteria of morality are not guaranteed. The apartments in communities are always decorated in a particular style, but none may inadmissibly fall below the standard of the Hilton Hotel.

A theory of contextualist universalism thus provides a formal framework in which collective and individual self-determination can be brought into agreement. Because this theory does not make any substantive assumptions about the good that is to be realized, it can provide space for the concrete conceptions of the good jointly inherited or created by members of a community. Universality and formality do not destroy communal contexts, they make them possible under “minimal” moral conditions. The principle of general justification is a principle *in* and *above* communal practice—it does not require that communal contexts be rearranged according to abstract principles “invented” in an ideal situation; it simply requires that these contexts be jointly accepted and be open to the rights claims of moral persons on the basis of negative experiences. Communal and humanity, the morality of natives and the morality of strangers, must be compatible, without the natives becoming strangers to one another and without making some natives into strangers. Practical reason does not impose an Esperanto upon persons, as Walzer fears, nor does it impose a contextless identity or an idealized conversation; it does not imply any “external” and undemocratic substantive justifications of norms. If the contexts of justification are sufficiently distinguished, ethical particularity, political autonomy, and moral recognition become not only compatible, they actually refer reciprocally to one other. The dualism between human universality and social particularity, which is unavoidable according to Walzer (1994a, 8) and leads to various conceptions of concrete justice and to a common understanding of certain basic norms of justice and of the very concept of “justice,” is to be explained in no other way than by the difference between various contexts of justice on the basis of a conception of practical justification.

In this discussion, a further “context” of person and community has become evident: the moral person as a member of the community of all human beings “beyond” particular contexts. In the moral context, the principle of practical reason calls for a justification of actions on the basis of reasons that are “shareable” in the strict sense. This understanding of per-

son, reason, and morality will be elaborated in a discussion of Rawls's constructivism in what follows, for Rawls's theory also rests on a certain conception of the moral person that, as an "idea of practical reason," serves as the foundation for the justification of principles of justice. How does Rawls "do justice" to the moral context and to the differentiation of different contexts of justice?

4.2. CONSTRUCTIVISM AND PRACTICAL REASON

Against the background of the discussion of Walzer's theory, it may seem that the "contextualist" Walzer and the "universalist" Rawls have exchanged roles: now it is Walzer who argues universalistically, whereas Rawls—if we follow Rorty's interpretation—has restricted his theory as being "political not metaphysical" to "trying to systematize the principles and intuitions typical of American liberals" (Rorty 1991, 189). What else can it mean when Rawls remarks that "since justice as fairness is intended as a political conception of justice for a democratic society, it tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation" (1985, 225)? Can such a culturally and historically anchored argument raise a claim to universality only if it is based on a Hegelian philosophy of history in the form of the thesis that American (or "Western") political culture represents the normative endpoint of political developments?¹⁰ What does Rawls's attempt to present a "reasonable" theory of justice mean? "Reasonable" in an Aristotelian, an Hegelian, or, in spite of all, still a Kantian sense?

According to a conventionalist interpretation of Rawls's "political" conception, the point critical of communitarianism—discussed in chapter 1—namely, that of distinguishing the conception of "moral person" from that of "ethical person," led to a concession to (differently positioned) communitarian criticisms: rebuking the atomism objection would carry the price of relinquishing the theory's universalist, moral claim. Rawls defended the original position, as we have seen, by pointing to the fact that it is based on a particular conception of the "moral person" that cannot be criticized for having a problematic view of persons' ethical identity. Rather, it is a second-order concept that abstracts from ethical identities and serves as the foundation for an impartial justification of principles of justice; it presupposes the two moral powers, namely, the capacity for a conception of the good and the capacity for a sense of justice, which are "neutral" toward particular conceptions of the good. This conception of the moral person, Rawls says, is "latent in common sense" (1980, 520); it is implied in the notion of the free and equal *citizens* of a democratic society (cf. 1993a, 13) and is to that extent a "political" conception. As such it serves

as the foundation for a “political” interpretation of the principles of justice in respect of neutrality toward “reasonable” comprehensive doctrines (see chapter 2) and in respect of the essential viewpoints of social justice (see chapter 3).

With this “politicization” of the conception of the person, however, Rawls seems to be relativizing its Kantian-moral content and to be relying solely on an understanding of “citizenship” that originates in “our” tradition of liberal-democratic states. It is then just one possible interpretation of this understanding among others. Hasn’t it thereby lost its claim to defending the *priority* of justice over competing conceptions of what is good “for us”? This question calls for a more detailed look at Rawls’s theory, which will show to what extent this contextualist interpretation is inappropriate.

Conventionalist interpretations of Rawls’s political liberalism can assume various forms. According to a political-“pragmatic” understanding, Rawls is concerned primarily with the problem of stability; the overlapping consensus does not therefore have any independent moral basis; rather, it is to be understood as the minimal consensus for maintaining social peace. According to this view, Rawls exchanges the role of the philosopher for that of the “politician” striving for political consensus (Raz 1990, 10). Rawls unequivocally rejects this interpretation; he distinguishes between two stages of the theory (1989a): the stage of the “freestanding” moral justification of the theory, and the subordinate stage of explaining the possibility of social stability (cf. 1993a, 133–34). Nonetheless, says the second conventionalist interpretation, the “freestanding” justification could place the conception of moral person at the center of the theory because it reflects “our” self-understanding as members of a particular political culture (Rorty 1991). This understanding is however incompatible with Rawls’s claim to justify a “reasonable” conception that—unlike conceptions of the good that question the priority of justice (or also unlike alternative, for example, utilitarian, conceptions of justice)—puts forward stronger reasons than the reference to “our” practices allows. The criterion of the “reasonable” (in contrast to “unreasonable” comprehensive doctrines) requires a nonconventionalist justification: there is only *one* conception of the normatively prioritized reasonable.

But, so runs the third interpretation, this justification could ultimately lie in the “fundamental commitment to the liberal political ideal” (Mulhall and Swift 1992, 191; cf. Giusti 1994) of a political order “publicly” justified among free and equal citizens—an ideal of liberal citizenship that plays a double role: “it is both what leads Rawls to seek a conception of justice that is publicly justifiable and what he finds when he goes to the public political culture in order to do just that” (Mulhall and Swift 1992, 190). What forms the normative starting point is not therefore the mere presence of the

liberal ideal in a particular political culture but the normative ideal itself—an ideal, nevertheless, that can in turn be justified only as a “comprehensive” liberal doctrine of the good (222–26). Rawls however contradicts this interpretation by emphasizing that his fundamental idea of social cooperation and the attendant ideas of free and equal persons and of the well-ordered society (Rawls 1993a, 14) are “ideas of practical reason” (90, 110) that “cannot be reasonably rejected” in a *moral* sense. Only with this argument can the priority of justice principles over “comprehensive doctrines” be defended and a “reasonable” limit be set to these doctrines—a limit that cannot itself originate in such a doctrine.

The theory of justice can thus assert the validity of its principles only in the sense of a “freestanding” and “moral” (not “ethical”) conception (11). It retains its *deontological* character, which Rawls (1971, 30) distinguishes through the priority of the right, only if it rests on practical reason; and a “political” conception, of all conceptions, cannot do without this. For that reason, the conception of “justice as fairness” begins not with contingent “shared understandings” because they *are* contained in a particular political culture, but with conceptions of person and social cooperation that *must be* contained in such a culture—and indeed *necessarily* so if the culture raises the claim to being a *democratic* one that rests on a shareable, reasonable foundation. Without these conceptions of practical reason there is no democratic, legitimate society. They are inherent in the fundamental principle of public justification: a just and publicly justified basic structure of society—a structure that expresses citizens’ “shared and public political reason” (1993a, 9)—must rest on these conceptions since they themselves are part of the idea of public reason. “Let us say, then, that the conceptions of society and person, and the public role of principles of justice, are ideas of practical reason” (110).

That the theory of justice as fairness “starts” (14) with certain fundamental ideas of a democratic political culture is therefore justified in the “philosophical background of political liberalism in practical reason” (xiv), not in a more or less conventionalist alignment of the theory. That we can reconstruct the right from familiar conceptions does not mean that it is right because it corresponds to “our” familiar conceptions. Rawls makes it clear that the ideas and principles encountered in a democratic political culture are contradictory and must therefore be ordered on the basis of fundamental “abstract” moral concepts (9); here he underscores the role of political philosophy: “We turn to political philosophy when our shared political understandings, as Walzer might say, break down, and equally when we are torn within ourselves” (44).

This Kantian interpretation of the new shape of Rawls’s theory refers to the outcome of a process whose examination is worthwhile since we can locate there the points at which this interpretation uncovers a disharmony

in Rawls's theory with other components of his conception—with, for example, the political-“substantive” loading of the conception of moral person in regard to the theory of primary goods, or with a certain (at least terminological) political-“nonmetaphysical” relativization of the theory in respect of the “truth” of comprehensive doctrines. Between these two understandings of the “political” and a third one, the political-“moral” sense of the priority of justice, Rawls's model exhibits a heterogeneity that an “autonomous” (98) theory must avoid. Ultimately, only a (similarly “non-metaphysical”) Kantian interpretation of the theory that clearly distinguishes between moral norms and ethical “doctrines” (but nonetheless takes into account the difference to Kant's “moral constructivism” emphasized by Rawls) can maintain this claim to autonomy; and such an interpretation goes beyond Rawls at decisive points.

To demonstrate this move in what follows, the basic assumptions of a deontological theory of justice will first be extrapolated (a); second, Rawls's justification models in *A Theory of Justice* and their alteration in the Dewey lectures will be discussed (b); in order, third, to examine his now reformulated theory of constructivism (c). On the basis of an immanent critique of Rawlsian theory, finally, a proposal will be made to interpret the theory of “political” constructivism in the direction of the universalist-contextualist theory that was formulated in connection with Walzer and that will be explicated with the help of discourse-theoretic assumptions (d).

(a) *Deontological Theories of Justice*

At the center of the model of a nonmetaphysical, deontological theory of justice is the attempt to reformulate the Kantian principle of moral autonomy as acting according to universally justified principles with a view to drafting principles of justice for a basic structure of society. It is, to use a specific formulation of Rawls's, a matter of “a procedural interpretation of Kant's conception of autonomy and the categorical imperative [within the framework of an empirical theory]” (Rawls 1971, 256).¹¹ The Kantian conception of autonomy is detranscendentalized and proceduralized: what free and equal persons can agree upon in their mutual and general interest is what is to be regarded as generally justified.¹² Thus the principle of practical reason, namely, that general norms must be generally justified, is to be interpreted *recursively* (O'Neill 1989, 21) and *discursively* (Habermas 1990a, 57–68): in the absence of metaphysically validated normative principles, moral-universal justification can be located only in a process of reciprocal rational argumentation that is in principle unfinished. If the alternatives of moral realism and relativism are to be equally avoided, then norms of justice must, as it were, “earn” their universal claim to validity. In this context, practical reason requires that we be able to provide reciprocal

and universal reasons for the validity of a moral norm. In this way, the condition of “impartiality” is taken into account, the condition that is central to the validity of norms of justice. A distinction must however be made between basic justice norms of a moral kind and concrete legal-political norms (and decisions) and determinations of social justice. As part of the basic structure, the former constitute the framework for the political-autonomous justification of concrete norms and decisions among citizens having equal rights. Not all questions of justice are moral questions that require universalist answers (in the strict sense).

On the basis of Habermas’s analysis (1990b, 196–97), four essential characteristics of a Kantian-procedural theory of morality can be explicated. First, its *deontological* character: it is aimed at the categorical normative validity (*Sollgeltung*) of norms that can be universally justified with shared reasons; this normative validity is unconditional in the sense that no one has, in a normative sense, good reasons not to accept this validity—which must prove itself in contexts of justification. These norms answer the question of the “right” life of persons together as moral persons, not the question of the good life of one person (though the former does have significant consequences for the latter). A Kantian theory is opposed to answering the question of the universal validity of norms by pointing to an individual or a collective conception of good—to the extent that these conceptions of the good can come into conflict with norms of justice, which must be justified to *all* persons and thus to *each individual* person, as Rawls emphasizes against utilitarianism.

This presupposes, second, the *cognitivist* assumption that moral questions admit of rationally and generally justified answers, in principle. The rightness claim of moral norms must be understood in the sense that its redemption does not consist in demonstrating a correspondence to objectively valid moral “facts,” rather that the rational validity of morality rests on a reciprocally and generally justified consensus of free and equal “rational beings”—“rational beings,” however, who are not stripped of all particularity in favor of the intelligible, but who are in a position to take the perspective of others. Shared reasons must be generally recognizable as good reasons.

A deontological theory therefore has a procedural principle of justification at its core; in this sense it is a *proceduralist* theory (Habermas calls it “formalist”). This third characteristic does not mean that all moral norms have a procedural or formal character; it means that they must be generally and reciprocally justified. Intersubjective reciprocity enters into the structure of the justification of norms: to the extent that they speak for all, all must speak out of them.

Fourth, and finally, Habermas underscores the *universalist* character of such a theory: the universality on which the validity of a moral norm (in

contrast to a legal-political norm) is based cannot be restricted to a specific—spatiotemporally localized—generality; the claim to be valid for *all* moral persons must be justifiable in principle to *each* person. The moral community of human beings is the justification community for moral norms. This implies not that there can be moral norms only in a supra-empirical Kingdom of Ends but that only moral reasons legitimate moral action (and moral norms) “here and now”—and that these reasons must be shareable reasons for each concrete person who is their addressee, so that he or she can understand him- or herself at the same time as the author of these reasons. Moral reasons—and the duty to provide justification—do not stop at the borders of ethical worlds.

A theory of justice must contain this universalist core content of morality. It does not however uniformly mold norms and values that are to be valid solely for a particular political community (in its self-determination). This is the main point of Walzer’s reiterative universalism, which raises the recognition of particular collective identities itself to a universal demand. Respect for the moral person does not replace the dimension of membership in ethical and political communities; rather, it gives effect to basic moral norms.

The construction of the original position represents Rawls’s attempt to bring, with the help of “reasonable” assumptions, the demand for general justification into a form that permits the derivation of substantive principles of justice. The principles derived in this state of equality are general and autonomous in the sense that, with the exclusion of heteronomous motives and interests, they would be chosen by all moral persons as free and equal rational beings—the veil of ignorance makes sure that the interests of one person are in agreement with the interests of all persons and that “unanimity” (Rawls 1971, 263) is possible. In Wilfried Hinsch’s (1992, 16) words: “If we are to summarize the requirements and conditions embedded in the original position, we can say that in it unanimously accepted principles of justice are generally and publicly justifiable principles for which we can rationally argue *with all persons, to all persons, and with reasons that are the same for all persons.*” The guiding question in the next section is to what extent Rawls’s theory corresponds to this characterization of a theory that is not only “reasonable” but also *reason-based*, and how the changes to his model appear in this light.

(b) *Reflective Equilibrium and Practical Reason*

According to Rawls, the strong point of a theory of justice lies in its modesty: only if it rests on the most generally shared, noncontroversial premises possible is there the prospect that it will be acceptable reasonably. “Ideally, to justify a conception of justice to someone is to give him a proof of its

principles from premises that we both accept, these principles having in turn consequences that match our considered judgments" (1971, 580–81). Such a justification cannot rely, as a "Cartesian" (578) theory does, upon self-evident principles from which a system of norms would be derivable; the justification of the theory is a hermeneutic undertaking insofar as it must correspond to the "considered" and "reasonable" moral judgments that can stand the test of a reflective equilibrium. This method of reflective equilibrium is a hermeneutic-"Socratic" (578) one: to find out what principles of justice can raise a justified claim to validity, they must be acceptable as just principles to free and equal persons—and the conditions for this free and equal acceptance must be mutually clarified and laid down in the equilibrium between the specific resulting principles and "our" moral judgments.

By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments *duly pruned and adjusted*. (1971, 20; italics added)

The reflective equilibrium therefore expects of the candidates for principles of justice not only that they be in accord with moral intuitions (Rawls 1971, 40–41; cf. Hare 1989; Feinberg 1989), feelings, and judgments, but that they also order these coherently (Lyons 1989; Hoerster 1977). Here, the original position takes up a mediating position: it is the "rationalizing" medium on the basis of which generally acceptable judgments on fairness and equality can be formulated in such a way that substantive principles of justice spring from it. From this method of bringing intuitions, principles, and abstract procedural conditions coherently together, Rawls expects the possibility of enlightening the sense of justice about itself in a reconstructive manner—indeed, doing so via the connection to simple concepts that make possible a "fairly sophisticated mathematics" (1971, 47) or "moral geometry" (121), which actualize the implications of these concepts. These concepts are not manifest; rather, they must be critically reconstructed, as Rawls (1993a, 9) emphasizes:

The public political culture may be of two minds at a very deep level. . . . This suggests that if we are to succeed in finding a basis for public agreement, we must find a way of organizing familiar ideas and principles into a conception of political justice that expresses those ideas and principles in a somewhat different way than before.

The central presupposition of a theory of justice from which Rawls proceeds is the idea that only those principles that can stand up to a rational

discussion among the citizens affected by them can raise a claim to validity—which is supported by his linking of autonomy and objectivity: “Thus acting autonomously is acting from principles that we would consent to as free and equal rational beings, and that we are to understand in this way. Also, these principles are objective” (1971, 516). In this way, the idea of justification becomes self-reflexive: a conception of justice is reasonably justified if it is built on the principle of autonomous practical-rational action and, with regard to questions of the justice of the basic structure, operationalizes this principle as best as possible. This conception of autonomy and reason is therefore the foundation for the conception of justice; and the model of norm justification based on reflective equilibrium has the task of representing this foundation in an appropriate manner. In respect of this model, Rawls’s approach is located *between* an empirical, contract-theoretic tradition, on the one hand, and a Kantian tradition, on the other, insofar as the procedural model—which he believes can be affirmed in a “narrow” reflective equilibrium (which orders a person’s beliefs rationally and coherently) and in a “wide” one (which takes alternative conceptions of morality as well as normative substantive considerations into account)—is conceived of in the specific form of the original position.¹³ This ideal initial situation connects rationality assumptions and empirical considerations concerning necessary primary goods with a Kantian conception of practical reason and of the impartiality and autonomy of principles that, without the influence of individual or social contingencies, apply to all “rational and reasonable” persons. “[O]ne conception of justice is more reasonable than another, or justifiable with respect to it, if rational persons in the initial situation would choose its principles over those of the other for the role of justice” (1971, 17). Rawls can therefore call the principles of justice categorical imperatives (253), which apply “to a person in virtue of his nature as a free and equal rational being.” The procedural principle of general and autonomous justification is connected, in a hypothetical thought experiment, to certain assumptions about a “rational” choice of subjectively desirable primary goods—this thus clarifying Rawls’s remark that the original position is “a procedural interpretation of Kant’s conception of autonomy and the categorical imperative [within the framework of an empirical theory]” (256).¹⁴

The resulting double character of Rawls’s theory, moving between Kantian moral concepts and more empirically founded assumptions, is evident in his theory of the moral person. An elementary presupposition, which seems “reasonable and generally acceptable” to him, is to assume “equality between human beings as moral persons, as creatures having a conception of their good and capable of a sense of justice” (1971, 19). The principles of justice that best reflect these attributes of persons are “fair,” as are the principles that are agreed in an original position that best expresses this

equality and freedom of persons. The Kantian side of this conception of the person consists in the fact that it rests on an ideal of autonomy according to which principles of justice must be justified without attention to contingent considerations or differences between human beings. The “rational” side of this conception of the person lies in the assumption that persons have plans of life that they want to realize as best as possible. The procedural rule that those principles are justified that can be rationally accepted by these kinds of free and equal persons prompts Rawls to explicate this conception of the person in a Kantian, *reasonable* and an empirically *rational* respect and to make it the substantive foundation of the theory and of the primary goods to be distributed—in the sense of the satisfaction of “rational desire” (93). In his writings after the publication of *A Theory of Justice*, Rawls strongly emphasizes the role of the conception of the person, which allows him to make this connection between various elements of the theory. In the article “A Kantian Conception of Equality,” for instance, he writes: “When fully articulated, any conception of justice expresses a conception of the person, of the relations between persons, and of the general structure and ends of social cooperation” (1975a, 94).

In the Dewey lectures on “Kantian Constructivism in Moral Theory,” the moral person clearly comes to the fore, while its strong justification in “our nature as free and equal rational being[s]” (as Rawls writes in *A Theory* [1971, 256; italics added]) recedes. Rawls spells out the core of his constructivist conception as follows: “The leading idea is to establish a suitable connection between a particular conception of the person and first principles of justice, by means of a procedure of construction” (1980, 516). From the perspective of the “wide reflective equilibrium” (534), he says, it is important to combine the perspectives of the citizens of a well-ordered society and the perspective of the parties in the original position in such a way that the description of the parties and the constraints imposed upon them lead to principles that are, in “our” view, reasonably acceptable to the citizens of a well-ordered society. The self-interested “rational autonomy” of the parties must do justice to the “full autonomy” of citizens “in their social life,” that is to say, the original position must embody the two “moral powers” of the person—having a *rational* conception of the good and having a *reasonable* sense of justice.

According to Rawls, a “constructivist” position does not claim to be “true” in the sense of “rational intuitionism” or other versions of moral realism; it is just “reasonable” (569) insofar as it rests on a “reasonable” conception of the person—a conception, however, that bears “critical reflection” and constitutes the center of an “objective,” public conception of justice. It is in this sense that we are to understand Rawls’s remark that a conception of justice must be “the most reasonable doctrine for us”: “Kantian constructivism holds that moral objectivity is to be understood in terms of a suitably

constructed social point of view that all can accept. Apart from the procedure of constructing the principles of justice, there are no moral facts" (519). He distinguishes here—in contrast to *A Theory of Justice*—between a theory of human nature and a (less demanding) conception of the moral person; in his view, however, this distinction strengthens the conception of the moral person since it becomes independent of controversial theories of human nature: "It is hard to imagine realistically any new knowledge that should convince us that these ideals [of the person and the well-ordered society] are not feasible, given what we know about the general nature of the world, as opposed to our particular social and historical circumstances" (566). The basic ideals of the moral person and the well-ordered society are "available to the common sense of any thoughtful and reflective person" (*ibid.*). Here, though his theoretical self-restriction seeks to avoid controversial philosophical and scientific truth claims, Rawls clearly understands his conception of the person in a strong sense. That the "fundamental ideals" to which he refers are immanent in a democratic political culture does not mean that their claim to validity is restricted a priori to this culture. Nevertheless, the "political" conception of the moral person (in the manner Rawls has described it since 1985) has a moral—"Kantian" and substantive—"political" double character.

The latter plays a role especially in the context of Rawls's explication of the principles of justice with regard to their function of socially enabling in a substantive sense the development of the two moral powers of persons (see the discussion in chapter 3.4). The primary goods are thus justified as "all-purpose means" for satisfying persons' "highest-order interests." Various elements therefore enter the conception of the "political" as well as the "reasonable": a "moral" element with reference to the priority of justice and the practical-reasonable character of the moral person; a (first) "political" element pertaining to the restriction to "political" conceptions of "citizen" and "social cooperation"; and, finally, a (second) "political" element in respect of the assumptions about certain "citizens' needs." It is against this background that his theory of "political constructivism" is to be examined, which is no longer understood as *Kantian* constructivism in *moral* theory (1985, 224n. 2; 1993a, 90n. 1), as was still the case in the Dewey lectures. This new understanding however entails a distancing not from the theory's moral validity claims as a whole, but from certain moral-theoretic assumptions (Kant's, in particular) and especially from ethical doctrines.

(c) *Political Constructivism*

In Rawls's writings since "Justice as Fairness: Political not Metaphysical" (1985), further important changes in his theory can be ascertained, ones

that led to a reformulation in his book *Political Liberalism*, whose very title is a statement of his program: he emphasizes more strongly the theory's nonmetaphysical claim to justification and its "political" character in an *epistemological* sense. The theory stands in greater contrast to ethical conceptions of the good and concentrates on the *normative-practical* task of being able to be affirmed in a ("reasonably" justified) overlapping consensus of an ethically pluralistic state. "Political" is to be understood in this epistemological-practical double sense: a theory is political if it avoids controversial claims to justification and if it refers solely to the basic structure of a pluralist society.

The essential motive for Rawls's emphasizing the "political" character of the theory of justice stems from his view that it can reach its "practical" aim of being "a basis of a reasoned, informed, and willing political agreement" between citizens (1993a, 9) in a society fragmented by the "fact of reasonable pluralism" only if it avoids the conflicts between ethical doctrines. In this sense, neither *A Theory of Justice*—in its explanation of social stability by a "congruence" of the good and the just—nor the Dewey lectures—which were still understood as "moral theory"—were sufficiently "political." The theory of the basic structure of society refers solely to "political" questions and aims at a political overlapping consensus; for that reason, it "starts" with "fundamental ideas" that are generally shared and are able to provide the basis for a general agreement.

According to Rawls, the line between justice and the good must be redrawn: the theory of justice must be tolerant toward a multitude of ethical views and their truth claims; indeed, it must be acceptable "from within" these conceptions, from their perspective, and maintain its strength and stability. Here lies its philosophical modesty, which does have another side, however. The theory must not only be compatible with ethical conceptions of the good and avoid as much as possible colliding with their claim to validity—this is a *practical* requirement. Even more important is that ethical conceptions be compatible with the theory of justice, that is to say, they must restrict their claim to truth precisely when they come into conflict with the theory's claim to reason—this is a *moral* requirement. And while Rawls emphasizes in his recent writings the practical requirement in particular, there can be no doubt that the moral requirement predominates. "The concept of justice is independent from and prior to the concept of goodness in the sense that its principles limit the conceptions of the good which are permissible" (1985, 249). The theory must be able to provide *independent* reasons as to how "reasonable" a comprehensive doctrine is and as to what constitutes the theory of justice's authority to draw these limits. Contrary to the view that the theory can do without a strong claim to moral validity, it will become evident that the theory can be neither ethical nor political "in the wrong way," as Rawls claims, only if it can fall back upon a

conception of the moral person that can be justified solely as an “idea of practical reason.” The conception of justice can defend its moral priority over ethical conceptions only if it is more than a rational compromise and less than an ethical doctrine, that is to say, if it is a morally justified conception.

The line Rawls draws between comprehensive doctrines and the “political” theory of justice was discussed in the context of his debate with Sandel already in chapter 1. The “political” conception of free and equal persons, which corresponds to the conception of free and equal citizens in their “public identity,” is—in view of the “fact of the reasonable pluralism” of ethical beliefs—the conception on which ethical doctrines can agree in an overlapping consensus, those doctrines that wish to exist in their own particular but nonetheless generally acceptable way in a democratic society.

This argument does however harbor the danger of being “political in the wrong way” (1989a, 234). Rawls’s “method of avoidance” of ethical claims to truth seems to weaken the moral claim to reason to such a degree that the theory becomes contingent (in terms of the logic of justification), and the overlapping consensus can hardly be distinguished from a *modus vivendi*, from an (unstable) compromise between ethical conceptions. In his response to this criticism, Rawls (as was noted at the beginning of this section) finds himself compelled to distinguish between two stages of the theory: the stage of the *justification* of the theory as a “free-standing” (1989a, 234), independent conception on the basis of fundamental moral ideas of person and society; and the stage of *stability*, in which the concept of overlapping consensus serves to explain how the theory can be supported by ethical conceptions of the good in a manner that is itself “moral.” According to Rawls, the first stage rests on the “fundamental idea” of society as a fair system of social cooperation and on the “two companion fundamental ideas” of citizens as free and equal persons and of the well-ordered society. The generality and ethical neutrality of these ideas *make it possible* for them to be accepted in different ethical conceptions; acceptance from the perspective of the particular ethical doctrines does not however *ground* their universal validity, for validity lies in the basic conception of practical reason, which is “independent” of comprehensive doctrines and represents the formal necessary condition of a “publicly,” reciprocally, and generally justified conception of justice. That is why it is only a “reasonable pluralism” that is compatible with the theory and leads to a *morally* justified overlapping consensus. Between their values and what is to apply in a political community as generally binding, “reasonable” comprehensive doctrines recognize the antecedent criterion of reciprocal and general, “reasonable” justification (see chapter 2.1).

With the distinction between “reasonable” and “unreasonable” comprehensive doctrines (1993a, 58–66) it becomes clear that though these doc-

trines *can* accept the political conception of justice for *ethical* reasons, they *must* however accept it for *moral* reasons. A theory of justice might well be a “part” or a “module” (12) of ethical doctrines and, from the perspective of a particular doctrine, even “derived” from it (1989a, 249); however, this ethical validity for this doctrine does not constitute the binding validity of the principles of justice for *all* citizens. The principles are valid not primarily because they are ethically incorporable; rather, they can and must be ethically incorporated because they are generally and reciprocally justifiable and cannot be reasonably rejected, without—and this is important to Rawls—being “externally” or metaphysically justified. They are to be justifiable with shared and generally (reasonably) acceptable reasons. In this respect, Rawls’s use of the concepts of “truth” and political “reason” does not underscore clearly enough that the overlapping consensus is a moral consensus to which no ethical claim to validity as such is connected and whose “reasonable” validity is therefore not dependent upon being transformable into an ethical “truth.”

This can be made clear by the fact that the priority of justice over ethical doctrines cannot be defended with ethical arguments—neither with arguments that stem from the conception of the good of the person demanding justice (“act justly because this agrees with my conception of the good”), nor with arguments that appeal to the conception of the good of the addressee of this demand (“act justly because this is good for you in the sense of your ethical conception”). Though one may be able to argue effectively in this way in some situations, it does not however explain the moral legitimacy of the demand for justice; just action is demanded not for the sake of the good of a particular ethical doctrine but for the sake of equal respect for the legitimate and “reasonable” claims of all. Justice might be a diamond that reflects different colors in the light of different comprehensive doctrines; its moral worth is not however located in this ethical reflection.

If one distinguishes between moral and ethical validity, the theory of justice can avoid being ethical or political in the wrong way. Moral norms are ethically incorporable, for they do not themselves form an independent ethical doctrine; the reasons that underlie them are however reciprocally and generally shareable. The moral claim to reason is thus clearer than the one defined in Rawls, who uses the concept “moral” now in the sense of “ethical,” and now in the sense of “moral-reasonable” (and “freestanding”)—for instance, in stressing that the conception of justice is a “moral” conception and is accepted by comprehensive doctrines “for moral reasons,” on the basis of their ethical conceptions and yet also “for its own sake” (1987, 11). To avoid these ambiguities, it is necessary to underscore that a conception of justice is morally justified, ethically incorporable, and refers to the basic political structure of society.

The chapter on “Political Constructivism” in Rawls’s reformulated theory can be read as a step in the direction of a stronger moral justification of the theory, even though the “reasonable” foundations of the theory retain their political-moral double character here too. What Rawls’s political constructivism has in common with his justification endeavors in *A Theory of Justice* and in the Dewey lectures is the attempt to steer a course between moral realism and relativism without surrendering a moral claim to objectivity. The aim of political constructivism, he says, consists in being able to present the principles of justice as the outcome of a procedure of construction that rests on the principle of a morally general justification, that is to say, that under reasonable conditions rational parties choose these principles. “This procedure, we conjecture, embodies all the relevant requirements of practical reason and shows how the principles of justice follow from the principles of practical reason in union with conceptions of society and person, themselves ideas of practical reason” (1993a, 90). A theory of justice is “autonomous” (98) if its principles can be derived from the principles and ideas of practical reason.

Although Rawls’s model shares with Kant’s “moral constructivism” the central idea of justifying principles of justice by means of a construction procedure that reflects the autonomy of moral persons as “reasonable and rational” (1989b, 97), he differs from Kant in essential points. First, unlike Kant’s “comprehensive moral view,” the political conception of justice refers not to the autonomous life of persons as such, but to principles of a basic structure of society. Second, the “doctrinal autonomy” of the political conception does not imply, as Kant’s transcendental idealism does, a “constitutive autonomy” (1993a, 99), the constitution of all moral values on the basis of practical reason. In contrast to Kant’s view or that of “rational intuitionism,” Rawls says, the political conception remains neutral—it does however accept Kant’s view that the ideas and principles of practical reason cannot be derived from other values; they are “self-originating and self-authenticating” (100). It is thus closer to Kant than to other conceptions of morality. Third, the fundamental concepts of the theory do not originate from metaphysical assumptions about a Kingdom of Ends. Fourth, the political theory is not aimed at a defense of the unity of (theoretical and practical) reason. Its aim is to find a shareable basis for just principles.

What both construction procedures—the procedure of the categorical imperative and that of the original position—have in common, nonetheless, is that they are procedures for the reasonable justification of principles on the basis of principles and ideas of practical reason.¹⁵ The principles and ideas that constitute this procedure are therefore themselves not constructed but reconstructed or “assembled.” “[W]e can reflect on how these ideas appear in our practical thought and try to set out an order in which they can be related, from the general and simpler to the more specific and

complex" (108). The *principles* of practical reason are therefore to be found through reflection on what it means to think and judge *rationally* and *reasonably*, and the *ideas* of practical reason, namely, the conceptions of *person* and *society*, are to be found through reflection on the subject and practical context of this thinking and judging. Political constructivism thus consists of three steps: the reflective *reconstruction* of the principles and ideas of practical reason; their employment in *laying out* a procedure—that of the original position—which embodies these principles (of the rational and the reasonable) and ideas (of person and society); and the *construction* of principles of justice with the help of this procedure. The third stage alone is the actual "constructivist" stage; "[t]he procedure itself is simply laid out using as starting points the basic conceptions of society and person, the principles of practical reason, and the public role of a political conception of justice" (104).

These principles of justice may now claim morally "autonomous" justification; they can claim for themselves an objectivity that corresponds not to Nagel's "impersonal point of view" but to a perspective "from somewhere" (116): the perspective of public, reciprocal, and general justification between reasonable, free and equal persons. The principles of justice can be justified *by* and *to* every reasonable person. "To say that a political conviction is objective is to say that there are reasons, specified by a reasonable and mutually recognizable conception . . . , sufficient to convince all reasonable persons that it is reasonable" (119).

The conceptions of reasonable and rational persons as well as of fair social cooperation, on which Rawls relies in this self-description of reason (96–97), are "conceptions of practical reason" in a universal sense; though they are restricted to the "political" questions of the moral justification of a basic structure between free and equal persons, they nonetheless refer in this respect to what it means in the first place to be morally reasonable: "they characterize the agents who reason and they specify the context for the problems and questions to which principles of practical reason apply" (107). In so doing, the principles of justice "cannot be reasonably rejected" by "reasonable" persons (124).

In comparison to this justification on the basis of the principle of reciprocal and general justification, Rawls makes further assumptions in his theory that are simultaneously *stronger* and *weaker* than a procedurally arguing theory. Those assumptions are stronger that comprehend the conception of the moral person substantively: to realize the person's moral powers, certain primary goods are necessary that go into the content of the original position, which is itself the crystallized form of the principles of the rational and the reasonable. On the basis of these substantive components of his theory, Rawls expects that it will be able to say more on concrete social questions than a proceduralist theory, which would have to leave the

determination of the content of primary goods itself to the discourse of general justification, on the understanding that the content is the subject matter and not a premise of the discourse. Rawls thus expects that the theory can link up more adequately with social contexts and that it is less abstract. Sen's criticism, among others', shows, however, that Rawls does not quite succeed in this, for the difference principle requires and permits a stronger, discursive contextualization (see chapter 3.4).

Yet precisely these substantive assumptions make Rawls's theory weaker in respect of normative justification, for its context-dependent assumptions cannot raise the claim to being as "reasonably" justified as the basic conceptions of practical reason. He is faced with a dilemma: either his assumptions are reason-based in a strict sense or they contain substantive conceptions of social membership; in both cases the theory is "political," however, in a more or less context-bound sense. Thus "moral person" is on the one hand explicated on the basis of moral concepts and, on the other, interpreted with reference to the implications of "citizenship" in a more concrete meaning—for instance, with reference to "citizens' needs." Both enter the formulation of the original position. In the end, this double meaning of the conception of a "political" theory of justice is unavoidable for Rawls's theory, since the original position attempts to justify *on equal terms*—in one step—principles of general moral justice *and* of more concrete social justice. The former require a moral justification in the Kantian sense, whereas the latter cannot be justified without additional ("political") assumptions. This tension between Kantian and strongly empirical components is, as has been noted, characteristic for his theory in its various stages; it ultimately leads to the double sense of his "political" conception and its central methodological device of the original position, which seeks to connect *different* practical contexts. This makes the conception in a moral respect *too political*; with respect to democratic self-determination and social justice it is *not political enough*.

On the basis of the discussion of contexts of justice so far, it is possible to formulate an alternative theory that preserves Rawls's central "constructivist" idea of justifying principles of justice by a procedure based on practical reason without using the model of an original position, that is to say, without, on the one hand, abstracting the procedural concept of justification in an initial situation, in order, on the other, to compensate this abstraction by introducing concrete assumptions. In this alternative, the principle of general and reciprocal justification links different contexts for intersubjectively justifying basic principles of equal rights (see chapter 2) and social justice (see chapter 3) within a basic structure of society that is morally justified and forms a framework for processes of collective self-determination. This leads to a differentiated theory that locates deontological principles and more concrete, substantive points of view at the various

levels of justification, without connecting heterogeneous elements in an initial situation. Moral principles form the core of a basic structure of equal rights and liberties that defines a politically autonomous, democratic community of equally and fully entitled citizens having different ethical identities.

The conception of the person at the center of the theory must therefore be differentiated. “Moral person” and “citizen” must be distinguished more clearly than in Rawls: moral persons are authors and addressees of moral norms; citizens are authors and (as legal persons) addressees of legal norms. As such they lay claim to certain social primary goods, whose specification and distribution must be reciprocally justified in political contexts. Such a theory does justice to Rawls’s principles and attempts to avoid his theory’s difficulties (which were discussed at the various levels). It is not primarily “ideal-based,” as Rawls (1985, 236n. 19) characterizes his approach, but “reason-based” in the sense in which his constructivism is also to be essentially understood. This thesis is now to be determined more precisely for the context of morality.

(d) Moral Justification and Communicative-Practical Reason

Among Kantian models that put the principle of practical reason—according to which moral norms must be reciprocally and generally justified—at the center of their reflections on moral theory (and in addition to Thomas Scanlon’s contractualism, whose formula of norms that “no one could reasonably reject” I interpret in the sense of the criteria of reciprocity and generality [see chapter 2.1]), Onora O’Neill’s constructivism as well as Karl-Otto Apel’s and Jürgen Habermas’s discourse theory of morality are to be given special emphasis.¹⁶ What they have in common is that they make the validity claim of moral norms dependent upon their intersubjective justification in a procedure of mutual argumentation—without using the model of an original position or relying upon a “comprehensive” ethical or metaphysical doctrine.

O’Neill explicates the Kantian idea of moral autonomy in a communicative-intersubjective manner and sees it grounded in a nonrealist and non-relativist conception of *recursive* and *discursive* reason (1989, 21): a reason that is without definitive substantive answers to moral questions, but with definitive determinations of what it means to search for a normative answer to a moral question, namely, in a discourse of free and equal persons.

The central idea, which O’Neill shares with discourse ethics, is located in the Kantian principle that *reason* must generate its standards and principles from within itself and that the claim of the *principles of reason* to be universally valid can be redeemed only in the public exchange of arguments. Kant remarks on the internal connection between reason and the

freedom of critique (of the critique of reason itself): “Reason depends on this freedom for its very existence. For reason has no dictatorial authority; its verdict is always simply the agreement of free citizens, of whom each one must be permitted to express, without let or hindrance, his objections or even his *veto*” (Kant 1973, 593 [A738–B766]).¹⁷ Practical reason is a critical, *vindicating* reason that regards principles as grounded only if they are generally justified—in the “public use of reason” (O’Neill 1989, 37) or in the forceless, undistorted argumentation (Habermas) between free and equal persons. Here there is a Kantian conception of the free and equal *moral person*: it regards persons as ends by granting them the right to demand reasons for actions by which they are affected—and the duty to justify themselves with universal reasons (O’Neill 1989, 113–14, 127). Moral justification means to provide reasons that would hold their own before *each* moral person and that means *all*. The justification of moral norms takes place therefore in an unrestricted “universal debate” (37–38). Thus a procedural reformulation of the universalist categorical imperative is possible. These “ideal” determinations of free and equal participation in discourse mean for “real” discourses that in moral questions *no one* may be excluded from the community of justification and that these discourses must be *open to arguments*—in the future too. “[T]here cannot be good reasons for those whose standing is denied by an account of practical reasoning to accept that reasoning” (O’Neill 1988, 705n. 1). Moral norms must always be justified *in intersubjective contexts*, but they must rest on reasons that do not end in particular contexts: unlike ethical values, moral norms are valid not just “for us.” This does not imply a contextless, fully transparent community of reason consisting of unreal ideal persons: it only requires that *each* person be recognized as a moral person with a right to justification and that this right be discursively respected.

The principle of justification, O’Neill says, does not have any demanding metaphysical presuppositions; it proceeds on the assumption of the absence of a metaphysical authority of reason, whose principles must therefore prove themselves solely in a procedural sense, namely, as principles that are shareable for a plurality of persons (O’Neill 1989, 21). The authority of reason must be a justified authority that can always be questioned—the “recursive” self-questioning of “discursive” reason is its autonomous nature (cf. O’Neill 1992). Practical reason manifests itself in the *procedure* of justifying principles and reflects the *absence* of “final” reasons and values.

If reasoning has only a discursive and recursive grounding and lacks transcendental vindication, then even the “supreme principle of practical reason,” the Categorical Imperative, has no greater authority than that it is a principle capable of guiding the interactions, including the communicating, of beings whose coordination is not naturally guaranteed. The Categorical Imperative

states essential requirements for a *possible* community (not an actual community) of separate, free and rational beings. (1989, 43–44)

The supreme *principle of reason* is that of general justification that originates in reflection on what it means to justify a norm that can claim grounded authority. O'Neill proposes a "Kantian constructivism" according to which moral principles of justice are justified not by the hypothetical consensus of rational parties but by the "*possible consent of actual agents*" (217). Hence in real legitimacy discourses, which must satisfy certain procedural conditions, it is precisely the disadvantaged of a society who have a right to demand the Kantian condition of the true generality of justification. It is essential to maintain the correct balance between abstract principles and their concrete justification: "Idealized accounts of justice tend to ignore actual vulnerabilities, and relativized accounts tend to legitimate them" (*ibid.*).

O'Neill does not however distinguish clearly between the normative contexts in which the principle of general justification means something *different* in each case, where values or norms have to satisfy different validity conditions. Her proposed universalistic "disciplining" of thought and action, which concentrates on the moral dimension (and the conception of the moral person), does not do adequate justice to the particular normative logic of the ethical justification of values, the justification of individual rights (within law), the justification of politically legitimate norms, or the justification of moral norms: practical reason requires a differentiation of validity spheres, not an identically conceived general justification of these different values and norms. "Generality" means something different in these contexts; the normative questions and answers required are of a diverse nature. Ethical or political discourses have to be more clearly distinguished from moral discourses—although O'Neill (1993) rightly points out that ethical or political discourses must bear moral criticism too.

The failure to distinguish different contexts of practical justification—and different justification communities—is linked to the fact that O'Neill's moral theory rests not on an argumentation-theoretic reconstruction of the conditions of redeeming different practical validity claims, but on the Kantian assumption that the authoritative claim of reason to "reasonably" connect unity and diversity requires, in a practical respect, a "public justification" of principles among a plurality of persons. Though practical reason is, as vindicating reason, *intersubjective*, it is "communicative" only to the extent that it makes communication as cooperation between moral persons possible: practical reason is unity-generating reason that "disciplines" communication in the moral sense (O'Neill 1989, 47). If however the analysis begins not with reason's claim to authority in general but, in particular,

with practical validity claims between persons that already refer *internally* to justifying reasons, then it becomes clear in a fundamental sense to what extent practical reason is to be understood as communicative reason. Certain conditions of “the public use of reason”—in the form of reciprocal and general *justification*—are implicit in normative validity and can be “recursively” reconstructed by means of the validity *reasons* on which practical norms are based. “Principles of communication” (43) are presupposed by practical justifications of “principles of cooperation” already in the form of the criteria of reciprocity and generality—not in the form of particular moral norms. The reason principle of justification reveals itself as the communicative condition of the possibility of practical norms grounded in their validity as such—and thus makes possible a differentiation of different contexts of justification, according to the validity reasons required.

Unlike O’Neill, the theory of discourse ethics proposed by Apel and Habermas grounds the principle of norm justification—namely, that a moral norm can be justified only in an argumentative way under certain conditions of free and equal participation in discourses—by means of a *formal-pragmatic* analysis of the presuppositions of redeeming moral validity claims. In this way the connection between practical-communicative reason and general justification becomes evident: it is located in the conditions of the validity of moral norms themselves. In what follows I deal with this widely branching model solely with the intention of explaining the principle of justification. In the process I refer primarily to Habermas’s version of discourse ethics; it will be possible to link up with its differentiation of various practical discourses (Habermas 1993a; 1996a, 158–62) in the sense of a distinction between contexts of justification (and justification communities), doing so in a manner that modifies the discourse-theoretic model.

The discourse theory of morality attempts to reconstruct Kant’s “fact of reason” in terms of a theory of argumentation in order to reformulate the moral conception of autonomy intersubjectively and procedurally, and to make possible a “construction” of norms—to use Rawls’s concept—that avoids the problems of a hypothetical contractual situation and that does not relinquish the universalist claim to validity of these norms. According to Habermas, the stages of this theory consist in a *reconstruction* of the argumentative presuppositions of justifying norms, one that leads to the formulation of a *discourse principle* that serves as a *principle of morality* or *democracy* (Habermas 1996a, 104–11) for justifying (in each case different) *norms* under conditions of mutual and forceless argumentation. The norm justification procedure rests accordingly not on assumptions about the properties of moral persons but on a reflection about the conditions of justifying action-guiding, generally valid norms. Habermas has suggested the concept of an “ideal speech situation” (1984, 177) to characterize the formal prop-

erties that discourses must exhibit so that rational consensual agreements can occur within them. These are conditions of equal opportunities on the part of discourse participants to introduce topics and viewpoints into discourses, to raise or problematize validity claims (see 1990a, 88–89). Neither the concept of “ideal communication community”—the auditorium, according to Apel, necessarily presupposed in validity claims—nor that of the ideal speech situation should however be hypostatized into concrete projections of social life; they are nothing more and nothing less than counterfactual assumptions (Habermas 1982, 261–62) that keep real discourses and factual consensual agreements open, in principle, to possible reasons and counterreasons as well as to unrestricted participation. A formal-pragmatic reconstruction of the conditions of the justified redemption of (different) validity claims thus attempts to uncover the presuppositions of theoretical and practical discourses under which arguments can be understood and accepted as grounded. Here I cannot go any further into the truth- or meaning-theoretic implications of this comprehensive theory of communication and argumentation.¹⁸

In what follows I confine myself—and the discourse-theoretic thesis from which I proceed—to the problem central to a theory of morality, namely, that of the pragmatic presuppositions that exist for the justification of *practical* norms. It is solely a matter of reconstructing the logic of justifying normatively binding validity claims—conditions under which norms or values can be acknowledged as justified in contexts of justification. This interpretation of the discourse-theoretic model has as its goal a “recursive,” formal-pragmatic analysis of the conditions of justifying values or norms in the respective justification communities in which these reasons are said to be valid. It moves inquiringly from normative validity claims back to validity reasons and validity justifications. Practical, grounded validity must be seen as “situated” in contexts of justification. This interpretation makes possible a differentiated analysis of the conditions of normative validity in *different* contexts, according to which not all values or norms—in accordance with their validity claim—must be justifiable within one “ideal communication community” or universal justification community. The validity of ethical values is to be ethically and autonomously justified by persons to and for themselves as members of “constitutive” communities; legal norms require a justification that is autonomous, reciprocal, and general within a political community (in order to enable legal autonomy); moral norms, finally, must rest on reasons that are to be autonomously justified in a sense of transcending particular contexts. Persons are authors and addressees of norms in all these practical contexts; and this normative complexity requires a differentiated analysis of validity. This thesis is to be shown first for moral norms; from here, the principle of justification can be applied to the other levels.

Moral norms are expressed in the form of categorical ought sentences or commandments: "One ought not to kill anybody." This sentence can also be formulated in other ways: "Nobody may kill another person" or "All human beings are morally obligated not to kill other persons." The categorical claim to validity implies an unconditional claim to justification, insofar as these ought sentences assert that there are *no* legitimate reasons against their validity: it is considered that no persons could reasonably reject them. They must however be able to defend this claim. To the extent that they claim to be valid for *all*, ought sentences must be justifiable to all with the same reasons, so that moral persons can understand themselves both as the addressees and the authors of these norms. Moral norms must be reciprocally justified so that their observance can be reciprocally demanded; accordingly, their validity can be put into question only by reasons that dispute this reciprocity. Disputing a norm raises, as it were, a negative claim to universality (concerning what is *not* to apply *universally*; i.e., what cannot be universally accepted) that must be raised and defended in discourses justifying a norm, whereby positive claims concerning what is to apply universally cannot be avoided.

To justify norms, Habermas (1990a, 65) argues, a universal discourse is necessary under conditions that allow only the "force of the better argument": "valid norms must *deserve* recognition by *all* concerned." Valid norms must therefore satisfy the principle of universalization (U), which is introduced as the rule of argumentation for moral discourses: "(U) *All* affected can accept the consequences and the side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests (and these consequences are preferred to those of known alternative possibilities for regulation)" (ibid.). Against Ernst Tugendhat's proposal to trace back the validity of a moral norm as "equally good for all" to whether a person has his or her own reasons to "subject" him- or herself to a norm (Tugendhat 1984, 85), Habermas objects that this falls short of both the cognitive and discursive character of moral justification (Habermas 1990a, 68–76). The "reasons" that, according to Tugendhat, characterize the reciprocity of the normative obligation are not shared reasons, and the communicative aspect of the justification is "not a cognitive but a voluntaristic one" (Tugendhat 1984, 123). As opposed to this, moral validity depends upon reasons that can be justified reciprocally and generally by persons to *others* and that, as such, are generally acceptable reasons—and therefore also individually acceptable for each person—which become the foundation for morally motivated, justified action. Deontological reasons are universally shared, intersubjectively recognized reasons—"reasons we can share" (Korsgaard 1993). Moral reasons are simultaneously general and individual, for reasons do not justify themselves but are justified *between* persons; as shareable reasons, they are action-justifying and action-guiding, and they motivate a

person to act morally out of *insight* (into their correctness).¹⁹ Moral action can be justified only with reasons of this kind.

The principle of moral universalization must be understood as a principle of discourse:

rather than ascribing as valid to all others any maxim that I can will to be a universal law, I must submit my maxim to all others for the purposes of discursively testing its claim to universality. The emphasis shifts from what each can will without contradiction to be a general law, to what all can will in agreement to be a universal norm. (McCarthy 1978, 326)

The principle of universalization is therefore understood neither from the perspective of the first-person singular (cf. Singer 1971; Hare 1963, 1981), nor from the “impersonal” perspective of a third-person singular (cf. Nagel 1986 and, for a consequentialist standpoint, Wiggins 1987), but from the perspective of the first-person plural, which is in principle unrestricted and, with reference to the second-person singular, must be discursively constructed. Moral norms raise a universal claim to validity—this is to be analyzed semantically—that can be redeemed only under certain conditions—this is to be determined with the help of a pragmatic analysis (cf. Rehg 1991). The principle of discourse ethics (D) thus states: “Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse” (Habermas 1990a, 93; see also 1996a, 107).

John Mackie’s discussion of stages of universalization illustrates the difficulties of a subjective and non-intersubjective generalization of maxims. The golden rule “Do unto others as you would have them do unto you” does not rule out the generalization of those norms that seem acceptable to, for instance, R. M. Hare’s consistent fanatic (Hare 1965, ch. 9) but nevertheless cannot be *reciprocally* and *generally* justified, since the interests of possible victims are evaluated solely from one’s own idiosyncratic perspective.²⁰ And yet, Mackie says, the requirement of a perspective change that generalizes not only one’s own perspective but adopts that of others—and indeed completely, without one’s own slant—gives rise to doubt as to whether any principles at all can fulfill this requirement. That is why Mackie (1977, 93) proposes a more modest principle: “We must lower our sights a little, and look not for principles which can be wholeheartedly endorsed from every point of view, but for ones which represent an acceptable compromise between the different actual points of view.” The question of how “acceptable” is to be explicated does however lead back to the procedural criterion of general justification: one can establish when it is actually justified to speak of a generally justified norm only on the basis of a general agreement, and this agreement is “acceptable” only if all those potentially affected could agree on this norm; and, contrary to Mackie’s view, it is not

possible to imagine this agreement as a compromise. The normative validity of moral norms does not allow different reasons for its validity because if it did, persons might have their own reasons for observing the norm—or for not observing it in certain situations, that is, for not consenting to it. This outcome is not however compatible with the unconditional normative validity of moral norms, against which there are no good reasons—or which, insofar as such reasons exist, are put into question in respect of their validity. That is why moral action can be legitimately demanded, and why no antecedent compromise is needed. If, moreover, a distinction is made between the validity of moral norms and the validity of legal norms (which do not rest on strictly shared reasons and demand only action that conforms to the law) and ethical values (“for me”), it becomes clear that morality does not imply casting off all the context connectedness of values and norms, and that it represents only one dimension of the practical world.

“Communicative reason” (Habermas 1996a, 3–4) is to be understood as “vindicating reason” that is oriented toward validity claims; and, in view of the distinction between practical contexts, “practical reason” can be grasped as the capacity to give the “right” reasons in the appropriate contexts. In the process, different modes of justification are to be heeded, as is still to be shown (chapter 5.2). Practical norms and values raise validity claims within particular contexts and must be justified in their own respective ways—whereby general norms, be they legal or moral norms, must always be generally and reciprocally justified (more or less strictly) within the respective justification community. *One* principle of justification is thus differentiated in respect of *different* practical contexts; hence, it is no “abstract” or “external,” “context-remote” principle of reason that absolutizes one or the other context. For a discourse-theoretic model that keeps this differentiation in mind, therefore, there follows the consequence that the concepts of “communication community” and “good reasons” are to be differentiated on the basis of the difference between practical validity claims in respect of different justification communities. Validity claims, which serve as the starting point of formal-pragmatic analyses, are after all in different ways “context-bound” and “context-transcending.” Persons raise mutual validity claims as members of different community contexts, not just as members of the all-encompassing moral community.

As far as moral questions are concerned, it is important to understand the principle of justification as a “recursively” and “formal-pragmatically” reconstructed principle according to which moral validity claims must be justified reciprocally and generally in an unlimited community of all moral persons. This idea of an “unlimited justification community” does not imply that there are no moral norms as long as an unlimited consensus of all possible persons has not been found; it means that moral norms must be justifiable to, in principle, each person, who has a moral right to veto—

and this, on the basis of the criteria of reciprocity and generality. Here lies the meaning of “respect” for moral persons as autonomous beings. No one may be excluded from the community of the authors and addressees of morality—a membership that protects and obligates all equally.

Although it is a difficult one, the concept of “reason” is an unavoidable concept in this respect: the appropriate moral justification of (action-legitimizing) norms must be a “reasonable” justification; and morally autonomous action is in the practical sense “reasonable” when it rests on justified reasons. The following properties of this conception of reason are to be emphasized.

(1) *Reason (Vernunft)* is immanently connected to *reasons (Gründe)*, which are not substantively pregiven but must prove to be reasonable. It is precisely the absence of “ultimate” and “absolute” reasons that calls for and enables “constructions without foundations” (O’Neill 1992, 291)—a reason “without a bannister,” to use an expression of Arendt’s. Reason is critical in the Kantian sense in that it turns recursively to itself and questions its own standards; it is dependent upon a form of justification in which its addressees are its authors too. What is considered universal and reasonable must be universally justifiable. The business of reason is always a (self-) critical business.

(2) According to the classical notion, reason creates a justified unity among a diversity of phenomena in the world. Bringing about this unity in the practical sense means creating a “rational identity” (Adorno) among a plurality of “nonidentical” persons: a justified and nonrepressive generality. Here, particular persons and communities are not subordinated to “bad” general concepts; rather, it is guaranteed that existing (more or less comprehensive) generalities are not immune to critique. The “unity of reason” is compatible with the “diversity of its voices” (Habermas 1992b). Reason does not itself speak a worldless and contextless language but calls for the justifiability even of “thick” languages in at least a “minimal” moral sense. This justifiability—we must emphasize with Walzer—does not constitute a “thick” language; it forms a common basis for reciprocal moral understanding, which represents the bond between morally respecting persons precisely at that point where “thicker” languages do not permit any understanding.

The criteria of reciprocity and generality underscore the idea of a “reasonable” moral justification that does not subsume the “concrete other” (Benhabib 1987) under a false universality. If norms must be justifiable, reciprocally, to each single person and, generally, for every possible person, then the *one* form of moral justification and moral respect implies the particular-universal double moment that leads Lutz Wingert (1993) to speak of two “basic forms of moral respect” (179–90): “solidary” respect toward individuals as persons who cannot be represented by others (*unvertretbar*,

i.e., who must represent themselves), and “just” respect for equally entitled members of a common “communicative form of life.”²¹ Moral justification therefore requires of persons a “twofold exchange of perspective”: with the “concrete other” and with “third parties” as representatives of the moral community (252–58). In this sense, Wingert says, moral reasons can be morally shared reasons. It must be objected, however, that if shared reasons are understood as reciprocally *and* generally justified reasons, the idea of (moral) justice cannot be attributed to one side only—that of generality—so that it requires reciprocal “solidarity” in order to correct a false, stereotypical generality (190–91). Insofar as “justice” demands equal respect for all, it already implies the possibility of a reciprocal “veto” and would not deserve the name “justice” if its generality were not one that is mutually justifiable and needed “solidarity” as its “reverse side.”²² It will have to be shown to what extent the inseparability of the respect for persons as *individuals* and as *members* of community by means of an analysis of different “communities of recognition” leads to four forms of recognition (chapter 5.3).

At the level of morality, “generality” is always “reflective” and not “subsumptive” (see Kant 1987, 18–19); the possibility of reciprocal objection is constitutive here. But this possibility is not only to be understood horizontally; as we have already seen, the different contexts correct one another: ethical persons challenge general legal concepts, moral persons question ethical values. Persons are always members of different contexts, which provide numerous possibilities for conflict and critique (chapter 5.2).

(3) Finally, a third element of this conception of practical reason is also to be highlighted: its context-transcending and yet context-immanent character. Moral validity claims go beyond the “local” contexts in which they emerge. Though moral problems arise in a contingent manner, they do not permit contingent responses. Unlike ethical values or legal norms, moral norms are not “reasonable” if they are valid only “for us” and we cannot therefore demand them of “others” with good reasons or justify them to “others.” Even though reason is “internally” located, it contains a universal claim, as Putnam emphasizes: “Reason is, in this sense, both immanent (not to be found outside of concrete language games and institutions) and transcendent (a regulative idea that we use to criticize the conduct of all activities and institutions)” (Putnam 1987, 228; cf. Habermas 1992b). In this respect too, “reason” continues to be a critical concept; it speaks not a “Platonic” language but rather the language of critique—the language of those who demand a justification.

In summary, three levels are to be distinguished within the framework of the discourse-theoretic conception of morality proposed here. *First*, the recursive and formal-pragmatic *reconstruction* of the principle of practical-reasonable justification; *second*, the reciprocal and general *justification* of

particular practical norms in different justification communities; *third*, and finally, the justified *action* of persons in accordance with justified norms on the basis of reasonable insight into the well-grounded character of these norms, which must be proved in the particular contexts of action. (From this, it follows that this conception of justifying reasons does not speak in favor of a strict division between the justification of norms and justified action; see chapter 5.2.) In distinguishing these three levels, one must bear in mind that the question of moral justification is not understood as the question Why be moral?, which already presupposes a particular conception of morality; rather, the question is What does it mean to be moral?, and it requires a differentiated answer with respect to a justification principle that makes possible the substantive justification of norms that ground moral action. To say that moral reasons as shared reasons are also “my” reasons does not mean that moral reasons are to be explicated *only* as “my” reasons—as reasons that are moral reasons only if they can motivate me (reasons that are good for me).²³ Moral reasons must be intersubjective action-justifying reasons.

The recursive-reflective and formal-pragmatic reconstruction of the principle of justifying reason proposed at the first level rests, as has been seen, on the assumption that the “authority” of practical reason cannot fall back upon ultimate reasons or substantive “external” values from which moral norms can be derived, and that norms must therefore be able to justify their claims to a reciprocal and general normative validity under these very validity conditions of reciprocity and generality. Of course, this reconstruction itself can be nothing more than a self-reconstruction of reason and as such cannot claim absolute or (in Apel’s sense [1988, 110]) “ultimately grounded” authority, but it does claim “recursive,” best justified authority with respect to its subject matter: the “reasonable” validity of norms. The principle implicit in the validity and justification claim of moral ought sentences—the principle that general norms must be generally and reciprocally justified—is a “nontranscendable” necessary condition of the concept of moral validity and is thus a necessary presupposition of morally responsible, justified action: the action that practical-reasonable, autonomous persons can expect of, and demand from, one another.

To return to the starting point of this discussion, a glance at the differences between Rawls’s theory and a theory based on the principle of justification shows what advantages the latter has and what parallels exist between the two:

- (a) A theory resting on the principle of justification steers a course between realism and relativism, without abandoning the claim to validity of universalist moral principles—a claim that justifies the priority of justice and does not fall back upon a “comprehensive doctrine.”

- (b) It relies upon a procedural notion of reason, without introducing as fundamental a substantive conception of the person that cannot be justified solely on assumptions of practical reason; it thereby satisfies the claim to “neutrality of justification” and the priority of equal rights and liberties (chapter 2 above).
- (c) By means of this move in abstraction, it is in a position to formulate principles of personal and political autonomy that lead to a nonrestricted theory of political legitimacy and to a substantive conception of social justice (chapter 3 above).

Such an “abstractly” justified theory is not therefore abstract in the wrong way; the basic structure it argues for represents a framework in which persons are recognized intersubjectively in different ways: as ethical persons in their ethical self-determination of the good life; as legal persons in their rights claim to “equal concern and respect” (Dworkin); as politically autonomous and equally entitled citizens of a political community; and, finally, as moral persons, as human beings “per se.” The theory proposed here connects a procedural conception of normative justification with a wide spectrum of recognition relations and of various communities.²⁴

This theory does however find itself confronted by two fundamental communitarian objections to deontological theories of justice. The first is MacIntyre’s critique of the assumption that it is possible to defend a universalist and, in his view, “contextless” conception of the moral person and of practical reason; the second is Taylor’s thesis that even a universalist theory must be justified in a “transcending” good. Once again the “priority of the good” is promoted over the priority of deontological justice: the priority of the good that is always only communally limited (MacIntyre) or of the good grounded in the modern identity (Taylor).

4.3. WHICH PERSON? WHOSE REASON?

At all four discussion levels of the debate between liberalism and communitarianism, MacIntyre’s critique of deontological theories of justice takes the most consistent liberalism-critical position of connecting a particular conception of personal identity (chapter 1) with the critique of the ethical neutrality of legal principles (chapter 2), with the defense of the “substantive ethical life” of political communities (chapter 3), and, finally, with a theory of practical reason and the rationality of traditions. At all these levels, MacIntyre’s theory draws on a single source: the view that persons develop their self-understanding, their conceptions of the good and the just, and their capacity for normative judgment solely *in* contexts of a particular community, a particular tradition. The conceptions of person, morality,

and reason cannot be separated from the substantive horizons of a form of life, an ethos; just as there cannot be any contextless, “impersonal” persons, there cannot be a neutral or impartial morality or a context-transcending reason.

Like Taylor, MacIntyre is convinced that modernity draws on a “variety of moral sources” (MacIntyre 1984a, 10) that, in their diversity, lead to a fragmentation of modern consciousness, to “an unharmonious melange of ill-assorted fragments” (ibid.). Unlike Taylor, MacIntyre does not believe that this fragmentation can be *aufgehoben* (sublimated) in a synthesis tracing out these moral sources; MacIntyre’s theory is negative Hegelianism inasmuch as the bifurcation, the fragmentation of the unitary ethos of the personally good, communal self-understanding, and a metaphysical-theological worldview cannot be reversed. Modernity is characterized by the competition between incompatible traditions of “moral enquiry” whose central form, that of the “encyclopedic” and “liberal” belief in a unitary human reason and universal morality, conceals in its absolute claim, first, its own conception of the good—its individualism—(1988, 3–4) and is, second, the worst conceivable, most degenerated form of moral inquiry: “What for the kind of ancient and medieval moral enquiry and practice which Thomism embodied was the exceptional condition of the deprived and isolated individual became for modernity the condition of the human being as such” (1990, 193).

In what follows I try to trace MacIntyre’s critique of the modern conception of morality itself in a narrative—in accordance with his ideal of moral inquiry (1990, 129)—in order to show that his *ethical monism* with respect to the connection between person, morality, and reason harbors problems that arise when, as MacIntyre requires of a rational critique, measured against its own standards. The narrative begins with his critique of the attempt at a justification of morality that believes it can do without a concept of human telos (*After Virtue*); it continues with MacIntyre’s attempt to formulate a theory that, first, shows that it is still possible to be able to judge rationally between traditions even without a tradition-transcending standard of rationality and, second, makes it possible to conceive of a simultaneously context-immanent and context-transcending concept of human telos and of natural moral law (*Whose Justice? Which Rationality?*). This attempt leads MacIntyre from his originally Aristotelian to a Thomistic position: Thomism seems to him to be the only tradition that meets the requirement of the possibility of a dialectical-rational comparison with other traditions and the requirement of the unity of person, community, and tradition, as well as maintaining a connection between practice-immanent and practice-transcendent teleological concepts. Thomism is the tradition that steers between the illusion of the “encyclopedia” of a context-neutral reason and the perspectivist-contextualist conception of “genealogy,” and

the only one that really deserves the name “tradition” (*Three Rival Versions of Moral Enquiry*).

In the course of this narrative, however, it will be seen that MacIntyre makes general rationality demands on traditions that cannot be *aufgehoben* within one particular tradition. He has to recognize the principle of justification in a practical and a hermeneutic respect; traditions must rest “inwardly” as well as “outwardly” on reasons that respond appropriately to practical questions, without themselves being able to determine comprehensively what “appropriately” means both in ethical questions of orientation and in moral questions. The counterthesis to MacIntyre’s view that practical reason is to be conceived of as a context-immanent ethical self-reflection in a tradition, however, is not that moral norms are to be justified rationally in the sense that “rational” persons, without any social particularity and having only knowledge of their egoistic interests, could assent to them (as MacIntyre suggests [1983, 450; 1984b, 7]). The counterthesis is that, on the basis of the principle that persons are always situated in contexts, different contexts must be distinguished in which questions of the good life, questions of equal rights, of political obligations, and of moral norms arise. In these contexts it is in each case *different* answers that must be given to the respective normative questions. Persons live in ethical universes but also in legal and political ones, and in *one* moral universe—and the Thomistic view that all these universes are in metaphysical harmony with one another can no longer be upheld, so that the Thomist himself must recognize the plurality of traditions and impose certain rationality obligations on traditions, obligations that honor both the ethical self-determination of persons and their basic claim to moral respect.

MacIntyre’s “narrative” recounts in three stages the history of occidental culture from a particular ethical perspective. This history is one of moral decline. At the first historical and moral-reflective stage there existed real objective moral standards that were embedded in a unity of theory and practice, in an ethos. This unity broke down in the attempt, at a second stage, to justify these moral standards in a different way, an attempt that led to a “moral catastrophe” inasmuch as the central premises of the first stage were abandoned. The third stage, finally, consists in the repercussions of this catastrophe, in the circumstance that the remnants of the original notion of morality exist side by side in incompatible conceptions, and belief in an objective justification of morality has given way to relativism. According to MacIntyre, Aristotelian ethics, as it developed vis-à-vis Homeric and Platonic ethics and as connected by Thomas Aquinas to St. Augustine in medieval philosophy, represents the first stage of moral development in which the narrative of the individual life was still connected—to the foundation of an ethical tradition—to the narrative of a community and its practices, and in which the inherent goods of these practices and traditions

provided the standards on the basis of which the virtuous life had meaning and discernible dimensions. The second stage is represented by the Enlightenment (the roots do however reach as far back as nominalism), which disengages human beings from this communal and metaphysical-religious context and thereby robs them of their practice-immanent (as seen from the Aristotelian perspective) and practice-transcending (as seen from the Augustinian-Thomistic perspective) telos as it attempts to justify morality on the basis of a contextless reason of persons robbed of all particularity. Being without ethical substance, this attempt fails and results in a *mélange* consisting of the ruins of past conceptions of morality, from which the existing “emotivist” culture draws the conclusion that there are no moral obligations at all for such detached persons. The self sees itself faced with the existential choice of creating itself; for MacIntyre, Friedrich Nietzsche is the philosopher who has diagnosed this state appropriately.

MacIntyre is concerned with showing that, in view of the failure of the project of Enlightenment to provide an autonomous justification for morality, the question can only be whether one accepts Nietzsche’s conclusions or finds a way to present Aristotelian ethics as being rationally superior—as a conception that overcomes the internal weaknesses of the Enlightenment’s morality as well as those of the emotivist conception in a way that can explain and solve their problems. *After Virtue* begins this attempt as it presents the Enlightenment’s failure and the Aristotelian counterposition. It is *Whose Justice? Which Rationality?* that provides the underlying conception of moral superiority and supplements Aristotelian ethics with universalist Thomistic natural law. *Three Rival Versions of Moral Enquiry*, finally, shows how the Thomistic tradition is superior to the encyclopedic and genealogical modes of moral reflection.

All these attempts are based on a particular theory of personal identity, which assumes that the self can find its way to itself only if it is not “rationally” (as in Kant or Rawls) or “emotivistically” (as in Nietzsche or Sartre) detached from ethical traditions and communities and their conceptions of the good. A life is meaningful only as an individual narrative within a collective narrative that is itself part of a metaphysical tradition. The three central components of a good, because virtuous, life are the narrative order of a life (as the “search for the good”), its embeddedness in social practices of a community (in which there are “internal” goods conducive to the common good), and membership in a moral tradition that provides absolute values, a “final telos” (see MacIntyre 1984a, 186–87, 219). The good life consists in the search for the good *for me*, for my *community*, and for the human being *as such*. Of course, even the third search is conceivable only within a tradition, within an ethical context.

These three dimensions of the good, virtuous life do however require closer scrutiny; after all, in (a) their *formal* definition of the good life, (b)

their *general-nonexclusive* definition of community as a “common project,” and (c) their *universalist* formulation of the highest telos or of the “moral law,” they introduce three viewpoints that reflect the modern conception of morality, which MacIntyre opposes.

(a) According to MacIntyre the life of a human being is to be conceived of as a narrative, a story whose “co-author” one is insofar as the community in which one lives also tells the story—a restriction that does not distract from the fact that the story of one’s own life is meaningless if one does not understand oneself as the author of oneself, which means assuming responsibility for past, present, and future actions. For MacIntyre, being accountable for oneself in this way constitutes the “character” of a person (1984a, 216–17). According to his classical conception, a story remains meaningless if it cannot be told with continuity, if it is not clear that one’s own life has a *direction*, a telos. This telos of life draws on two sources: the goods internal to a communal practice and the search for a highest good that transcends these goods. The narrative unity of life is a quest for the good within a community and within the role intended for the individual as well as for the good for the human being as such. However, MacIntyre leaves both determinations of the telos open and formal. With reference to the search for the communal good he remarks: “A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goods” (1984a, 191). And though he regards the three central virtues of justice, courage, and truthfulness as constitutive of every social practice, he makes it quite clear that this conception of virtue is in accord with a plurality of communities and conceptions of the good. But there is more: against Aristotle’s “metaphysical biology” and the “ahistorical character of his understanding of human nature” (1984a, 159), MacIntyre stresses that not just certain persons are capable of leading a virtuous life but all human beings who are part of a community. The telos of life is not reserved for certain persons (cf. 196–97). This view has repercussions for his concept of community.

(b) Persons owe their identities to the community in which they grow up and learn what it means to do good, to have duties, and to bear responsibility. As members of this community, from which we receive the “roles” we have to “play” within this community (without having any choice), we are who we are. In his discussion of virtue in *After Virtue* (and in his essay on patriotism [1984b]), MacIntyre interprets the polis, understood in the Aristotelian sense as the “bond of friendship” (1984a, 155), as an essential context for the normative constitution of identity. Unlike Aristotle, however, MacIntyre does not limit this bond to free (Greek) male citizens; rather it is open to “all”: the political community is constitutive of practice-immanent concepts of virtue only if it provides all members with

an identity that is acceptable *to them* (159); it must be a truly “common project” shared by all whose purpose is to “bring about some good recognized as their shared good by all those engaging in the project” (151; cf. Bernstein 1986a); his conception of the political is therefore closer to a modern republicanism (cf. Pocock 1975) than to a classical theory of the polis.

(c) Finally, MacIntyre cannot avoid acknowledging the possibility that the practices of a community can simply be “evil” (1984a, 200). Thus he remarks “that a morality of virtues requires as its counterpart a conception of moral law” (ibid.). Practice-immanent conceptions of the good by themselves are not able to judge these practices themselves. He does not of course see any possibility of justifying this universal moral law in a Kantian manner; rather, he connects it to a conception of the good as the “final telos” that goes beyond communities. It does not follow from the communal constitution of the self

that the self has to accept the moral *limitations* of the particularity of those forms of community. Without those moral particularities to begin from there would never be anywhere to begin; but it is in moving forward from such particularity that the search for the good, for the universal, consists. (1984a, 221)

Accordingly, MacIntyre sees two possibilities for criticizing one’s own community: first, in the form of immanent critique and, second, in the form of an appeal to a universal moral law (1984b, 15). This second possibility relates to a problem in his discussion of patriotism (see chapter 3.3). Though he rightly points out that only the members of a nation who identify with its past (in a particular manner) can feel responsible for its “crimes” (1984b, 16), he cannot however explain on purely contextualist premises what a “crime” actually consists in, one that, for instance, was committed on nonmembers of a community in the name of certain values and traditions of this community.

Two properties of MacIntyre’s theory prevent him from being led by the idea of a moral law to the conclusion of a universalist, context-transcending conception of morality. On the one hand, it is his belief that even norms that claim universal validity can be meaningfully conceived only within a “tradition” that, though embodied in communities, goes beyond these in respect of its content. On the other, it is his view that there cannot be any moral norms that do not serve as the telos of the good life. His ethical monism thus leads to the consequence of connecting the final telos of the individual good life with a “moral law” that, in its universal content, is itself part of a tradition and is regarded as the highest end of human endeavors. This connection leads him in the writings following *After Virtue* to move from Aristotle to Thomas Aquinas. It is only in the Thomistic tradition that

MacIntyre sees the three components of the good life safeguarded—ethics, politics, and theology, that is to say, the individual quest for the good in the communal and universal senses.

Ethics, in both Greek practice and Aristotelian thought, was part of politics; the understanding of the moral and intellectual virtues, in both medieval practice and Thomistic thought, was part of theology. To abstract the ethics from its place in either is already to distort. (1990, 191)

According to MacIntyre, there is no room for an independent morality, as Kant or Sidgwick attempted to justify it, beside the unity of ethics, politics, and theology. It has been seen however that he attempts to support the plausibility of this thesis by replacing morality with a *formal* ethics, a *nonexclusive* politics, and a *morally* substantive theology. This conclusion must be augmented by pointing out not only that he builds these additional assumptions into his theory, but also that his own thesis of the *rational* superiority of the Thomistic-Aristotelian tradition is based on a concept of rationality that is procedurally constituted and confirms on a hermeneutic level that he has to relativize his ethical constriction of the conceptions of person, morality, and reason. To this end, it is necessary to take a closer look at his conception of rationality.

After Virtue argues the thesis that the Aristotelian tradition can be defended in a meaningful way against other traditions. Its defense requires a particular conception of rational comparison, one that is not provided until *Whose Justice? Which Rationality?* On the basis of this notion of rationality, *After Virtue* appears as the diagnosis of the “epistemological crisis” of modern conceptions of morality, as a diagnosis of their failure. What is the diagnosis that explains the failure of the Enlightenment? MacIntyre provides essentially two arguments: a historical and a conceptual one. The historical argument states that the Enlightenment’s claim to having conceived a morality that would be equally plausible and valid for all rational beings must be regarded as untenable since this attempt has led to the opposite situation: to a fragmented culture of many moralities and rationalities and to the emotivist perspectivism that in the end dispenses entirely with rationality standards.

For the best evidence that there are no such principles constituting morality is that no one version of them has been able to compel assent from all, or anything like all, the members of that distinguished subclass of rational persons, modern moral philosophers, let alone from all rational persons. (1983, 451; cf. 1988, 334; 1990, 189)

MacIntyre is so sure of the failure of the Enlightenment that only in passing does he put forward arguments against Kant (on this, see O’Neill 1989, ch. 8) and Gewirth in order to document this failure exemplarily. The debate

with deontological (or also utilitarian) theories is therefore much less important to him than the debate with theories in the wake of Nietzsche, for they at least witnessed the failure of the Enlightenment (though they did not diagnose it correctly). His historical argument cannot however suffice (cf. Frankena 1983); for if the mere factual disagreement concerning Kantian or utilitarian principles in our culture is evidence for the failure of these models, then the collapse of the Thomistic tradition and its loss of cultural significance is also a sufficient argument against it. In this case, relativism and emotivism, which MacIntyre regards as dominant in our culture, would necessarily have the last word. Could his argument against natural rights for individuals serve also against Thomistic natural law?

The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches and the best reason which we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there *are* such rights has failed. (1984a, 69)

MacIntyre must thus fall back upon a conceptual argument to explain why the idea of Enlightenment *had to* fail and to what extent the relativist alternative is inadequate. According to this argument, human life is meaningless without a *telos* that points the human being to an end for which he or she strives in a manner that proves him or her to be worthy of this end. The starting point is human *nature*, the path is *ethics*, the end is the highest *telos*.

We have thus a threefold scheme in which human-nature-as-it-happens-to-be (human nature in its untutored state) is initially discrepant and discordant with the precepts of ethics and needs to be transformed by the instruction of practical reason and experience into human-nature-as-it-could-be-if-it-realized-its-*telos*. (1984a, 53)

These three components refer to one another and must not be separated. But this is precisely what modern morality did: it cut off the level of the *telos* and retained unformed human nature as well as the principles of ethics, so that its attempt to relate the two to each other without the element of *telos* was bound to fail. Ethical principles were robbed of their communal-metaphysical context, and henceforth ethics was placed between an empirical reliance on basically nonmoral (or fallen) human nature and a desubstantivized ethics of principles. All nonteleological ethics must remain fragmentary and ultimately lead to relativism; it cannot give human and social life the *direction* it needs. "The individual human being is a unity in whom the directedness of the different aspects of his spiritual and social existence have to be ordered hierarchically into a unified mode of life" (1990, 142–43). It is on the basis of this strong thesis of

the integrity of the self that MacIntyre's conception of rational comparison—and the outcome of this comparison—is to be understood; and on this basis it must be measured. How can the superiority of a tradition be justified, and what does the superiority of the Thomistic tradition consist in?

Whose Justice? Which Rationality? disputes the possibility of context-transcending rationality standards that determine what the standards of the good and the just are: there are only rationalities and justices. Nonetheless, MacIntyre says, the relativist conclusion that there is no possibility of a rational comparison is premature (1988, 9–10; 1990, 5). In his conception he attempts to find a path between the false assumption of a context-transcending, neutral reason as well as language and the thesis of ethical universes radically separated from one another.

Every tradition-constitutive and tradition-constituted form of moral inquiry, MacIntyre argues, develops in three stages:

a first in which the relevant beliefs, texts, and authorities have not yet been put in question; a second in which inadequacies of various types have been identified, but not yet remedied; and a third in which response to those inadequacies has resulted in a set of reformulations, reevaluations, and new formulations and evaluations, designed to remedy inadequacies and overcome limitations. (1988, 355)

It is not until the third stage that a tradition becomes firmly established and develops into an ethical universe—a universe with its own, one and only “language-in-use,” its own standards of rationality and justice. Such a tradition's claim to truth is absolute but must vindicate itself again and again to the members of this tradition in a “process of dialectical justification” (360). A tradition thus harbors its own rationality standards on the basis of which arguments are advanced; it must however satisfy a second-order *transcending* standard of rationality, which MacIntyre does not distinguish as such: it must be generally justified to its members. “Only those whose tradition allows for the possibility of its hegemony being put in question can have rational warrant for asserting such a hegemony” (388).

Such a tradition might reach the point at which it provides insufficient responses to problems—insufficient according to its own standards. MacIntyre calls this an “epistemological crisis”: a problem is recognized but not the possibility of resolving it. Such a crisis can be overcome only through a conceptual innovation that must satisfy three criteria. First, it must solve the problem; second, it must be able to explain why it was not possible to solve the problem with the old conceptual means; third, it must be in a position to establish continuity between the old and the new concepts (362). Yet it may still be the case that an epistemological crisis proves to be irresolvable for a tradition, that all the conceptual means that can be

mobilized are insufficient. In this case, the “encounter” with an alien tradition can lead to the recognition that the standards of this second tradition-bound language-in-use, which must be learned as a “second first language,” provide the means—the means, that is to say, in the light of the standards of the first language—to solve and explain the epistemological crisis. The new explanation cannot however fulfill the third criterion, that of continuity; the members of the first tradition are therefore forced to recognize the superior rationality of the second one (364–65).

To make this result plausible, MacIntyre must qualify the thesis of the untranslatability of two traditions: it means not that ethical universes constitute completely enclosed units, but that languages are embedded in forms of life and can therefore be learned only by experiencing these contexts, as it were—just as anthropologists do so when they become members of an alien community (374). Experiencing the contexts first enables knowledge of translatability; knowing two different traditions makes it possible in the first place to see what knowledge of one tradition is not accessible to the other. This does not mean that this difference can be translated into a neutral, internationalized workaday language—which does not necessarily stand in contradiction to MacIntyre’s own approach, for he does not claim to present all the strong points of a tradition (his Thomism, for instance) in a generally understandable language—even though he regards himself as an anthropologist, as it were, who has learned foreign languages and systems of thought (1990, 43). The central difference between this approach and a hermeneutics as proposed by Gadamer consists in the fact that the dialogic test leads not to a fusion and an expansion of horizons, to learning from the other tradition (cf. McCarthy 1989), but to the fact that, in view of unbridgeable differences, the individual must *decide* between the two traditions he or she has gotten to know. Either this decision relies on a rediscovery of the values of a particular tradition one has “always already” recognized, without perceiving this tradition in its entirety or living in it (MacIntyre 1988, 394); or it amounts to a “conversion” in which a person moves from a state of ethical alienation to a tradition new to him or her and to a new self-understanding (396). What is typical of modern society, MacIntyre says, is nonetheless the fragmented self that lives with many half-convictions without ordering them coherently in the sense of one tradition.

MacIntyre gives however an insufficient explanation for how the members of a tradition can “encounter” another tradition. For if traditions were really so drastically different (having different modes of thinking [381]), it would then be unclear as to how the members of tradition A, which was intact before the epistemological crisis, could know that tradition B has the appropriate resources for resolving the crisis. For to recognize these resources presupposes that one has *already* learned tradition B as a “second

first language"; however, there was no reason for doing so prior to the crisis in tradition A. Ethical persons are not anthropologists: they know, according to MacIntyre, if they are members of one tradition, only their own tradition, and to be able to recognize that another tradition is superior, they would have to know it already. But to be motivated to learn it and to get to know it from the inside, they must already know that it is superior. If the adoption of the new tradition is not to be a leap into the unknown, it must already be familiar, like a second first language one learned at a time when the original tradition was still intact. The "conversion" therefore presupposes itself in order to motivate itself. It is unclear what MacIntyre means when he says that the members of a tradition finding itself in crisis "now come or had already come to understand the beliefs and way of life of this other alien tradition" (1988, 364). At another point, however, he argues:

First the onset of an epistemological crisis, a systematic breakdown of enquiry in the face of a certain set of intractable problems within a particular scheme of belief, may, if recognized, provide good reasons for seeking out some rationally different alternative; and second the possibility of learning to understand the other incommensurable point of view from within imaginatively, before it can be occupied intellectually, can never be ruled out. It is by such uses of the imagination that one can come as if to inhabit another alien culture and in so doing recognize how significant features of one's own culture to which one has hitherto been, and could not but have been, blind can be discovered and characterized from that other culture's point of view. (1990, 120)

In this passage MacIntyre retracts the strong thesis that understanding another tradition is possible only through direct experience, through living in it; he now considers it possible to imagine adopting it. The leap into the new is not a leap into the unknown only if the new is not so new, if it was already possible to learn it.

This presupposes the possibility of simultaneously understanding two traditions and, on the basis of the same problems and the same personal identity, of comparing them as answers to one and the same question (cf. Habermas 1993b, 103-4). MacIntyre cannot dispute this hermeneutic possibility, after all the new tradition is regarded as an answer to the problems of the old tradition. If it were entirely different from the latter, it could not respond to these problems, and it could not guarantee that after recognizing the new answer persons were still able to tell their life histories as a consistent narrative. Getting to know another tradition may of course expose blind spots in one's own tradition or conceptual differences that are difficult to reconcile. These are however insights that surface within one identity and a particular kind of questioning; to answer such questions it is necessary to establish a continuity between the old and the new, one that

has the character of adding something new to existing knowledge—of learning (and even a radical reorientation, as a justified reorientation, is a form of continuity). A person must be able to integrate coherently new answers to his or her problems: he or she must be able to identify with the new answer as the person he or she is and was.

MacIntyre's one-sided ethical conception of the rationality of traditions thus contradicts his own ethical conception of the person. He cannot avoid accepting a hermeneutic rationality of reciprocal understanding in order not to defend a thesis of the seclusion of ethical universes that would put the continuity of the self into question—a continuity that is maintained *between* traditions; he thus also relativizes the ethical monism of the conception of the person. This hermeneutic rationality is a *second-order rationality*: it does not state what standards of the first-order good are justified; it does however state that traditions can be justified only by being "tested dialectically" (1988, 358), that is to say, by justifying themselves rationally with good reasons to their own members individually and *vis-à-vis* other traditions. Even if different traditions have different standards of the good, a second-order hermeneutic rationality nonetheless states that these traditions must justify their claims with good reasons. They must do so because ethical traditions are dependent upon individuals' being able to identify with them. Their validity criterion lies in the question of whether the individual "finds him or herself most adequately explained and accounted for" (398). MacIntyre's second-order concept of rationality—concerning the rationality of the rational-dialectical comparison of traditions—is itself normative (cf. Kelly 1990, 87) and *context-transcending*: it determines the criteria that traditions must meet if they raise a claim to rational justification. This conception of rationality does not determine *what* reasons subjects recognize ethically; it determines solely that it is reasons that count, reasons that convince rather than persuade (MacIntyre 1990, 169)—"by reasoning rather than by the use of power" (1983, 451). This outcome corresponds to the discussion of *After Virtue* in which it became evident that MacIntyre avails himself of certain second-order, context-transcending principles, such as a formal definition of the good, the conception of community as a nonexclusive project, and universal "moral law." These principles are practical rationality conditions a community has to fulfill, according to MacIntyre, in order to be acceptable. Therefore he himself is forced to introduce a separation between second-order formal principles and ethical-substantive contents of the good—both in a hermeneutic and in a practical sense.

Three Rival Versions of Moral Enquiry can be read as MacIntyre's response to this outcome: as the attempt to identify in Thomism a tradition that absorbs these hermeneutic and practical second-order principles once again into one tradition and one concept of ethical rationality. He is con-

cerned with showing that a Thomistic position (now alone regarded as “tradition”), having absorbed Aristotelian and Augustinian elements, is superior to the two other models present in our culture—universalist “encyclopedia” and relativist “genealogy.” Thomism is the only tradition that substantively incorporates the integrity and continuity of the self and the dialectical test of rationality. It preserves the procedural rationality of the dialectical test and the moral norms of the “moral law,” just as it brings individual life and communal life to a substantive unity in a tradition with context-immanent (Aristotle) and context-transcendent (Augustine) conceptions of the good. Moral inquiry in the Thomistic sense presupposes this unity of person, morality, and reason within one ethos. The narrative of the individual life, that of the community and of tradition are indissolubly connected (1990, 129). Only the Thomistic tradition gives moral inquiry a meaningful—practical and, at the same time, supertemporal—*direction*:

Without some rationally warranted belief in, some genuine knowledge of that perfect goodness in relationship to which alone the soul finds ultimate good—that divine goodness by reference to which alone, in Augustine’s Platonic terms, the unity underlying and ordering the range of uses and applications of the concept of the good can be discovered—the soul would find itself directed beyond all finite goods, unsatisfiable by those goods, and yet able to find nothing beyond them to satisfy it. (137–38)

The outcome would be a soul without an end or without order, a “Hobbesian soul” (138).

Encyclopedia founders on its conception of a morality without a telos, genealogy on its conception of a discontinuous self without a telos. Genealogy sets out to disavow the encyclopedic claim to truth as an expression of the will to power, but it cannot avoid recognizing the “metaphysics of reading” (46); it cannot itself avoid raising temporally continuous truth claims for which the author must be “accountable” (208). The genealogist has to take off his or her mask. “The function of genealogy as emancipatory from deception and self-deception thus requires the identity and continuity of the self that was deceived and the self that is and is to be” (214). Nietzsche’s remark in *Twilight of the Idols*: “I fear we are not getting rid of God because we still believe in grammar” (1968, 38; quoted in MacIntyre 1990, 67) is taken up by MacIntyre: to be the author of a text—like being the author of one’s own life—means being accountable for oneself, preserving one’s own personal identity over time, and being *responsible* for one’s position (even when it has changed); it means providing reasons for one’s position. The rationality standards of responsible communication are necessarily presupposed—the “reason-giving, reason-accepting, and reason-rejecting, in the light of which alone the genealogist and his or her reader can put each other to the question” (45).

MacIntyre's Thomistic counterposition to encyclopedia and genealogy is however problematic in two respects (and this just in reference to its moral-theoretic content). First, he cannot show the connection between the "direction" of an individual life and a religious conception of the highest telos: between ethical self-realization and the truth of a highest good there is no necessary connection. Second, he does not do justice to the "responsibility" that an actor must assume toward others in the moral sense; here it is not enough to justify oneself by referring to the convictions "within my community."

On the first point: MacIntyre's thesis that the narrative existence of a person is "directed" and in a position to meaningfully integrate practice-immanent and finite goods only if his or her mental existence is guided by a highest end, a *summum bonum*, does not do justice to his own thesis of the intersubjectivity of personal identity. Though the unity of a life history—a history coauthored by the subject and by others as well—requires an integration of the subject's self that does not rule out radical revisions and connects the past, the present, and the future with one another, an ethical-religious transcendence of contexts of social existence is not necessary to achieve this integration. The image of itself according to which a subject understands and projects itself develops in the light of necessities and possibilities within the contexts in which a self lives and is recognized as such. Anticipation of a form of recognized identity that one does "not yet" have and that transcends existing social contexts is of course always possible; this form, however, draws on the "material" social life has to offer, on the one hand; on the other, it is ultimately, as Mead remarks, again just an anticipation of another, "larger" community before which one interprets one's life history (see Mead 1962, 271–72; Habermas 1992c, 192). This can be a religiously motivated transcendence of context (Mead 1962, 275), but it does not have to be: the life ideals and values chosen (or adopted) by a subject as the highest ones do not necessarily refer to a supertemporal truth; the necessary connection between the *ethical* truth of a life and the *religious* truth of the *summum bonum* does not exist. MacIntyre recognizes this himself at those points where he defines the good formally and leaves it to the self-knowledge of the subjects—where he does not speak as a "partisan."

On the second point: MacIntyre defines his conception of moral responsibility as follows: "So part of being one and the same person throughout this bodily life is being continuously liable to account for my actions, attitudes, and beliefs to others within my communities" (197). Yet he can apply this conception of responsibility to moral responsibility only because he conceives of "my community" in the Thomistic sense as a community in which divine natural law and the laws of the community coincide (192–93). The ethical truth of this community is also morally valid—that means

for all persons—only because it is a timeless universal religious truth (200–201). This understanding does not however explain how the statements that are valid according to these communal standards of the good and of the just ought to be also valid for persons who are not members of this community—valid in the sense that they can be justified to these persons and that these persons ought to observe them. In this case, Thomistic “moral law” must also be in a position to be *valid for* (and *acceptable to*) those who do not belong to this tradition. The Thomist must be able to justify his or her actions to non-Thomists affected by these actions—he or she must be accountable. To their questions concerning the justification of his or her actions affecting them, the Thomist cannot respond by referring to his or her conception of the good but must give reasons that are as acceptable to others as they are to him or her: moral-reciprocal reasons. The difference between the justification of actions within one ethical “world” and the justification of actions between persons who belong to different ethical worlds cannot be sublimated in the ethical perspective of *one* tradition. Moral reasons must be “found” between persons who come from different ethical contexts. These contexts represent the starting point but not the endpoint of “reason-giving” and “reason-accepting” in a common moral context. MacIntyre’s own “metaphysics” of argumentation reflects the necessity of assuming a *formal* second-order rationality (of justification) vis-à-vis a *substantive* rationality of the stock of reasons that is at first available to persons but can then be expanded in a process of reaching agreement. Here it is important to note that moral justification presupposes not a “pure” language of morality, but the process of finding a common language (a minimal vocabulary) that—it must also be emphasized—does not have the task of getting different ethical worlds to coincide perfectly; rather, only in moral questions of interpersonal conduct does it require shared norms.

Neither in a hermeneutic nor in a practical respect can MacIntyre’s ethical conceptions of person, morality, and reason dispute the rationality criterion of “dialogic” justification. For their members, ethical traditions rest on good reasons with which they must be able to identify individually. Hence the ethical tradition attempts to redeem its claim to truth in a “co-operative” way and sees this process as dialectical and open—to other traditions too. An “outward” moral openness—an openness to reasons—corresponds to the “inward” ethical openness.

Therefore, if one asks, along with MacIntyre, about an appropriate practical conception of *person*, *morality*, and *reason*, one must recognize that the necessity to understand persons as members of an ethical community and tradition does not allow one to describe the relation of ethical persons to their community and tradition, to other communities and traditions, and to persons belonging to other communities solely in terms of *one* ethical

tradition. To view persons, morality, and reason *within* contexts means paying attention to the *different* contexts in which persons relate to themselves and others. If morality is conceived in such a way that it pays attention to the different contexts of normative questions, the criticism that by replacing concrete values and bonds with “impersonal” norms it becomes a “dangerous phenomenon” (MacIntyre 1984b, 16) is incorrect: morality applies only where ethical values and bonds are not sufficient to recognize the legitimate claims of moral persons. MacIntyre does not do justice to this dimension of morality.

This result is now to be exposed to a final counterobjection: doesn't the theory of contexts of justice itself rest on a multidimensional theory of the good that has developed in modernity and is “nontranscendable” in the sense that we can dispute these values only at the cost of losing our identity? This is Charles Taylor's position.

4.4. ETHICAL UNIVERSALISM AND MODERN IDENTITY

Taylor's work represents the large-scale attempt to resolve the competition between the good and the just at a higher level, to the benefit of the priority of the good. Rather than argue that the principles of equal individual rights and universal respect find their “limit” in tradition-bound conceptions of the good (as MacIntyre and Sandel do), he asserts that certain “transcending” goods (Taylor 1986, 128) are part of the value horizons of modern subjects and thus demand the respect of the dignity of the person. Accordingly, Taylor does not attempt to play off an *ethical good*—an ideal of the good life—against liberal principles; at a higher justificatory level he is concerned with defending *moral goods* that demand respect for a plurality of ethical conceptions of the good. At this level, according to Taylor, proceduralist conceptions of morality have two serious deficits. First, they overlook the fact that they themselves are grounded in certain foundational conceptions of the good and are therefore contradictory in their reflection on justification. “They are caught in a strange pragmatic contradiction, whereby the very goods which move them push them to deny or denature all such goods” (Taylor 1989a, 88). Second, they neglect the fact that they are based on only a part of the ethical-moral values that determine the identity of modern subjects. They thus absolutize the domain of rights and reciprocal obligations as constituting the whole of moral experience and suppress other domains of the good that relate to questions of the self-understanding of concrete persons and their embeddedness in horizons of “qualitative distinctions.” And yet only a perspective that discloses this dimension of “strong evaluations” hermeneutically can be in a position to explain the obligating force of values. “Articulating our qualitative distinctions is setting out the point of our moral actions. It explains in a fuller

and richer way the meaning of this action for us, just what its goodness or badness, being obligatory or forbidden, consists in" (80). The procedural conception of morality is therefore itself part of the "malaise of modernity": it is the *context forgetfulness* of a practical reason that seeks to justify moral principles in isolation from subjective, intersubjective, and "transcendent" conceptions of the good. Taylor's theory thus leads the debate back to the starting point: back to the communitarian thesis of the context connectedness of person, morality, and reason. The counterthesis—that a conception of justice can be developed that, by virtue of its resting on a procedural conception of practical reason, is compatible with contexts of individual and collective identity—must prove its worth once more in dialogue with Taylor's position.

The similarities and differences between Taylor's and MacIntyre's common diagnosis "that the project of Enlightenment to justify a secular, independent morality has failed" (Taylor 1986, 130) are important for the question of contexts in which one locates person, morality, and reason, in contradistinction to the morality of the Enlightenment.

Like MacIntyre, Taylor defends the thesis that the starting point of reflections in ethical-moral theory should be not the atomistic "disengaged identity" (Taylor 1985a, 7) but the conception of the "situated subject" (1979, 167–68) whose narrative unity of life is to be seen within the horizons of the narrative of a community and certain identity-determining values (see chapter 1). This hermeneutic conception of the ethical person is the central premise of Taylor's methodological critique of naturalist objectivism in the human sciences, of his critique of deontological (and utilitarian) conceptions of morality, and, finally, of his critique of modernity itself. Unlike MacIntyre, however, Taylor does not believe that the narrative unity of individual life history presupposes a "highest telos" that modernity can no longer furnish. The values constituting the horizons of modernity are, according to Taylor, sufficient for a meaningful life, however, they must be "disclosed" and articulated in their content.

With regard to the critique of individual rights and of formal morality, MacIntyre and Taylor agree that these rights take their orientation from a negative concept of liberty that ignores that persons belong to a political community in an ethical, value-related manner (Taylor 1985f, 205–8) and disregards the fact that particular modes of communal existence allow us to define liberty in a qualitative sense (1985g). In contrast to MacIntyre, Taylor does not believe that modernity is no longer capable of a form of *Sittlichkeit* that can establish the bond of a nonalienated identification between the individual and the collective. Like Hegel, Taylor is at the same time aware that a "post-industrial *Sittlichkeit*" (1979, 125–34) cannot do without the principle of individual liberty (in a nonatomistic sense).

Against the background of this conception of person and community,

Taylor, like MacIntyre, criticizes a procedural conception of practical reason. Though being “reasonable” in a practical-moral sense means being able to give reasons for the validity of values and norms, these reasons originate nonetheless in a particular constellation of values and must provide the “best account” of these values, with which an individual can identify in the light of an interpretation of him- or herself. According to MacIntyre (1988, 398), the rational validity of moral traditions is determined in terms of “which of these rival modes of moral understanding [the individual] finds him or herself most adequately explained and accounted for”; and Taylor proposes the principle of “best account” (1989a, 58) as a principle of practical reason: the arguments for the validity of certain goods must connect up with the narrative self-understanding of subjects in such a way that the subjects understand themselves better now than before as a result of adopting these values (see Taylor 1993). A person must be internally “moved” by values to be able to accept them (1989a, 72–73). There are no conclusive “basic reasons” for values or norms, all reasons must be compatible with the “qualitative discriminations” (77) of a meaning in life that develops in a context of general values. It is only within this context that arguments are at all intelligible: they have meaning for me by contributing to the meaning of my life. Unlike MacIntyre, Taylor does not however proceed on the assumption of an unbridgeable fragmentation of the modern constellation of values, which makes “directed” identity possible only beyond modern convictions; though he does see a fragmentation of modernity’s “moral sources” (MacIntyre 1984a, 10; Taylor 1989a) as a result of the failure of the Enlightenment, he nonetheless believes in the possibility of a “reconciliation” (Taylor 1989a, 106). His hermeneutic holism does not allow him to regard as insuperable the bifurcation of modernity into the camp of “naturalist” instrumentalism and atomism and that of romantic “expressivism”; already in his book on Hegel (1975) he found that Hegel’s failed attempt at a synthesis of these two strands of modernity nonetheless pointed the way to finding the necessary reconciliation of these elements splitting modern society in the conception of a “situated subjectivity.”

Taylor’s strongest thrust is directed against a conception of the theoretically and practically reasonable subject that views itself, other subjects, and the world as totally separated, objectifiable entities and sees itself in demarcation from contexts already structured in terms of language, intersubjectivity, and values. Such a conception of subjectivity does not understand what *identity* means. To have (or better: to be) an identity means moving within horizons in which relations to others and the relation to the world have always been conveyed in a world-disclosing language in which subjective, collective, and ethical-“transcendental” identities form a whole—albeit a charged one. Modern identity—and that means the identity of each mod-

ern subject and the identity of modernity itself, of the “spirit” of modernity—is fragmented as long as subjects are not conscious of the totality of their ethical relations to the world, as long as they banish their romantic longing to the “private” realm, as long as they understand nature as an object and themselves as a distanced subject. Taylor endeavors to articulate this fragmentation and thereby bring it closer to a reconciliation. His work is an “attempt to uncover buried goods through rearticulation—and thereby to make these sources again empower, to bring the air back again into the half-collapsed lungs of the spirit” (1989a, 520).

To understand Taylor’s ethics of the good on the basis of a transcendental hermeneutics of the modern identity and his conception of moral philosophy, it is necessary to ascertain the basic features of his conception of the person. The starting point for this conception is Heidegger’s analysis of *Dasein* in *Being and Time* as a being that, “in its very Being, that Being is an *issue* for it” (Heidegger 1962, 32), a being that has always already had an understanding of its being and its world, a being that can inquire about this understanding but can never fully set it “before itself”: the world is always ahead of *Dasein* and determines the horizons within which it can inquire in the first place. Hermeneutic reflection is not a self-positing or a self-observing according to the subject-object scheme but an *interpreting* of oneself. The human being, says Taylor, is a “self-interpreting animal” (1985c), and all the resoluteness of the self and all the disclosure of the world remain provisional and bound within a historical given. “Situated subjectivity” designates precisely this world character of the subject, which only has an interpretative access to itself—and that means to itself as a temporal, bodily, historical, and ethically particular subject within the horizons of certain background assumptions and of a world linguistically “disclosed” but never appearing in crystal-clear light. Four dimensions in particular are central in this conception of the person: the conception of the human being as (a) an ethical-evaluating, (b) a communal, (c) a linguistic, and (d) a temporal-historical being.²⁵

(a) Taylor follows Frankfurt’s (1971) distinction between first- and second-order desires: human beings do not simply have certain desires and needs, they are also able to examine them reflectively in the light of “higher” desires and to assume responsibility for them. This reflective evaluation can be understood, Taylor says, in a weaker and a stronger sense. A person can examine and evaluate his or her desires and needs according to criteria of convenience and comfort but can also view them in the light of qualitatively more substantive ethical values that admit of gradations—values that distinguish the noble from the base, the good from the bad. Taylor calls the former “weak” and the latter “strong evaluations” (Taylor 1985b; see also the discussion in chapter 1 above). Strong evaluations are—contrary to what utilitarianism believes—the real action-guiding consider-

ations, for they are indissolubly connected to the self-interpretation of persons: they establish the framework within which one sees oneself as a particular kind of person.

Since it is an interpretation of oneself, strong evaluation is not a “radical choice” as existentialism envisions it. Values constitute the horizons within which the person has always understood him- or herself—horizons that can be fully transcended only at the cost of losing one’s identity. It is not that the person has always been aware of these values; instead, it might be that he or she becomes conscious of their validity or their doubtfulness only when they are articulated. The “deeper” a person delves questioningly into his or her strong evaluations, the greater the possibility that a reevaluation of convictions considered right until now will follow since they do not correspond to “what is essential” in ethical identity. “Thus the question can always be posed: ought I to re-evaluate my most basic evaluations? Have I really understood what is essential to my identity? Have I truly determined what I sense to be the highest mode of life?” (Taylor 1985b, 40). The “deep reflection” (42) that asks “what we really are about” (1985f, 68) must however make do without a “fixed yardstick” (1985b, 42): ultimately, the criterion as to whether certain strong evaluations belong to the “essence” of an identity must be left to the person and his or her possibility to integrate these evaluations meaningfully into a life and to assume responsibility for it. Consequently, to have a “strong” identity means not only having a “personal style” but also agreeing “deeply” with oneself and one’s actions and being responsible for oneself, that is, being able to respond cogently to questions concerning oneself. Therefore, Taylor argues, liberty cannot be grasped negatively as the absence of external obstacles to action; rather, a person can be free only if he or she “really” agrees consciously with his or her actions; in accordance with an “exercise-concept” (1985g, 216) of positive liberty, liberty consists in realizing “authentic” desires on the basis of “qualitative distinctions.” It might be, Taylor says, that we ourselves do not always know best what we “really” want and need the help of others to be free. He is not however willing to draw from this political consequences of the type that some authority outside the person would be given this prerogative—in that sense his “positive” concept of liberty does not change anything in the “negative” concept of legal-political liberty that Berlin (1969b) defends precisely for this reason. It is evident, as I have already argued (chapters 1 and 2), that these concepts of liberty are located at different levels (for neither does Berlin dispute that a person can learn from others something about his or her “real” interests [1969b, 133–34]). Ethical and legal liberty are conceptions that belong to different dimensions of “being a person” that do not necessarily collide with each other.

(b) That persons’ strong evaluations are not their “projections” but are self-interpretations oriented by the values of the “noble” and the “good”

reflects the fact that the world in which these values apply is a shared world: persons, to speak with Hegel, have already been recognized as particular persons within a context. "The community is also constitutive of the individual, in the sense that the self-interpretations which define him are drawn from the interchange which the community carries on" (Taylor 1985a, 8). Values are always "our" values, and "my" identity is constituted through dialogic forms of ethical recognition that enable the formation of an identity within a community and make it possible to understand oneself and others within common ethical horizons. The "moral space" in which persons find and discover themselves is always a "public space" (1989a, 35); without the ethical recognition by others that is based on common values, the development of a stable and self-respecting identity is not possible. Individual and community are connected through strong evaluations—individual and collective identity form a unity that is itself brought about linguistically: strong evaluations express a common world, common horizons of meaning that are first "disclosed" by those involved in the articulation of this meaning. The moral-public space is the space of a language community; persons exist in "webs of interlocution" (1989a, 36).

(c) Central to Taylor's view of this connection between ethical identity, community, and language is his theory of the "expressive" power of language, a theory that goes back to Herder, Humboldt, and Hamann. Language is not a purely designative medium, it also discloses a common world. Through the linguistic articulation of the good and the right, subjects become conscious of the force of these values; only in an evaluative language do they discover what they "deeply" consider to be right, how they can interpret their feelings and thoughts. Language is the material of self-interpretation, it is "constitutive of thought" (Taylor 1985d, 229). A pre-existing "essence" is not however expressed in the dialogue within a language community (that is why the romantic concept of "expressivism" is misleading): "What is made manifest is not exclusively, not even mainly, the self, but a world. . . . In this kind of expression, we are responding to the way things are, rather than just exteriorizing our feelings" (238–39). Language discloses (in the Heideggerian sense [Taylor 1985e, 269–70]) a subjective and communal world; it is the medium in which this world becomes conscious to individuals and is at the same time formed by them. Emphasis is therefore placed not on the expressive element but on the world-disclosing aspect.

Thus there are three things that get done in language: making articulations, and hence bringing about explicit awareness; putting things in public space, thereby constituting public space; and making the discriminations which are foundational to human concerns, and hence opening us to these concerns. (263)

(d) The common, linguistically unveiled world is a historical world, and the persons who discover themselves in it are temporal beings: they have a past that they must connect, in the present, with a projection of their future on the basis of the language at their disposal (inasmuch as one can speak of a language "at one's disposal"). Persons must see themselves in a "life story," a "narrative," as Taylor says with MacIntyre (and Ricœur): "In order to have a sense of who we are, we have to have a notion of how we have become, and of where we are going" (1989a, 47). In contrast to the conception of a Lockian "punctual self" (cf. Parfit 1984), Taylor proceeds as does MacIntyre on the assumption of understanding life as a "quest," as a search for the good that gives life meaning and direction. The interpretation of the self cannot manage without this narrative dimension: the future must "redeem" the past (1989a, 51–52), must give it, in remembrance of things past, a meaning within a whole. The temporality of existence points accordingly to the narrative dimension of the quest for the good, which in turn has its place within a historical community. The constellation of strong evaluations does not prescribe a highest telos to life, but it does provide the resources—or sources—of meaning from which all of life draws.

From this conception of the person and its four dimensions of ethical, communal, linguistic, and temporal existence there follow far-reaching theoretical consequences in Taylor's work—at various levels. "Naturalism" fails to recognize these dimensions individually and in their interconnection. It results in (a) an atomistic conception of the person as "a subject who only evaluates weakly" (1985b, 23), who fails to recognize qualitative distinctions and understands itself as a subject with mere "preferences"; (b) an instrumental and external conception of community, a negative notion of freedom, and a conception of the "state based on need, the state as the Understanding envisages it [*Not- und Verstandesstaat*]," to use Hegel's words (1967, 123 [§ 183]); (c) a designative conception of language that conceives of language as an external instrument and overlooks its world-disclosing character; (d) finally, a forgetting of the historicity of the question of the good and the continuity of life. Naturalism cannot therefore pose the question of the good correctly, and this inadequacy is reflected in utilitarianism's and proceduralism's deficient conception of morality, whose central mistake is that it does not enter persons' strong evaluations "from the inside" and instead limits itself to their external relations and adopts a one-sided notion of reason that is formal in character.

Taylor's critique of atomism operates at these different theoretical levels and at an explanatory *metalevel* as well. He not only criticizes naturalism and opposes it with an alternative theory, he also shows how naturalism itself developed from a one-sided conception of the strong evaluations of modernity. Of course, naturalism cannot grasp its own genesis since the capacity to penetrate hermeneutically into the "sources" of the develop-

ment of the modern identity is denied to it. Taylor's metacritique thus "redeems" naturalism from its blindness by showing from which strong evaluations it has developed and which other ones it has suppressed. He therefore relates his conception of the person at a higher level to the genesis of all possible theories of the person: how the self was conceived is an outcome of the manner in which the self developed and understood itself in modernity. His theory no longer operates at the same eye level as competing theories of the person and morality: it also wants to give a historical-conceptual explanation of these theories themselves. His metanarrative shows how one-sided developments occurred that led to problematic repercussions in the theory of the person, liberty, and language, as well as in the practices of modern societies. Taylor's reconstruction of the modern identity combines Hegel and Max Weber: the rationalization of modernity is described as a process of bifurcation, and the articulation of this process appeals to modern subjects to return to their sources.

Sources of the Self not only presents a theory of the self and of strong evaluations, it also tries to generate an "articulation" that discloses, that raises to consciousness, the common world of modernity and its bifurcation. Through this articulation, the horizons of ethical values that Taylor regards as determinative of identity are to be linked not to a particular community or a particular period but to the development of modern Western culture as a whole. The "self" whose "sources" are brought to light is therefore not a particular, biographical self but the "modern self"; hermeneutics is shifted in this way from a hermeneutics of the person to a hermeneutics of the modern spirit, a super-self whose strong evaluations must find their way to a unity—this, however, no longer in the form of absolute Spirit becoming conscious of itself, but of modernity's individual subjects becoming conscious of themselves, each for itself. Hegel's ontological and historico-philosophical premises are hermeneutically refracted in Taylor—thereby raising the central question of the epistemological status of Taylor's theory of the good (cf. Nussbaum 1990b, 33–34; Habermas 1993b, 74). To whom does this metanarrative apply, and what are the conditions of its validity if the "spirit" of modernity has dissolved in the spirits of modern society?

Taylor responds to this question with a *transcendental-hermeneutic* interpretation of his theory of the person: the reconstruction of the goods of modernity brings to light the "inescapable" (Taylor 1989a, 31) "transcendental conditions" (32, 38–39) of modern identity—the values without which modern subjects cannot understand themselves in the totality of their conceptions of the good. In this sense, the "hypergoods" of modernity are a "framework," a moral space that is as real for us as an ethical fact can be, a fact that cannot be recognized by the means provided by the natural sciences: "what you can't help having recourse to in life is real, or as near

to reality as you can get a grasp of at present" (1989a, 59). Mackie's (1977) antirealist statement that moral concepts are "projections" is disputed by Taylor not only in the sense that these concepts have developed historically and are therefore "inherited," but also in the sense that they simply cannot be meaningfully disputed since they constitute the very universe of possible meaning. "What better measure of reality do we have in human affairs than those terms which on critical reflection and after correction of the errors we can detect make the best sense of our lives?" (Taylor 1989a, 57, cf. 257; 1991a, 242).

This theory of "hermeneutic realism," as it were, underpins the strong validity claim of the objectivity of ethical values only in the sense that it provides the "best account" (58), the most appropriate articulation of modernity's hypergoods—an articulation that exposes contradictions, unravels confusions, and formulates values of such importance in "our" conceptions of values that we are individually "moved" to a "transition" (1989a, 72; 1993, 224–25). A *hermeneutic* practical reason formulates values with which individuals *can* identify, whereas a *transcendental* practical reason would have to be able to formulate principles with which individuals *must* identify (as "transcendental conditions" of their identities). Taylor's theory oscillates between these two poles: it excavates the transcendental goods constituting modernity, but it cannot raise a transcendental validity claim for this excavation. It rejects an "external" model of practical reason (1989a, 75) that provides objective "basic reasons" for norms, but his hermeneutic-internal model that addresses its reasons to "my" existence is undecided concerning the reconciliatory power the theory thinks itself capable of. For on the one hand it is dependent upon the assent of its addressees, on the other it knows that modern culture is under the rule of a partially blind naturalism, and therefore the required self-knowledge is hindered; it thus already has an explanation for its critics. The reconciliation of modernity with itself, Taylor says, is a difficult task.

We have to search for a way in which our strongest aspirations towards hypergoods do not exact a price of self-mutilation. I believe that such a reconciliation is possible; but its essential condition is that we enable ourselves to recognize the goods to which we cannot but hold allegiance in their full range. (106–7)

According to Taylor there are three levels to be distinguished at which we can speak of the good. The first, the level of the individual good life, consists of the biographical narrative within which a person seeks to shape his or her life meaningfully. The second level consists of certain "life goods" (1989a, 93) in whose light persons evaluate their lives and actions as good. Such "hypergoods" as liberty, altruism, universal justice (101) do not however shine in a clear, uniform light: they can come into conflict with one

another. This possibility points to the third level, the fundamental one of “constitutive goods” (93), from which even the life goods themselves draw their power and their ultimate meaning. They are the “moral sources” constituting the framework for possible concrete goods. They present the ultimate ground for persons’ self-identification, the ultimate sense of one’s own being in the world. Modernity is characterized by an abundance of and a conflict about hypergoods that owe their origin to three essential “moral sources”: belief in divine creation and the unity of the world, the autonomous subject’s powers of reason, and the richness and goodness of nature. “Modern culture is one of multiple sources; it can be schematized as a space in which one can move in three directions. There are the two independent frontiers and the original theistic foundation. The fact that the directions are multiple contributes to our sense of uncertainty” (317, cf. 495). Modern culture draws on these three sources; however, modern subjects see themselves mainly only in a partial light, the light beamed from one of these sources. Against this background Taylor now elaborates in a complex and rich presentation the genesis of the modern identity and a diagnosis of the problems and conflicts within this identity (1989a, ch. 25), which I cannot examine in detail here;²⁶ and I cannot therefore consider whether the subjectivizing way of speaking of *one* comprehensive modern identity is justified (cf. Steinfath 1991). In the present context, the moral-theoretic implications of Taylor’s approach are of primary importance.

His *Sources of the Self* claims to give the best account of the strong evaluations that are inescapable for the identity of modernity—and thus of each individual modern subject. The validity claim of this narrative, of this story of the genesis of modern hypergoods, is however, as I have already pointed out, explicated by Taylor now strongly (with reference to “transcendental conditions”), and now weakly (hermeneutically): “A hypergood can only be defended through a certain reading of its genesis” (73). According to this hermeneutic perspective—as opposed to a “transcendental” reconstruction of “real” goods—the story’s power to convince depends ultimately upon the addressee: “I can only convince you by my description of the good if I speak for you, either by articulating what underlies your existing moral intuitions or perhaps by my description moving you to the point of making it your own” (77). Only such a form of practical reason that can provide reasons to “move” a person to revise his or her self-understanding is considered by Taylor to be meaningful and possible. Here he proceeds from the paradigmatic case that practical reason as argumentation always has the form of convincing a person of his or her already accepted strong evaluations—in accordance with the criterion that he or she can “identify” with these values. However, by pitting this form of ethical practical reason against a form of “external” reason, Taylor neglects the possibility of a nontranscendental conception of moral-practical reason that is also to be

located “internally” in intersubjective contexts but is aimed at a *moral* justification of norms, not an *ethical* justification of values. Taylor concentrates on the question of a person’s ethical good in view of his or her identity and therefore on an ethical argumentation for the sake of this person to whom certain values—and corresponding actions—are suggested and recommended. Yet the hermeneutic-reconstructive disclosure of certain hypergoods, which is Taylor’s model for discovering the sources of modernity, fails to see the difference between those “goods” a person ought to recognize because in so doing he or she reaches a better self-understanding and those that ought to be recognized because they are required for the sake of other persons, and this on the basis of reasons that cannot be generally and reciprocally rejected. Whereas in an ethical respect practical reason suggests values a person *can* accept as the person he or she is, in a moral respect it requires action on the basis of justified norms a person *must* recognize. It does not speak in the name of “external” principles, it gives reciprocal effect to the claims of other persons; it remains addressed to persons “ad hominem” (Taylor 1993) but has a different end than answering the question of the good life.²⁷

Taylor distinguishes three axes of moral thinking: the question of respect toward persons and obligations to them; the question of one’s self-understanding of the good life (in general and for oneself in particular); and the question of one’s own dignity, what it means to be esteemed (and estimable) in a particular society (1989a, 15). In Taylor’s view, these three complexes cannot be separated according to criteria of ethics and morality; all three find their answers in the strong evaluations of a historically developed community. The first complex does however assume a special position, for it is one of modernity’s nonrejectable hypergoods to respect *all* human beings, whatever origin or skin color they may have; and that also means: whatever conceptions of the good they may have. In this case, it would be “utterly wrong and unfounded to draw the boundaries any narrower than around the whole human race” (6–7). Hence this hypergood of moral respect knows no limits: “we” believe that it is valid “for all,” and indeed not just within the culture of modernity but also in societies in which widows are burned or other human beings are sacrificed (67). This good of universal respect assumes a special importance: we consider it not only a good that ought to guide our action toward every human being but also a good that ought to guide the action of every human being as such.

Taylor brings this general norm to bear against the “racist” (7) or the “Nazi” (1993): in such an argument it is important, first, to link up with premises recognized by that person too (in this case a version of the prohibition against killing) and, second, to show that the limiting of this principle done by the person in question is argumentatively untenable. Practical reason therefore means exposing contradictions or confusions in a per-

son's view or pointing out aspects so far neglected by him or her (1993, 225). An appeal to absolute criteria is not possible here: we begin where a person stands. But even where there is no explicitly common starting point, it is possible to move a person to a position that, in comparison to the initial position, is a "more rational" one in the sense that it can be judged retrospectively as better in accordance with such immanent criteria and formal aspects as coherence and freedom from contradictions. Progress consists in an "error-reducing step." Here Taylor links up with MacIntyre's conception of rational comparisons and justified "transitions" between traditions (see chapter 4.3).

It becomes clear here, however, that it is necessary to distinguish between an ethical-practical reason of the best account and a moral-practical argument that demands reciprocity and generality. In both instances there are only "internal" criteria for a "more rational" position, but they are different: on the one hand, it is a matter of a better self-understanding on the part of person A; on the other, a matter of this person A considering the moral rights claims of other persons B, C, D, and so on. In ethical contexts, reason therefore appeals to the self-understanding of a person because he or she seems to be leading his or her life falsely; in moral contexts, by contrast, because he or she is acting falsely toward others. What a person cannot reject reasonably, "what he cannot lucidly repudiate" (1993, 209), are, on the one hand, values that the person ought to recognize for the sake of his or her own identity and, on the other, norms that the person cannot reject reciprocally or generally, whatever ethical identity he or she may have. It cannot be explained in any other way why "we" demand this *one* good—moral respect for *every* person as an "end" (1989a, 6; 1993, 227)—of *every* person, whether or not it is a part of his or her conception of the good. In this sense it is a "categorical" good that is not an ethical good among others serving as the basis for strong evaluations but the only "moral" good that obligates in a universalist sense: it therefore designates not an ethical value but a moral *duty* corresponding to a basic moral *right*.

In ethical contexts persons provide others with reasons for recognizing values that serve the end of having the addressees find their way to a life better *for them*; in a broader sense, this is the model for Taylor's entire theory, which recommends to the members of modernity's ethical identity certain hypergoods on whose basis they learn to understand themselves better. The motivation for a "transition" from one self-understanding to another is therefore ethical-rational in character. In moral contexts, on the other hand, questions of justified action *toward others* are to be answered with moral reasons that must be *intersubjectively* shareable. Here the justification for a "transition" from one form of action to another is moral-rational in character. Though moral questions refer to individual persons, they cannot however be answered solely with reasons that are valid "for

them.” Structurally, they are intersubjective in a way different from ethical questions; in communal contexts, both types of questions are answered “together” in different ways; the “final authority” for answering ethical questions is the person who has to live his or her life, for moral questions this authority is located “between” persons—without the community being limited, in principle. To express it negatively: if a person ignores ethically good reasons, he or she pays the price of a deficient self-understanding; if a person ignores moral reasons, the price is the disrespect of others.²⁸ This does not mean that in moral argumentation we do not appeal to persons’ self-understanding or attempt to convince them against this background—the reasons why a change in their attitude is called for and why a certain mode of action is required are however different.

A differentiated conception of the relation between ethics and morality cannot therefore be understood—as Taylor (1991a, 244) insists in response to objections in this connection raised by Kymlicka (1991a, 173–76)—as a defense of universal principles that are “blind” to questions of the good life, for morality is not brought to bear until persons or social practices become “blind” to the moral rights claims of individuals. Of all moralities, a “procedural” morality—provided its procedural character is not erroneously reified—is sensitive to the voices of each person, voices that must not be sacrificed to a “thick” language.

Between Taylor’s “internal” ethical conception of practical reason and the “external” conception (which he criticizes)—which assumes that there are substantive basic reasons for norms that are valid above the heads of those concerned, as it were—we must place a concept of context-immanent and, at the same time, context-transcendent practical reason that is not open to Taylor’s critique of naturalism; one that operates intersubjectively without however reducing the moral viewpoint of generality and impartiality to the ethical perspective of the first person. This theory of morality does not organize “everything around a single base” (Taylor 1989a, 76) that prescribes abstract laws and suppresses ethical values, as Taylor, like Williams (1985, 174–96), fears: moral reasons are justified *internally* in a reciprocal and general manner. Thus Williams’s thesis is to be simultaneously accepted and modified: “Practical deliberation is in every case first-personal, and the first person is not derivative or naturally replaced by *anyone*” (1985, 68). This statement is true both of ethical and of moral questions; however, the reasons that are good reasons in these contexts are to be distinguished: moral questions must not be answered like ethical questions in the first person perspective. “My” reasons must first be proved to be good reasons in a moral respect; and this proof presupposes a perspective change in discourse. Morality does not devalue or replace persons’ qualitative distinctions, it nonetheless requires that they modify these distinctions relative to the moral claims of others, insofar as it is a matter of

moral-intersubjective problems (and not ethical questions that persons must answer against the background of their identity-determining values). Persons do indeed exist “in a space of questions” (Taylor 1989a, 29), but these questions pose themselves (or are posed) to persons in different respects and require different answers. A theory of different practical contexts does justice to this complexity of the normative world. It avoids the false alternative between a one-sided understanding of “Kantian” “pure” morality and the equally one-sided absolutization of the ethical perspective. (I return to this in chapter 5.2.)

A further possible objection must be considered. Doesn’t morality according to this understanding remain form without content if it is not filled with what is morality’s concern in the first place: the *good* of each person equally? Wasn’t procedural, “sensitive” morality determined in this way? Hence, it can be neither *explicated* nor *justified* without a *formal*, nonqualitatively determined and minimal conception of the good—as the “possibility” of a free personal life for which “latitude” is needed. According to Martin Seel this formal understanding of the good constitutes the material core of morality: “The priority of the formally understood good refers to a *conceptual* priority, the priority of the criteriologically understood right designates a *normative* primacy” (Seel 1993, 232).²⁹ Moral action is therefore not “preferential” action for the sake of one’s own good, and moral justification looks for shareable reasons; but the idea of moral justification is itself based on a conception of the good that not only explicates it (hence the conceptual priority) but also includes the notion that the binding character of morality—that shared reasons are required—rests on accepting the universality of this “nonrelative” good and on insight into its necessity for each person (234). And from this there also follows in a certain sense the normative primacy of this conception of the good, which by itself pushes to overcome the particular limits of the moral community.³⁰

According to this view, morality is concerned not with one’s own good life but with the good life of *all equally*. Morality is connected not to a (substantively) determined conception of the good but to the general possibility of an autonomous life within moral limits: the morally relevant good is a general and formal good. But this—*pace* Seel—does not entail a conceptual priority of the good since this concept of the good is already morally defined in its formality and generality: the good of free personal existence is determined through the criteria of reciprocity and generality as a “moral good” whose respect and recognition cannot be denied by or to any person with good reasons. The formal, general, and “nonrelative” determination of this good presupposes conceptually the criteria of the “right,” not the other way round. The conceptual and normative priority of morality are inseparable: the good—be it “thick” or “thin”—comes into play only as that which is generally and reciprocally justified serving as the basis for moral

claims. Hence the *right* to this good cannot be limited to a certain community and has normative priority over competing conceptions of the good.

However morality is explicated—for instance, via particular concepts of the individual or social good—it imposes certain universalizing and formalizing criteria upon this explication: the criteria of reciprocity and generality, which are prescribed for all moral validity of norms and for their “reasonable” justification “between” persons. In the absence of “ultimate” reasons, the very point of morality “without a bannister” is found in this self-critical, recursive “unconditionality” of reason.

By reason of its procedural character, the principle of general justification does justice to the substantive conceptions of the good of persons in communities, without resting on a theory of the good: regarding questions of ethical self-determination, equal rights, political autonomy, and moral integrity, it refers to contexts that are filled in concretely by ethical persons on the basis of their identities, by legal persons in mutual respect for personal autonomy, by citizens in political self-determination, and by moral persons in reciprocal recognition. The practical reason of “morality” does not suppress “ethical” content; rather, it formulates principles that jointly enable individual and collective self-determination. In this complex view of different contexts of practical questions and reciprocal recognition there lies the possibility of a connection between universalism and contextualism.

Contexts of Justice

From the reconstruction of the communitarian critique of liberal and deontological theories in four problem areas—the constitution of the self, the neutrality of law, the ethos of democracy, and the conception of a universalist theory of morality—it has been seen in a horizontal respect, as it were, that critique and counter-critique in each area of the debate permit possibilities for mediation that lead to redefinitions of the conceptions of legal person, citizenship, or morality in which arguments from both sides are *aufgehoben*. At the same time, it has been seen that these possibilities make it necessary to clarify the various conceptions of the person, community, and values or norms involved—conceptions often insufficiently differentiated in the debate. These conceptions, then, have to be combined in a vertical respect. This task constitutes the main thesis of the theory of “contexts of justice” developed in the passage through the respective problems, this is, the thesis that to the four levels of the debate there correspond four different conceptions of person and community, which are indeed connected but are not however reducible to one another. They form four “contexts” of reciprocal recognition—as an ethical person, as a legal person, as a fully entitled citizen, and as a moral person—which correspond to different modes of the normative justification of values and norms in different “justification communities.” The analysis of the debate between “context-forgetful” liberal-deontological and “context-obsessed” communitarian theories has therefore led to a differentiation of four normative contexts in which persons are “situated.”

The vertical perspective helps clarify certain misunderstandings of the debate, but neither this nor the horizontal perspective can claim to gather all the arguments into a comprehensive synthesis. It permits the possibility of bringing the two sides together—*Sittlichkeit* and morality, the good and

the just—in a manner that connects the recognition of ethical identity and collective forms of life as well as substantive determinations of social justice with the validity of individual rights, discursive procedures, universal moral principles; and it does so on the basis of *one* conception of communicative-practical reason and in consideration of *different* normative contexts. These elements have to be integrated in a comprehensive, complex, and yet “autonomous” theory of justice. Therefore, just principles are ones that are *generally* and impartially justified in that they correspond in an appropriate way to the *concrete* interests, needs, and values of those affected by them. According to these principles, the *ethical* identity of persons is recognized and *legally* protected in a society, and this through *politically* and autonomously posited law within a political community of fully entitled members—law possessing a *moral* core that respects the integrity of moral persons. The thesis of the context connectedness of all justice principles thus has to be related to the diversity of contexts—from an ethical-substantive to a moral-universalist kind—in which persons are members (in a normatively substantive way) of communities, but very different ones; and from this multiple constitution of the normative world there follow different modes of reciprocal recognition and normative justification. Redrawing the map of a theory of justice in the way proposed here requires that these dimensions be connected in a *justified* basic structure of society. Here lies the ideal of a just society.

In what follows, a summary of the essential arguments on both the horizontal and the vertical levels will serve to clarify on what I base the claim to formulate, with this theory, a mediating position beyond communitarianism and liberalism (5.1). The “contexts of justice” will then be analyzed in terms of moral theory as “contexts of justification” (5.2), and explicated in terms of a recognition theory as “contexts of recognition” (5.3).

5.1. JUSTICE AND THE GOOD

From the discussion of Sandel’s critique of Rawls there follow, as has been seen, not only the distinction between ethical person and legal person but also the more fundamental distinction between different modes of justifying ethical values and the norms that claim to be generally valid—be they legal or moral norms. It is precisely the mode of reciprocally and generally justifying general norms—the thesis states—that makes it possible to do justice to the communitarian concern for recognizing particular, communal, as well as “different” ethical identities (to the latter, feminist theory attaches great importance). It is therefore a *communitarian fallacy* to infer the impossibility of any deontological legal or moral principles from the thesis of the intersubjective constitution of the self. This fallacy fails to see the difference between various conceptions of the person and relations of

recognition; it fails to see that the dichotomous opposing of “justice” and the “good” is not sufficient. Within different normative contexts, one has to distinguish various conceptions of the individual, collective, or moral-“formal” good that enjoy “priority” wherever it is a matter of ethical questions; in contexts, however, in which no shared ethical convictions provide convincing answers there is a need for norms that can be justified in a different (but also) intersubjective way. It is here that the question of justice begins.

Sandel’s critique of the liberal “unencumbered” self proceeds from the thesis that Rawls’s construction of the original position relies on an atomistic conception of the person that forms the basis of his theory of the priority of justice over the good. Hence, Sandel argues, liberal principles of law (and at the same time deontological moral principles) as well as the conception of the legal person rest on such an ontological theory of the self. This thesis, however, misunderstands Rawls’s theory in particular and the justification of universal principles in general. The level to which Rawls’s conception of the moral person refers is that of the basic structure of an ethically pluralistic society, a structure that is equally fair to all. It is limited to the “public identity” of persons as persons of law. Here persons are regarded as equals among equals; they have certain rights and duties, which they have both as Saul of Tarsus and as Paul the Apostle—Rawls also speaks of the “institutional identity” of a person. This identity differs therefore from the ethical identity of persons as biographically individuated, “unique” beings. In order to understand the complex connection between ethical persons and legal persons, one must make a conceptual distinction between them: individual rights to personal autonomy make it possible for ethical persons to develop their conceptions of the good under conditions of self-determination and fairness. As the freedom to act, legal-autonomous self-determination is therefore formal and is not to be understood in an ontological sense: individual liberty rights do not imply individualistic life plans. The justification of legal norms is not based on a certain conception of personal autonomy as an ethical “ideal” of the self-determined life—as communitarian and “ethical-liberal” theories both assume equally, but with varying evaluations. Rather, the difference between the two spheres is grounded in the different validity modes of general norms and ethical values: these values are valid for subjects against the background of their identities; they must be accepted by them as their own values. Legal norms, by contrast, raise an obligating claim to generality and must therefore rest on generally justifiable reasons and not on particular values. Only in this way can law do justice to different ethical identities and be considered *generally* justified. Law does not express a particular world of “liberal selves” that is to be created and maintained—but it does express a political-autonomous community of citizens.

The distinction between ethical person and legal person goes hand in hand with the distinction between ethical communities and the legal community. Within a legal community there prevails a form of general and equal recognition as a legal person that does not consider the person's concrete identity. In the liberal view, the fact that the legal community is not an ethical community with which a person's identity is very closely connected is not a loss but a gain; it makes possible a plurality of ethical communities within a state. In that sense the legal—"negative" freedom to act and the ethical—"positive" freedom of self-realization do not exclude but imply each other: law is the *protective cover* for ethical identity. To be recognized as a legal person means to be protected in one's ethical identity under a law of general and equal freedom. To be regarded as a protective cover in this way, law must be ethically "neutral" in its mode of validity, so that it itself does not lay down certain "values" as highest goods that cannot be reciprocally and generally justified. Nonetheless, this mode presupposes on the part of "reasonable" ethical persons the capability and willingness to recognize the threshold of generality and reciprocity and to modify their conceptions of the good relative to the legitimate claims of other persons. They do not have to downgrade their ethical "truth" to a mere "belief," but they have to reciprocally respect others' equal rights to an ethical identity. The line separating the ethical and the legal spheres is not to be understood in the sense of an a priori or a dichotomy: law can—especially with regard to (nonmoral) questions that do not come under the "strict" criterion of neutrality—take up ethical contents to the extent that they are justified. Of course, in questions that affect persons' ethical identity in a morally relevant manner, an ethical self-relativization is required *reciprocally*: restricting a form of life can be justified not with ethical, only with moral reasons. Persons have a reciprocal right to this protection.

Individual rights are therefore reciprocally nonrejectable rights to respect for personal integrity. In this nonrejectability lies their moral core, which is justified neither ethically nor in terms of natural law but intersubjectively; the core must be legally determined and institutionalized. To avoid false conclusions concerning the relation between ethics and law, one must consider the following. First, in accordance with this (procedural) conception of law neither the conception of the ethical nor that of the legal person is understood "atomistically"; the former is "situated" in "constitutive" communities, the latter in the reciprocal recognition of equal members in a community of rights and duties. Second, as a protective cover, law is a reflection of the fragility of ethical identities and does not impose a preformed identity upon the latter—a stipulation that places high demands on law. Only law that does not itself speak a particular ethical language (to which minorities would have to subordinate themselves) can satisfy these demands: ethically justified law will not do justice to ethical

identities. Law is “neutral” not in the sense that respecting the threshold of reciprocity and generality does not set limits to certain conceptions of the “good” that, for instance, bring the ethical autonomy of minorities to bear against the ethical autonomy of majorities; law is therefore not ethically undemanding. Law is “neutral” insofar as this threshold and these limits are not themselves based on ethical values. Hence, third, “neutrality” is to be understood in the sense of the principle of general justification (and of certain criteria) and not as the “neutrality of consequences” or the “neutralization” of political discourses.

This theory of the ethical neutrality of law is a critical standard for all those legal relations that, in determining what is to be legally recognized, use particular conceptions that exclude “other” identities but claim to be neutral and “color-” or “gender-blind.” Thus, like the communitarians, feminist theory criticizes the false claim of the legal person to be general where in truth this person is individualistic and “masculine”; but feminist theory departs from the communitarian critique where the latter wants to absolutize certain conceptions of the community’s good life. Here one can infer—critically, but of course not affirmatively—an ethical justification of law from a “nonneutral” effect of law. What matters is that legal norms that are exclusionary in character do not obstruct ethical self-determination (of cultural minorities too, for instance); and only law that claims to be generally and reciprocally justified can open itself to hitherto excluded claims to recognition—particular persons’ claims to *equal* recognition through law, that is. The status of the legal person remains a status of equality. Neutrality implies not equal treatment that is blind to difference but recognition of equal entitlement in a substantive sense. Because life is particular, law must be general, equal for all, and equally sensitive. In short, only as generally and reciprocally grounded law is law, on the one hand, ethically inclusive and mindful of difference and, on the other, justified in a way that legitimates its obligating and summoning character.

This connection between ethical and legal contexts calls for the expansion of perspective to include the context of common citizenship and of the democratic legitimation of law within a political community. Law’s claim to generality has to be redeemed and legitimated in political discourses—in a consensus of citizens who are authors and not just addressees of law. In contrast to a natural-law conception of the legal person’s moral core, which is reflected, as it were, in positive law, this core must itself be reciprocally and generally justified and concretely determined in a legal and political community. Moreover, legal norms must be not only justified and institutionally affirmed but also *realized* in a political community’s political and social practices in which citizens understand themselves as members of a community and grant one another the necessary presuppositions of personal and political autonomy. Legal persons are as individuals re-

sponsible *before* the law, citizens are jointly responsible *for* the law. *Citizens* create and realize the law in which (particular) *ethical persons* are recognized as (equal) *legal persons*. Ethical, legal, and political autonomy form an internal connection.

The question of the meaning of “citizenship” and “political community” opens another round in the communitarian critique of liberalism: even if it is granted that, in a justification-theoretic and a practical respect, “ethical person” and “legal person” belong to two different normative levels, and even if law’s claim to generality does not exclude ethical identities but protects them, there still remains the question of the *Sittlichkeit* that a “heap” of legal persons can create, a heap that is ethically pluralistic and whose constituents enjoy equal rights in law. Doesn’t the political community have to be an ethical community? Can liberalism realize its promise of a “social union of social unions” only if it counts on a civic-communitarian solidarity that respects and realizes general norms?

For the conceptualization of the terms “citizen,” “political community,” and “legitimacy” on the communitarian side, ethical membership in communities serves as the model; on the liberal side, the model is legal person and legal community—both viewpoints, however, fall short of the mark here. Against the background of the discussion of liberal models of political legitimacy and community (*viz.*, *modus vivendi* and overlapping consensus), of their critique by substantivist and participatory communitarian approaches, and of the debate with theories of civil society and deliberative democracy, one can formulate an alternative conception in which political integration is not understood in an ethical manner, but in which citizens conceive of themselves as part of a political whole for which they are jointly responsible. The political community is less than an ethical community but more than a purposive community for securing individual rights. Solidarity between citizens does not rest on common ethical values but consists in reciprocal recognition as fellow citizens with the (realized) right to fully entitled membership, that is, to protection against legal, political, or social exclusion.

A theory of political recognition as (a) an ethically “different” person, (b) a legal person having equal rights, (c) the “co-author” of law, and (d) a fellow citizen with the right to the equal “worth” of personal and political autonomy—such a theory is a response to the dilemma of “substanceless substance,” namely, to the dilemma of not tying citizenship to ethical-cultural (ethnic, religious, etc.) specifications and commonalities but at the same time being able to explain “substantive” political integration and social solidarity. In the political sense, responsibility has a discursive meaning and one referring to solidarity: citizens respond to and are responsible for one another and for their collective as a whole. In this sense one can speak of “political virtues.” A political, collective identity presupposes that the

citizens can identify with their political community to the degree that it recognizes them in the above-mentioned respects. Thus they can see themselves adequately represented in the self-understanding and institutions of the political community and consider themselves “part” of it. This identity has grown historically out of common experiences and conflicts, and it continues to be the object of political interpretations; it is neither a fixed substance nor completely substanceless. In contrast to the thesis that a political community needs an ethical-cultural basis of integration and reciprocal recognition, an ethical-pluralistic political community can be fully integrative only if it does *not* politically absolutize a particular ethical-cultural tradition. For it is only then that all persons can be regarded as members having equal rights and the political community can be considered a common “good.”

With reference to the question of political legitimacy, political discourses are not grasped as the ethical self-clarification of a comprehensive macro-subject or as the fusion of particular perspectives into a common will of all virtuous *citoyens*, nor are these discourses limited to “public” questions in a restricted, political-moral sense. Contrary to the view of some liberal approaches, the distinction between ethical values and general norms is not translated one-dimensionally into the separation between “private” and “public”: all questions concerning unequal social circumstances and the discrimination of ethical identities are questions of justice. But this broadening of the scope of justice does not make political discourses into ethical discourses of self-discovery. In political discourses, a public-general language of citizens must be found that gives effect to rational arguments, is open to critique, and is at the same time a common, binding language. According to the theory of “deliberative” democracy, democracy’s claim to legitimacy rests on a justified generality of consensual agreements and compromises that is (and always has to be) discursively brought about by procedures of reciprocal argumentation. These procedures exclude neither topics nor participants; they enable “public” reason, the concrete content of which is ascertained politically and jointly.

Thus, on the basis of the outcome of the first two “rounds” of the debate, the discussion of the communitarian critique of the liberal theory of citizenship, political community, and legitimacy has led to a differentiated conception of citizenship that assimilates the two previously mentioned conceptions of the person and adds essential elements. The dimensions of ethical person, legal person, and citizen are conceptually connected through law’s claim to legitimacy; the formation of a personal-autonomous ethical identity presupposes the protection of the law and therefore certain political and social participation possibilities, which in turn require full membership in a political community. Ethical, legal, and political autonomy must not be set in false opposition: ethical self-determination, legal

freedom to act, as well as political participation and responsibility are compatible beyond individualistic atomism and social monism (which does not mean that they cannot come into conflict). At this level too, the principle of general justification and the requirements of recognizing particular identities—be they individual or collective identities—supplement one another: a “procedural republic” (Sandel) is not based on the conception of an “unencumbered self.”

At the final stage of the debate, the priority of the good is asserted once more on a higher level. Principles of equal rights as well as procedures of general justification, it is said, rest ultimately on a conception of the good that is context-bound (be it in a political community or in a culture). There cannot be a conception of practical reason—or a universalist morality—that stands “above” particular, “thick” contexts.

A refutation of these objections leads, on the one hand, to the thematization of another, fourth context of the justification of norms: to the moral context of justifying strictly universal *moral norms* between persons as moral persons and members of the moral community of *all* human beings. On the other hand, it leads to a methodological, moral-theoretic reconstruction and justification of the principle of practical reason according to which practical values or norms must be justified in the respective contexts to which their validity claims refer; that is to say, it leads to a conception of practical reason that is context-sensitive but not contextualist.

The dimension of moral norms, moral justification, and moral recognition is overlooked by a communitarian theory that understands the concept of “context” too narrowly and does not adequately consider the “universal context” of humanity. Persons are not only ethical persons, legal persons, or citizens having corresponding rights and duties, they are also, as human beings, moral persons who have certain rights and duties of recognition toward “every” person in principle—rights that the concrete conception of legal person must contain at its core. It is only here that the real meaning of a categorically binding morality and that of *moral autonomy* (as a fourth concept of autonomy) reveal themselves.

It is important to see that neither the procedural conception of practical reason—which is reflected in various justification contexts of a normative kind—nor the command of moral respect and general justification is mistakenly abstract. Moral norms protect concrete persons where only the context of common humanity exists as the normative foundation, and the duty to have moral respect corresponds to the basic duty to generally and reciprocally justify moral action according to norms with a general validity claim—a duty that follows from the intersubjective-communicative “situatedness” of being human together. Moral autonomy presupposes not a “pure” realm of moral obligation but action according to shareable, reciprocally justified, and intersubjective reasons. Furthermore, moral norms do

not replace ethical values or political norms; rather, they enter into competition with them only where these ethical values or political norms become morally questionable, that is to say, where they deny persons basic recognition. The principle of general justification is context-transcending not in the sense that it violates contexts of individual and collective self-determination but insofar as it designates minimal standards within which self-determination is “reiterated” (Walzer) in a particular way in each case. Moral principles of respecting human dignity and of recognizing the duty to strictly justify generally valid norms grant moral persons as human beings the minimal comfort of a Hilton Hotel, without reducing the concrete *Sittlichkeiten* of political communities to this standard.

As a Kantian theory, Rawls’s theory rests on the principle of general justification: his conception of practical reason is explicated on a fundamental level on the basis of the “ideas” of reason, that is, the moral person and social cooperation. These serve the justification both of moral principles of equal rights and of substantive principles of social justice (for which certain additional assumptions are necessary); and in their twofold task lies the reason for the political-moral double character of Rawls’s model. Hence, with regard to “reasonable” principles’ deontological claim to priority, his theory is on the one hand too political in that it connects certain substantive presuppositions with its conception of the person; yet on the other it is not political enough, insofar as in questions of political legitimacy and social justice it does not adequately consider the context of political autonomy and that of the concrete discursive determination of full political membership.

A discourse-theoretic constructivism, formulated in connection with O’Neill and discourse ethics as an alternative to Rawls, argues instead for a recursive and discursive conception of practical reason: in the absence of objective, transcendental moral truths we cannot, and don’t have to, do without a moral validity claim insofar as this is understood as a “reasonable” claim that cannot be rejected with general and reciprocal reasons. Practical reason is communicative-vindicating, self-questioning reason—it (recursively) demands reasons on which the validity of particular values or norms rests in the contexts (and communities) in which they claim to be valid. Thus *one* principle of practical-reasonable justification refers to *different* modes and contexts of justification.

The conceptions of moral person and community implied by this notion of reason (with reference to the context of morality) are not, as MacIntyre criticizes, an illusion in their context-transcending property and are not themselves anchored in a “liberal” conception of the good. According to MacIntyre, persons can be conceived of only as ethical persons within ethical universes, each universe incompatible with any other. He himself however is forced to relativize his ethical-monistic conception of the person in

order to do justice to persons' ability to be competent members of two traditions; moreover, he must impose upon ethical contexts certain moral demands that (internally) prevent exclusion and (externally) generate a universal "moral law"; finally, he employs a dialogic-formal conception of reason insofar as justification is addressed to individuals—a "second-order" rationality (of justified validity) that is imposed upon a "first-order" ethical rationality (without determining its reasons in terms of content).

Taylor's defense of the priority of the good over the just acknowledges the differentiation of normative spheres and the idea of a universal morality but sees this morality justified in the "transcendental goods" of modern identity, in the strong evaluations that arise within modernity's ethical horizons and raise their claim to general validity only against the backdrop of these horizons. It is a sign of modernity's forgetfulness of the self and of context that it proceeds from a general and abstract conception of moral reason that does not correspond to any conception of the good and does not operate by appealing to those conceptions of the good that can be accepted as identity-determining by particular persons. Or *ought* to be accepted? In this question there is an indication of the fundamental problem of a theory that traces the moral validity of norms back to ethical values and overlooks the decisive difference between an ethical and a moral form of practical reason. In contrast to the ethical form of practical reason, the moral form has the goal not primarily of helping the addressee, through insight, to a better life but of giving effect to reasons that the addressee must recognize and respond to in order to be able to justify his or her actions to those persons affected by them. This form of practical reason is no less intersubjective than the ethical form, and it thus avoids Taylor's critique of a conception of reason that believes it can provide "basic reasons" that ignore intersubjective contexts. Yet ethical and moral contexts call for different types of reasons and justifications of these reasons: ethical values are valid for an individual on the basis of his or her self-understanding, insofar as he or she accepts them as being "important" *to him or her*; moral norms are intersubjectively valid as those norms that cannot be reasonably rejected *before other persons*.

The passage through the four levels of the communitarian critique of liberal-deontological theories has shown that from the thesis that persons are always "situated" as members of concrete communal contexts one cannot conclude that questions of law, democratic self-rule, and morality can be reduced to ethical contexts. On the other hand, it has been seen that the conceptions of legal person, citizen, and moral person, which are located alongside the ethical person, must be formulated in such a way that the abstraction that necessarily accompanies these conceptions always relates to the possibility of protecting and recognizing concrete identities and reflects the conditions of realizing the just in communities. In this sense,

communitarian critique represents an important corrective moment for liberal theory.

The analytical distinction between normative spheres, which follows from the discussion of the levels at which liberal and communitarian positions confront one another, therefore calls for a multidimensional theory of the recognition of persons in communities that is based on an intersubjectivist conception of practical reason. Its principle—namely, that values and norms are to be justified in the respective contexts in which they claim validity—does not contradict the contextuality of ethical values, legal norms, political discourses, and moral justification precisely because of the fact that at all these levels it is concrete persons who put forward validity claims and justify them in different “justification communities” (see the following section). The “priority of practical reason” implies a differentiated understanding of the contexts in which practical questions are to be answered in compliance with the priority of the ethically good, the priority of equal individual rights, the priority of what can be politically legitimated generally, or the priority of the morally right; and it implies an understanding of how these viewpoints are connected, the differentiation of which is not to be understood in the sense of a disjunction. It is these distinctions that first allow one to see to what extent law, democracy, and morality can do “justice” to the “good” (in its various meanings).

A theory of *justice* must not absolutize one of these dimensions and shape the others according to it; justice maintains the boundaries between these spheres by giving effect—in accordance with generally justified norms—to ethical identity, equal rights, political membership, and moral respect. Justice recognizes ethical persons as persons in need of protection and grants them general rights and the liberties of personal and political autonomy under the minimal standard of moral respect. In this sense one can speak of an “autonomously” justified basic structure of society. What recognition of persons in their ethical identities, as legal persons or citizens, as particulars and as equals, means concretely is left to the contexts of ethical and political communities; *that* they must be recognized as such is a requirement of justice. The person at the center of a theory of justice is not just an ethical person, a legal person, citizen, or moral person, he or she is *all* of these simultaneously in a different way: he or she is ethically, legally, politically, morally autonomous. In this conception, therefore, different notions of personal and political liberty are *aufgehoben*—notions that are stressed differently by liberal and communitarian theories.

The outcome of this debate must now be examined closely. The following moral-theoretic analysis of these four normative contexts and conceptions of autonomy, which have been obtained through a discussion of different problem levels in a theory of justice, has the task of clarifying how they can be systematically differentiated and connected together. This sys-

tematic analysis will then be supplemented by a perspective provided by the theory of recognition.

5.2. CONTEXTS OF JUSTIFICATION

In a normative respect, persons are “situated” in different contexts: they are members of different (ethical, legal, political, and moral) communities in which they are faced with practical questions that they must answer with good reasons within these communities. A theory of morality (in the larger sense) must therefore begin in intersubjective-practical contexts in order to reconstruct the different modes of validity and justification according to which “autonomous” persons act “rightly.” A closer examination of these normative spheres will show in what sense one can speak here of “justification.” This analysis is the starting point both for the discussion of possible normative conflicts *within* and *between* contexts and for a detailed formulation of the conception of autonomy. First, however, I deal with three fundamental moral-theoretic objections and problems against whose background the character of the proposed conception appears more clearly.

(a) *Three Problems in Moral Theory*

One could object, for instance, that the idea of different spheres of practical questions and answers leads to a fragmentation of the self and the normative world that no longer allows the idea of an integration of these spheres, or that the separation of different questions, particularly ethical and moral ones, absolutizes the realm of morality vis-à-vis the ethical identity of persons. This point permits two alternatives. According to the first, moral questions themselves can be answered solely on an ethical basis “for me” and not generally in the strict sense; the second says that, though ethical and moral questions can be distinguished, morality must nonetheless itself be anchored in the ethical “being a self.” Here the idea of a comprehensive moral community and of general norms is not doubted in principle, but moral obligations are grasped ultimately as ethical obligations. The discussion takes up the problem of the fragmentation of the normative world in debate with Thomas Nagel (and his suggestion for integration), examines the ethical critique of morality on the basis of Bernard Williams’s objections to deontological theories, and then explores the ethical anchoring of morality with reference to Ernst Tugendhat. These problems concern all three stages of moral justification discussed in chapter 4.2—moral justification, according to which moral *action* must be justifiable in compliance with *norms* that are in turn “reasonably” justified in accordance with the *principle* of reciprocal and general justification. What notion of reasons or norms is presupposed by this conception, and what does it mean to act “reasonably”?

(1) Under the title “The Fragmentation of Value” Nagel (1979) analyses five different values that can come into conflict with one another when a person asks him- or herself what he or she should do. He distinguishes between “specific obligations” (as a member of a family, for instance), the rights of others, considerations of general utility, perfectionist values that are to be promoted for their own sake (art, for example), and, finally, personal ends and commitments. Nagel doubts that there is a value scale according to which all values could be placed in an order of priority; neither the personal and subjective-relative ends nor the objective and “impersonal” values (of a utilitarian or perfectionist kind) have absolute priority in all practical questions.

Human beings are subject to moral and other motivational claims of very different kinds. This is because they are complex creatures who can view the world from many perspectives—individual, relational, impersonal, ideal, etc.—and each perspective presents a different set of claims. (134)

It is a question of practical judgment as to what perspective in what context is appropriate.¹

Nagel thereby relativizes his conception from *The Possibility of Altruism* (1970) according to which only “objective reasons” are good, action-justifying reasons: “Whenever one acts for a reason, I maintain, it must be *possible* to regard oneself as acting for an objective reason, and promoting an objectively valuable end” (96–97). Persons must be able to adopt an “impersonal” or suprapersonal standpoint toward their own actions so that their reasons can at all be reasons for persons, promoting objective values. Despite the partial qualification relative to subjective reasons, this conception remains at the heart of Nagel’s theory: moral justification requires recourse to objective values that are to be realized as best as possible—here the consequentialist character of this conception shows itself. Moral reasons presuppose the *objectivity* and *reality* of these values (1970, 95; 1986, 138–63).

The problematic character of this conception, which screens out the intersubjective dimension of justifying reasons, is evident in Nagel’s attempt in *The View from Nowhere* (1986) to connect the objective and subjective moral standpoints. Here he defends the possibility of an “objective” standpoint of the person who observes him- or herself and situations of moral decision “from outside.” “The basic question of practical reason from which ethics begins is not ‘What shall I do?’ but ‘What should this person do?’” (141). The objective judgment of someone who reflects from the perspective of the observer presupposes an objectivity of values that answers the question of the right and the good beyond all particularity. “Agent-neutral reasons” are reasons that are valid for every person without consideration of his or her concrete identity and designate unconditional values that are

to be promoted; “agent-relative reasons,” on the other hand, are valid for a person as the person he or she is. Three kinds of relative reasons put the hegemony of neutral reasons into question: “reasons of autonomy” (personal ends), “deontological reasons” (what one may do to others), and special “reasons of obligation” to a particular community (165). Even contrary to “objective” reasons for certain actions, these reasons can be good reasons to act differently: reasons that follow from the individual’s particular situation and special relationships to others. Here too Nagel eschews the attempt to construct a hierarchy between these reasons that would rank all practical questions; the moral task lies in integrating the personal and impersonal standpoints as best as possible. The normative world is so complex that conflicts between what is good for me and what is universally right can arise and, contrary to Williams’s (1985) objection to Kantian theories (with which Nagel agrees in respect of utilitarianism [1986, 205]), the moral-objective standpoint does not demand too much of persons in terms of self-relativization: the ability to observe oneself “from outside” (1986, 198) is a basic human ability without which persons could not see themselves as moral persons. It continues to be their central moral attribute.

Nagel’s assumption that the adoption of the third-person perspective on oneself is the only possibility for not narrowing practical reason to the ethical perspective of the first person, and his inference from the necessity of “objective” reasons the existence of objective values fundamental to morality, show that he considers “deontological reasons,” like ethical values, to be agent-relative, which does not however explain deontological reasons’ claim to universality and obligation. To explain it Nagel would have to abandon the dichotomy of subjective and objective reasons (and values) and accept *intersubjective* reasons as the basis for justified actions *between* persons. In order to put forward a claim to general validity, reasons that are valid between persons need not rest on “objective-realistic” values but must be intersubjectively “constructed”—*shared*—reasons (Korsgaard 1993, 28; Darwall 1983, 140–45). Their objectivity lies not in their “external” reality; rather, it lies in their being justified reciprocally and generally in a strict sense. Thus these reasons retain a validity “independently” of subjective motives, and are reasons “for everyone”—which is particularly important to Nagel (1970, 85; 1986, 144)—without their corresponding to a transcendent reality that must be “discovered.” Christine Korsgaard (1993) therefore argues, on the one hand with Nagel, for the distinction between normatively universal and subjective reasons (or motives), on the other against Nagel’s objectivism:

Ask yourself, what is a reason? It is not just a consideration on which you in fact act, but one on which you are supposed to act; it is not just a motive, but rather a normative claim, exerting authority over other people and yourself at other times. To say that you have a reason is to say something *relational*,

something which implies the existence of another, at least another self. It announces that you have a claim on that other, or acknowledges her claim on you. For normative claims are not the claims of a metaphysical world of values upon us: they are claims we make on ourselves and each other. (Korsgaard 1993, 51)

This conception of the practical-intersubjective construction of common values through reciprocal argumentation contradicts the conception of objective moral values and thus the possibility of consequentialist conceptions of morality, according to which acts are justified insofar as they promote as best as possible the independently definable good. Good reasons must be located in intersubjective contexts in which acts have to be justified to and for others (as subjects and objects of justification, respectively).

Nagel's thesis of the fragmentation of values must be reinterpreted in this light. This fragmentation does not reflect the heterogeneity of subjective and objective values, according to which agent-relative reasons are indeed not "inferior" reasons but are nonetheless always in competition with objective values. Rather, the complexity of the normative world corresponds to the different questions that pose themselves to persons in different community contexts. Thus questions of "specific obligations," personal ends, as well as perfectionist, cultural values are ones that pose themselves to persons as members of ethical communities and of a particular culture. They are to be responded to against the background of shared understandings and one's own identity as part of a collective identity; ultimately, each ethical person him- or herself is responsible in the ethically autonomous sense for the ethical duties and ends that are "for him or her" determinate of life. Within this framework, "ultimate values" are also ethical values that are jointly appreciated in a strong sense and are as such "valuable" (values of art, for instance). Questions of general utility, by contrast, arise mainly in political contexts, hardly ever in ethical considerations concerning what decision contributes to one's own good life. They do however have to be answered and generally justified—and this is a moral argument—in consideration of the rights of persons, be they positive-legal or moral rights. Moral questions, ones in which persons make moral demands on others, are to be answered only with strictly shared reasons; they are "objective" insofar as they cannot be reasonably (reciprocally or generally) rejected. The criteria of reciprocity and generality are essential for morality's "common standpoint"; they first explain what it means to speak of "shared" reasons.

The normative world does not disintegrate into a heterogeneous diversity of incompatible value spheres, nor is it however a singular linear order. Both *within* and *between* practical contexts there is the possibility of conflicts (cf. Nagel 1979, 134). An intersubjective interpretation of all the spheres of practical questions concerning what is good "for me," what is commanded by law, what is politically justified "for us," and what is morally

right “for all” does not assume that the answers that can be given at these levels, and particularly between levels, will be necessarily in agreement with one another. Such an interpretation does nonetheless assume that they can and ought to be in agreement. “Autonomously” integrating the different practical contexts and the obligations that persons as members of different communities have is a practical task whose possibility is neither given through an objectivity of compatible values nor put into question through an incompatibility of different objectively valid values.² Within the normative world there is no preestablished harmony and no reasons in principle for the failure of the attempt on the part of a person within the *different* contexts of *one* intersubjectively shared world to find compatible answers to different questions. Without doubt, nonetheless, conflicts within these contexts as well as conflicts between them are serious, possibly “tragic” conflicts in which good reasons may speak for different mutually exclusive actions; though the different character of contexts allows an analysis of these conflicts and of the formal criteria that “good” answers to practical questions must satisfy, the concept of autonomy would however lose its meaning if more than analysis were possible and substantive criteria could be identified for the “only correct” solution to practical problems as a whole.

On the basis of the conception of different justification contexts and of the criterion of “shareable” reasons regarding moral questions, one can point out—with Nagel and against an ethical narrowing of practical reason to the first person—that moral reasons are action-justifying reasons that “go beyond” the first person but do so intersubjectivistically and not objectivistically; hence moral justification requires that one not objectivate one’s own perspective “from outside” but expand it discursively toward others. Moral reasons therefore have a character that is “independent” of subjective motives by their being reasons *between* persons; as such, however, they remain “subjective” reasons insofar as they are justified “by me” to other persons. Their intersubjectivity lies beyond the alternative between objectivism and subjectivism. Practical reason therefore continues to be “first-personal” (Williams 1985, 68), and concrete actors remain irreplaceable and are not dissolved into “anyone”; depending on the different contexts, though any reasons I give in response to practical questions must be “my” reasons in order, for instance, to motivate me to act morally, these reasons are however in moral contexts—*unlike* reasons in ethical contexts—not already morally good reasons by being “my” reflectively affirmed reasons. Moral questions concern me in a way different from ethical ones: rather than orientation questions concerning my own good life, they are persons’ demands on me to which I must respond. The intersubjective character of moral reasons is fundamental and cannot be reduced to the ethical perspective of what is good “for me.”

(2) This conception of practical reason can therefore respond to the following objections to deontological theories raised by Bernard Williams and Martha Nussbaum. It does not accept (a) a *moral transcendentalism* according to which morality consists of “pure,” “externally” justified norms that correspond to a world of values without conflict, a world beyond life’s contingencies or “luck” (Williams 1981b; 1985, 195–96; Nussbaum 1986, 4, ch. 10). No “noumenal” or “characterless” (Williams 1981b; 1993, 158–62) self can, outside Plato’s cave and inside Kant’s Kingdom of Ends, be the legislator of moral norms beyond all particular contexts (I leave open whether Kant is to be understood in this way). Moral justification, just like ethical reflection (which Williams and Nussbaum take as the model of practical reason), remains “context-bound,” but it does require strictly reciprocal and general reasons that are “reasonable” in an intersubjective sense, not a “transcendental” one. Even without the metaphysical presupposition of a pure value sphere, the validity of moral norms rests on this claim to universality and reason. Precisely because moral norms must be able to show concretely their validity and remain dependent upon justification, they are not abstract, context-remote constructions that spring from the dream of a disengaged community of reason (argues Williams 1985, 197).

Furthermore, this conception of practical reason does not speak for (b) a *moral imperialism* according to which moral norms overrun the autonomy of persons in the other spheres, and questions of the good are to be answered only in accordance with criteria of what can be generally agreed. An “impersonal” morality does not take the place of personal relationships, as Williams (1981a) and MacIntyre (1982) fear. Ethical questions remain ethical questions, be they questions that are to be answered collectively or individually. No morality relieves persons of their responsibility for their good and for their relationships to others within their “constitutive” communities. Ethical questions remain questions within a plurality of ethical values; in this sense Williams and Nussbaum rightly point to the limits of ethical judgment concerning the good: “We know that the world was not made for us, or we for the world, that our history tells no purposive story, and that there is no position outside the world or outside history from which we might hope to authenticate our activities” (Williams 1993, 166). All practical questions remain questions in contexts without definitive answers; however, some—moral or political questions—must be answered jointly because they arise jointly. The ethical self-relativization required in moral questions is not an abandoning of ethical identity by “contextless” individuals (nor is it a self-objectivization); it is a consequence of the unavoidable relativizing relation of the self to others, who themselves have their own identities.

As already mentioned, the thesis of the possibility of conflict between competing ethical values, and conflict between ethical values and moral

norms, does not mean, first, that reasonable resolutions to these conflicts are ruled out, nor, second, that the ethical conflicts of a person and moral conflicts between persons are to be responded to in the same, ultimately contingent way. For instance, an (unforeseeable and fortuitous) special ethical success—for example, a person's success in his or her life in creating artistic values—does not represent a moral justification for the violation of others' legitimate claims and cannot compensate such a violation. Indeed, as Williams points out, ethical decisions are often to be judged retrospectively on the basis of their success; from this, however, there does not follow any moral legitimation for the action leading to this success.³ Ethical decisions—for family life or for life as an artist, for instance—are made by persons “for themselves” (though they are made together with others); yet the decision against family life must nonetheless be morally responsible in view of the consequences for others. There are no “highest” values that trump this responsibility. Ethical persons are always also moral persons who must not fail to satisfy certain criteria of reciprocal and general justification *vis-à-vis* those affected by their actions when they act as practical-reasonable persons. Satisfying these criteria does not presuppose leaving one's own ethical perspective but implies morally expanding this perspective by reasons that others bring to bear—not with regard to how I ought to live but with reference to what conduct I can justify to them. To consider in this justification whether a life for art as a “value” exceeds other moral points of view presupposes that very “eccentric” and contextless standpoint that is imputed to deontological morality. A consideration of this kind is also “one thought too many,” as Williams points out in another place (1981a, 18). Here he rightly argues that the moral standpoint would be problematic if it demanded in a situation in which only one person can be rescued from a danger that we “impartially” consider whether it is justified, of all the possible persons in danger, to save one's own wife. This is not however one of those “situations [that] lie beyond justifications” since here an ethical point of view adds something to the moral point of view and does not contradict it. If it did, that is to say, if, for the benefit of one's artistic creation or to please a person close to oneself, one did not help someone in immediate danger, one would clearly also expend one thought too many or, rather, one too few.

Finally, the theory proposed here does not defend (c) a *moral purism*: morally autonomous action in accordance with reciprocally and generally justified reasons does not presuppose “pure” motives such that the action-motivating reasons are not my own reasons affirmed on the basis of moral insight. This problem of the relation between action-justifying, normative reasons and action-motivating, subjective reasons is at the center of the debate between “externalist” and “internalist” theories. These concepts are frequently employed in different ways, which I cannot discuss here.⁴ In a

general sense, internalist theories state that practical reasons for a person to act in a particular way must be reasons that motivate this person to act in this way. Good reasons must motivate the person with insight into them to act. Externalist theories, on the other hand, assume that it is possible to recognize reasons as justified but not be motivated by them. A further reason must be added, as it were, in order to act in the particular way. It is however difficult to imagine such a reason, for if it is to motivate someone to act morally (and not just in conformity with morality), the action must be based on insight into the justification of the act. Evidently, everything depends here on the concept of "insight." Thus internalism points out that moral reasons must be able to motivate persons to act morally if they have insight into these reasons (Nagel 1970, 64; Korsgaard 1986, 11), whereas externalism points out that an "amoralist" (Brink 1989, 46) can very well have insight into what it means to be moral but is by no means motivated to be moral. Obviously, "insight" in the first sense is different from "insight" in the second: in the first it is moral insight; in the second it is insight into morality, which is not moral insight. The concept of "moral insight" means that a person acts morally by acting in accordance with reasons that can be reciprocally and generally justified; this person sees these reasons as having the best justification and is willing and able to act in accordance with them, since there are no good reasons to act contrary to them. "Reasons" are therefore *inter-subjective*: they are reasons between persons and are thus normatively valid in an "independent" way as reasons with the best justification; and they are "subjective" reasons for the individual persons, who are after all at once authors and addressees of moral validity claims—the reasons between moral persons are reasons *of, for, and between* moral persons.

Internalism emphasizes the "subjective" side of these action-motivating reasons, externalism their independent, action-justifying validity. It therefore makes sense to distinguish between reasons that *explain* an action and ones that *justify* an action; between reasons a person had for doing something and reasons to justify it (cf. Nagel 1970, 15; Darwall 1983, 28–29, 80–81). Now, in moral actions—and this is what characterizes them—the two levels must coincide: a moral action must be morally motivated; otherwise, though it conforms with morality, it is not moral. It is moral when the reason why a person acts according to certain reasons consists in the fact that these reasons are morally justified. This is the core of a morally reasonable, autonomous action, which can therefore be explained without a metaphysical concept of freedom. An action well grounded in the moral sense is an action according to reasons that cannot be reciprocally and generally rejected—that is to say, "independent" normative reasons that are nonetheless subjectively motivating through insight and do not correspond to "externally" established truths or rest

on “external” sanctions but are justified in intersubjective contexts by persons who accept them.

Internalist theories are however frequently defended in a specific version. If—following a particular interpretation of David Hume’s—we take as a foundation a conception of rationality according to which “reasonable” action is action that, on the basis of a person’s ends (grounded on desires or beliefs), best realizes these ends, then good reasons can be understood only *relative to* the ends (and desires and beliefs) that a person has. Reasons for action are thus necessarily part of a person’s “motivational constitution” (Gosepath 1992, 229) or “subjective motivational set” (Williams 1981d, 102; italics omitted). They can therefore be only “internal,” action-causing, motivating reasons that simultaneously justify and explain an action—and this with reference to the ends a person has. Reason (*Vernunft*) does not “spawn” reasons (*Gründe*) if it is not connected with the desires and ends that a person has as the person he or she is. Though reason is not the “slave of the passions” in a narrow understanding of “passions,” this conception nonetheless assumes with Hume (1978, 457) the following: “Since morals, therefore, have an influence on the actions and affections, it follows, that they cannot be driv’d from reason; and that because reason alone, as we have already prov’d, can never have any such influence.” To be effective, reason remains dependent upon the motives and values of persons; practical reasons can be reasons only for persons who can affirm them.

But this approach narrows practical questions to ethical questions: practical justification is always a justification “for me and only for me.”⁵ The reason for this lies in a particular conception of practical rationality and the motivating force of rational reasons. From the condition that, to guide actions, reasons must be subjective reasons one might infer that only reasons that “fit” a person’s motivational set can be *good* reasons. There are therefore only subjective, hypothetical reasons for action, and hence action norms are “justified” only in this sense. This inference is not however correct; for the fact that good, justified reasons can motivate when persons have *insight* into them does not mean that subjectively “fitting” reasons alone can be appreciated or are already *morally* good. Moral reasons cannot be reduced to persons’ desires: moral action is justified only if, going beyond one’s own ends, practical reflection inquires after reasons that *others* could *reasonably* bring forward against a possible action (and which I cannot reject reciprocally). And this reflection is a faculty of practical reason that, unlike a purposive-rational reflection, inquires not after means for reaching one’s own ends or—in a wider sense—after ends that are praiseworthy but after action that can be intersubjectively justified. The reasons that are, in a moral respect, good reasons must be able to answer the question Why did you do that? in a way that not only explains the action but also legitimates it.

The *willingness* to answer moral questions with reasons that cannot be reasonably rejected, and the *capability* to have action-motivating insight into these reasons, can be regarded in a wider sense as part of a person's motivational set—however, only if the concept of “desire,” which according to empiricist theories is alone action-motivating, includes the “reasonable desire” (not understood in a purposive-rational sense) to “find and agree on principles which no one who had this desire could reasonably reject” (Scanlon 1982, 111). Rawls (1993a, 82–86) therefore distinguishes between “object-dependent desires” to pursue certain ends, “principle-dependent desires” to act according to certain formal-rational or (in the moral sense) reasonable principles,⁶ and, finally, “conception-dependent desires,” according to which a person is motivated to act in accordance with a certain political ideal of free and equal citizens. In a moral respect, the principle-dependent desire is decisive in acting according to generally and reciprocally agreeable reasons; and it is not a desire, understood in the empiricist or ethical sense, to realize “my” ends but a faculty of reason according to which “reasonable” reasons motivate “reasonable” persons to “reasonable” action, without these reasons having to be “translated” into empirical, purposive-rational desires (Korsgaard 1986, 21–25). Practical reason is the capability and willingness to act with justification; practical reason is vindicating reason *in* intersubjective contexts. Only in this way is it possible to distinguish moral action from action conforming with morality and only in this way is it possible to explain to what extent we can *demand* of persons that they act in accordance with justified reasons (or can reproach them for not having acted thus). Good reasons are in the moral—not the ethical—sense reasons “for me” (and are thus “internally” motivating) and at the same time reasons “between us” (and are thus to be “externally” judged and are normatively valid). These reasons are not “automatically” action-guiding; they compete with other interests and possible special obligations. They are however action-guiding insofar as a person is willing and able to act on the basis of moral insight.

Skepticism about moral-practical reason is therefore fueled by a particular conception of ethical-practical reason and motivating “desires” that, because of the too restrictive alternative between subject-relative and objectivistic justifications of morality, neglects morality's intersubjectivity. From the claim that “ought” implies “can” it cannot be concluded that “ought” is to be reduced to “(can) will.” For insofar as the assertion “‘ought’ implies ‘can’” is meaningful (which I cannot examine here), it refers to the relation between what ought to be done and the possibility of doing it under the given contingent circumstances in the world; it does not refer to “ought” being binding only if a “willing” corresponds to it (cf. Larmore 1987, 85–90). Moral-*categorical* duties therefore assume not that a person casts off his or her ethical interests, ends, and motives but that in moral

questions (and only in these) he or she acts according to norms that can be justified reciprocally and generally in the strict sense. These reasons are then both his or her reasons and general reasons; as such they have categorical validity—which means that they cannot be meaningfully rejected by anyone—and their moral meaning consists in including each moral person in the “justification community” of moral norms.

This intersubjective understanding of moral validity and moral motivation presupposes action on the basis of motives and reasons that are not “empirically unconditional” in the sense that moral actors must abstract from all empirical conditions and interests or feelings on their own part or even that of other persons. However the Kantian determination of “pure will” is comprehended,⁷ the unconditionality of morally autonomous action is, according to the conception proposed here, to be understood intersubjectively and not metaphysically. It means that what is decisive in appraising moral questions is not ethical, self-referential motives, or even egoistic interests, but reasons that can be reciprocally and generally justified *to others*. “Freedom” from empirical conditions lies in this reciprocity and generality of justification between moral persons, who recognize and respect one another as both reciprocally responsible and vulnerable beings in need of protection. Morality lies in the *criteria* of action-justifying reasons, not in its “pure” *source*—in the metaphysical sense.

(3) There does however remain a possible objection. Though it is correct to distinguish morality from ethical questions and to understand morality’s content in terms of Kant’s categorical imperative, its justification itself (i.e., the justification of the principle of justification) is not however located in an “emphatic” conception of practical reason but in the ethical conditions of being a self—that is, in the general conditions of being a self as a member of a moral community. This is Tugendhat’s (1993a, 80, 45) objection.⁸

He tries to justify a Kantian conception of morality without recourse to a notion of practical reason by asserting that this conception is superior to competing theories and showing that it is the most plausible explanation for the moral identity of persons. In the concept of a “good human being,” who has internalized the moral ought in light of the internal sanction of moral shame (56–64), morality and ethics are connected. In this way Tugendhat attempts to avoid both a contractualist position, according to which norms are observed solely on account of external sanctions, and the strong thesis that being moral is a necessary and unavoidable condition of being a self. Nonetheless, a justification of morality can succeed, he argues, only if the internal connection between moral *justification* and social *recognition* is adequately considered.

Tugendhat’s concept of the “justification” of a conception of morality has two basic meanings. On the one hand, he begins with a particular idea

of morality according to which moral norms must meet the criteria that they can be demanded generally in the strict sense and are generally acceptable on the basis of insight—this thus rules out not only traditionalist or religious justifications of morality but also ones that locate the basis of morality in empathy, contract, or general utility. The “grammatically absolute” value expressions of the morally “good” and the “unconditional use” of the moral “must” or “ought” (37, 40) impose upon the candidates for the possible explanation of these expressions conditions that ultimately only a Kantian morality can fulfill. On the other hand, however, these *reasons* for this morality face a further dimension of justification: it must be able to state the *motives* (29, 85) on the basis of which persons are at all willing to observe this morality and understand themselves as morally “good” persons. The “grammatically absolute” use of “good” is, according to Tugendhat, an attributive use in reference to the “being good” of persons. Here lies the connection between the moral ought and subjective will: in a person’s wanting to be good. And here there is also a crucial pointer for the rest of the analysis, since moral arguments and demands on a person cannot then rest on an independent sense of the morally right but can only appeal to the self-understanding of the particular person to comprehend him- or herself morally. The moral “must” is thus doubly relativized: it presupposes an internal sanction on nonobservance, which in turn presupposes an “act of will,” namely, the will to be moral (60). The alternative, conceived of on empiricist premises, between a “must” that is “absolute” in quasi-religious terms, and a “must” that is an “ought” only as subjective will, causes Tugendhat to overlook the independent, but not absolute sense of the moral ought as that which cannot be reasonably rejected and can therefore be *mutually* demanded.

This hypothetical⁹ justification of being moral has problematic consequences for his attempt to prove the Kantian theory, in terms of content, to be a plausible conception of morality and to explain the moral “ought” better than alternative conceptions. Insofar as the *normative* validity of morality is dependent upon the will to understand oneself in a particular way, arguments for morality in general and for being moral in particular remain oriented to the “well-being” and the “prudential” reflection of an acting person (89). But these arguments ultimately mean that moral action is commanded for the sake of one’s *own* well-being and cannot therefore be reciprocally *demanded* of a person. Here it is evident that morality’s (subjective) validity “for” a person is to be distinguished from its (normative) validity “vis-à-vis” a person: morality is valid not only when a person has already accepted the sanction connected with its violation (such that, if persons did not accept this, we would have to advise them for their own sake to understand themselves in such a way that they are ashamed of themselves for certain actions); rather, it is valid precisely because a person acts not

only “for him- or herself” but *must* consider in his or her actions the claims of *others*—those possibly affected. Neither can this “must” be traced back to an ultimate, transcendental sanction that forces us to be moral, nor is it dependent upon an internalized sanction of hurting my self-understanding: the concept of sanction does not play a role until the question of the observance or nonobservance of moral norms arises, and not already in the question of *why* someone ought to recognize others morally or *what* action is commanded or forbidden and ought to be penalized with sanctions. Sanctions—indignation and, correspondingly, shame—follow the violation of the morally right, and therefore the validity of the latter cannot be dependent upon the existence (and antecedent acceptance) of certain sanctions (cf. Habermas 1993b, 47). This internal connection between validity and sanction (Tugendhat 1993a, 95) is a legacy of contractualism, which makes moral obligation dependent upon an antecedent act of will and cannot give any reasons as to why this act is *commanded*, namely, for the sake of others and not for one’s own sake. A particular action ought to bring sanctions in its train because it is immoral; it is morally commanded not just when it brings (internal or external) sanctions in its train. This does not mean, it should be remarked, that moral action (unlike action in conformity with the law) does not rest on inner moral motives or is not connected internally with accusations of guilt by others and oneself (in the “inner dialogue” that represents conscience).¹⁰ One must respect oneself as a moral person, be able to “look oneself in the face”—however, respect for others is commanded not for the sake of one’s own face. That would mean an “instrumentalization” of the other (Wingert 1993, 248), which is not compatible with a morality of equal respect. Sanctions are more or less legitimate and “reasonable”—and for this evaluation we need “independent” moral standards of the right and the commanded, and indeed not primarily with reference to *persons* but with reference to action-justifying *norms*.

On the one hand, Tugendhat understands moral validity relative to what is “good for me” (1993a, 90); on the other, his basic critique of alternative theories of morality is that they envision such a condition. Thus he criticizes the restriction of moral obligation that accompanies an ethics of empathy in that it has recourse to a “feeling,” which according to Tugendhat is not universalizable in the moral sense. Such an ethics knows no “common conception of being good” (183). Contractualism, on the other hand, knows no “moral sense” whatsoever; it does not really justify obligations morally; it is more a “quasi-morality” that is at best advantageous for persons but is not binding: “What is justified is a kind of being good relative to each individual” (77). This does not lead to a shared idea of being good, according to which the action of every “good” person corresponds to the categorical imperative. “When I say that my reasons for raising certain

moral claims (that this or that is good/bad) consist in it being in my interest to raise such claims (good for me), then in so doing I have retracted these claims" (1993b, 45). Moral reasons, so it seems according to this statement, cannot be "my" reasons alone. Yet this understanding contradicts the consequences of his own conception.

True, the reasons that are good reasons (for actions) *within* Kantian morality are not located at the same level as the reasons that speak for morality *as such*, since the latter precede the former, according to Tugendhat. The seed of morality must fall on fertile subjective ground. However, the will thereby remains a constant companion of the moral ought (1993a, 62), so that both levels dovetail. For, Tugendhat says, autonomy means in the sense of the freedom to act that persons can decide for or against morality (97, 160). Moral persons never internalize morality to such a degree that it deprives them of autonomy; they do not "have to" understand themselves morally. Thus the basic practical reflection continues to be whether it is "good for me" to be "good"—a decision that is one for or against sanctioned conduct, for or against a "conscience." Yet this voluntarist conception of "wanting to have a conscience" (as one could say paraphrasing Heidegger), of "adopting a conscience," does not do justice to the involuntariness of conscience, which "makes itself felt" whether desired or not. This question is not however central; even though one cannot decide on "developing" (60) a conscience—it just makes itself felt—it is still left up to the person to follow this "call." Rather, what is important is that, whatever social identity a person has and wants to have, he or she is as a moral person unavoidably an addressee of validity claims raised by others, and the author of claims addressed to others. Though it does not follow from this that the person necessarily "feels forced" to respond to these claims and to respond in a certain way (or to justify his or her own claims), it does nonetheless follow that the absence of this feeling—or of the will to understand oneself morally—does not invalidate the criteria of a "reasonable," morally justified, and reciprocally demanded (and demandable) response to these claims.

Connecting ethics and morality in the concept of the "good human being" is questionable in another sense: what is the relation between "self-esteem" and the moral "respect" of others and by others? The thesis of the immanent connection between morality and "ego identity" states that to be esteemed "as a human being" as such, and not as a particular human being with certain attributes and capabilities, is essential for self-esteem and for being able to affirm oneself (1993a, 59, 311).¹¹ It nonetheless makes sense (cf. Tugendhat 1984, 137; Wolf 1984, 100–111) to distinguish between being ethically esteemed as a "valuable" human being and having moral respect as a moral person, and hence to regard *self-esteem* as being dependent upon whether a person is evaluated and esteemed as an indi-

vidual member of an ethical community on the basis of shared values. Moral respect of and by others, on the other hand, corresponds to persons' *self-respect* in being morally autonomous; it is both narrower and more comprehensive than the form of recognition that constitutes self-esteem: it refers to respect for human beings as human beings. The idea of "wanting to be affirmed" in the form of wanting to be approved by an impartial moral observer (Tugendhat 1993a, 311) oscillates between an ethical and a moral evaluation of the human being considered "good." For, on the one hand, to be able to explain self-esteem substantively, this form of recognition ("wanting to be affirmed") must involve recognition within a particular community and relate to the latter's social norms—to a *particular* meaning of "good" (58) as a member of this community. On the other hand, to be moral in the sense of a "morality of universal respect" (345), this form of recognition must relate to the unlimited moral community of all human beings (83–84). But then "wanting to belong" to a particular society can no longer be the motive for moral action, which can of course require going beyond a particular society and criticizing it. Social esteem and moral self-respect would move apart and the person would see him- or herself recognized in the eyes of a "larger" community, as George Herbert Mead says (to which I return in chapter 5.3). Not primarily wanting to be socially recognized, then, but having moral self-respect motivates action according to norms that leave all social particularity behind, as Tugendhat says (315); it would not be the "worth" but the moral "dignity" (in the Kantian sense [cf. Vlastos 1984]) of a human being that would make him or her into an author and addressee of morality. Then, however, a social community of recognition has become a moral community of justification.

Hence, it is only conceptually within Kantian assumptions that Tugendhat can argue for an expansion of the moral community to include all human beings; he cannot argue for it on the basis of his theory of recognition. That the restriction of the community, and not its universalization, needs to be justified (1992a, 330) corresponds to the principle of general and reciprocal justification, according to which a moral norm must consider "all equally" (1993a, 317) and so, in accordance with its claim to validity, does not allow any restriction. Moral norms are therefore to be distinguished from other norms not primarily by means of a concept of sanction but through the criteria of strict generality and reciprocity. These norms *correspond to* a particular form of self-respect, but they cannot be *justified* in a theory of social recognition. When it is a question of morality, justification and recognition must be linked in the correct way: the fact that certain (subjective and social) bonds are necessary so that persons can understand themselves morally and can act morally does not lead to the subjective or social conditionality of moral validity. To assume this would mean falling victim to a "genetic fallacy," as Tugendhat criticizes it at another

point (202). As will be seen, a theory of contexts of justification is in a position to be linked to a differentiated analysis of relations of recognition; yet the justification itself of morality does not rest on certain identity-theoretic or anthropological assumptions. The basic moral question is not Who do I want to be? but What can I justify morally? That persons must be able to bring their actions into agreement with their (ethical) image of themselves does not mean that they can justify actions only on the basis of this image and its central values and ideals.

The principle of practical reason, which follows “recursively” from the absence of “ultimate” foundations and the inevitability of moral claims between persons, is not “rammed into us as an absolute must” (97). Practical reason is a faculty for providing reasons, having insight into them, and acting in accordance with them; it is the faculty we ascribe to morally responsible persons and to which we appeal—and have to appeal—when we address questions of action that affects others. Respecting moral persons means recognizing them as authors and addressees of validity claims—it means considering them morally responsible and behaving responsibly toward them. To be moral in such a way is a *task* of autonomous persons, and no anonymous objective reason that speaks and acts through them can relieve them of this task.

It is now necessary to look more closely at how the intersubjectivist theory proposed here distinguishes various contexts of justification, including different values and norms with various validity modes, which refer to different “justification communities.” This theory leads in turn to a complex theory of practical obligations and a theory of four forms of *autonomous*, justified, and self-responsible action as an ethical person, a legal person, a citizen, and a moral person. From this standpoint, some of the issues mentioned above—for instance, the question of normative conflicts—can be discussed more precisely.

(b) *Practical Justification and Autonomy*

To “situate” the concept of autonomy in intersubjective contexts and to subject it to a fourfold differentiation presupposes having an integral preliminary concept. According to it, persons as actors are in a practical sense “autonomous” self-determining beings when they act consciously and with *justification*. As such they are responsible for their actions: they can be questioned with regard to the reasons on the basis of which they acted. As *responsible* persons they are *responding* persons, and we expect of them that they have considered their reasons for action and can justify them. In this sense, autonomous persons are reasonable in terms of practical reason: they have reasons for their actions that they can justify to themselves and can communicate and justify to others, so that these reasons—under certain (still to be determined) circumstances—can be shared.

Under what circumstances do “my” reasons have to be “general” reasons? Doesn’t it contradict the meaning of self-determination to understand autonomous action in this sense as justified action? A differentiation of “contexts of autonomy” must respond to this objection and show in what practical questions autonomous answers have to rest on reasons for which a person must be able to be responsible—by him- or herself alone, with others, or before others (and before which others). Different forms of “positive” and “negative” freedom can therefore be distinguished,¹² ones that have already been discussed in the preceding chapters: the *ethical autonomy* of persons in respect of their (good) life (and the validity of ethical values), the *legal-personal autonomy* of legal persons (as addressees of the law), the *political autonomy* of citizens (as authors of the law), and the *moral autonomy* of persons as authors and addressees of moral norms. As will be seen, different dimensions of practical responsibility correspond to ethical self-realization, personal freedom to act, political self-legislation, and moral self-determination. None of these concepts can raise the claim to be the sole legitimate representative of autonomy; it is necessary to differentiate them in order to avoid false opposites and to see how they harmonize and come into conflict with one another. The constructive task of integrating these forms of autonomy is required in a double sense: every person must achieve this “autonomously” for him- or herself, and within the basic structure of society these forms must connect in a manner that does not sacrifice one dimension for another. Here lies their importance for a theory of justice.

“Autonomous” persons ask themselves the questions What ought I to do? or What is good or right for me / for us / generally? in different contexts. And these questions demand answers that can be justified within the particular communities in which persons as individuals are members (in different ways). A discourse-theoretic conception of autonomy and normative validity must differentiate these contexts in order to show what practical questions presuppose what form of universalization for their answer, and not to refer practical questions as a whole to an “unlimited” justification community. If one recursively follows the logic of the justification of action-legitimizing values or norms by reconstructing the contexts of justification in which validity claims are raised, there then emerges the perspective of an intersubjectivist theory that is neither particularistic nor universalistic in the wrong way. A theory that approaches the matter in this manner and distinguishes different more or less comprehensive justification communities does not assume a strict separation of value spheres (see the discussion of Nagel above); it inquires only after the criteria that values or norms must meet in order to be valid in certain contexts. Furthermore, it must consider the irreducible “subjective” element especially in ethical problems of “my” (good) life (which Williams underscores) and in legal

persons' freedom to act. Here too, questions of validity and genesis are to be distinguished, but this time not in favor of morally "unconditional" validity but (for example) with regard to ethical responsibility for one's own life: even though ethical questions arise for me as a member of ethical communities and have grown out of this context, I alone, "as the final authority," am responsible for ethical decisions.

The following analysis of different modes of justification concentrates on the validity dimension of values and norms. Here I restrict myself to the basic systematic points that go back to conceptions and arguments developed in the preceding chapters on ethics, law, democracy, and morality. And to supplement and complete this analysis of practical justification and autonomy, I examine different forms of recognition in the subsequent section. Despite their complementarity, the perspectives of justification and recognition have to be distinguished methodologically. On the one hand, the validity claims of values and norms are indeed connected in a complex manner with persons' claims to normative recognition. Ethical persons, for instance, are recognized and esteemed against the background of jointly shared ethical values; and to respect a person as a moral person means recognizing him or her as the author and addressee of moral validity claims. On the other hand, however, validity claims, which are raised between persons, are not *per se* claims to the recognition of persons' identity (cf. Habermas 1992c, 189–90); they can have different contents and ends and may affect structures of recognition only indirectly—even if in normative questions of a legal-political kind, for example, it is frequently a matter of what it means to recognize persons as equally entitled, full citizens. The methodologically primary orientation to the validity criteria of values or norms permits a differentiated analysis of the various contexts of justice, to which certain, justice-relevant forms of recognition nonetheless correspond. What is decisive is that this orientation enables a more precise clarification of the question of which claims to recognition—as claims directed toward others—need to be reciprocally justified and can be justified, and justified in what sense. Criteria in this connection—which are necessarily formal but not "contextless"—cannot be drawn solely from a theory of recognition.

(I) ETHICS

Ethical questions are questions of the good life of a person as a member of particular ethical communities, with whose history the unique life history, the narrative of the self—its past, present, and future—is connected. "Connected" does not however mean "identical," even if the identity of a community is (partially) constitutive of a person's identity. A communally constituted identity can change, but it cannot fall out of contexts; there is no radical choice of self, but there is a choice of conduct toward oneself

and toward others. Here it is important to speak of ethical communities in the plural: to be simultaneously part of a love relationship, of a family, and of communities like religious or ethnic communities requires ethical-integrative capabilities on the part of ethically autonomous persons. There is not just *one* “constitutive community” that determines a person’s identity. Intersubjective constitution does not therefore exclude ethical autonomy, and ethical autonomy is for its part an autonomy *within* communities. Ethical persons consciously define themselves through membership in communities that embody certain values and allow persons to have certain roles that they recognize for themselves as being part of themselves. Ethical questions inquire after who and what I am, who I have become and want to be, as the person I “now” am. They are questions concerning the orientation I have in “my” world, which is not just “mine” but also the world of others. Ethical questions are questions of orientation to which a person him- or herself *together with others* must *respond*, but ultimately he or she *alone* is *responsible* for the answers.

No community can relieve ethically autonomous persons of the responsibility they have for the ends and values that define their lives. Insofar as they are ethically autonomous, persons are in a position to give reasons for their plans of life as well as “to form, to revise, and rationally to pursue” these plans (Rawls 1980, 525). This does not imply that they pursue linearly through their lives a detailed, foreordained plan of life or an ultimate (or, in the metaphysical sense, “highest”) telos. Their biographical “narrative” (MacIntyre), whose co-author they are, develops according to a “plot” that a person seeks to endow with temporal “meaning”; this narrative includes the co-authorship of others, the influence of luck, and ruptures, which must be retrospectively and prospectively harmonized through interpretation. To live one’s own life with understanding and meaning is a constant hermeneutic task for the person, who does not “possess” his or her identity in the atomistic sense, but to whom it nonetheless “belongs” more than to anyone else.

What is justified in an ethical respect? Two things. On the *subjective* level I justify “my” life decisions to myself and to those who belong to the core of my identity; they are important to me for they tell me how they see me—who I am for them. I share with them a particular ethical world that forms the framework for strong evaluations without which I cannot understand myself. Ultimately, these others do not however make my life decisions for me; I myself must be able to identify with everything belonging to my identity. I must still be able to say “I” to me. Accordingly, ethical justification means: I must be able to face and explain myself. I justify myself to myself and to others against the background of values important to us; but they are important *only* because each individual person considers them important: their validity does not have categorical force. The central difference

between ethical and moral validity—and argumentation—is that in ethical argumentation a person can only be *advised* or given the recommendation to regard certain values as being important to him or her (see chapter 4.4). Here no moral ought sentences are formulated that raise a claim to reciprocally and generally nonrejectable validity—even when these “values,” which, say, a friend recommends to me, are “transcendent truths” claiming generality. They do not become an ethical truth for my life until I identify with them, until I understand myself through them. Ethical values are considered justified answers to the question of the good life only if they are anchored in a person’s self-understanding and have become a constituent of his or her qualitative identity.

In a *community-relevant* respect, ethical justification means that a community with which individuals identify seeks to answer the question of the good “for us” on the basis of a common self-understanding. Members of a community constituted by ethical values have to find common answers to practical questions that spring from new problems, without breaking the continuity of the self-understanding. Justification then means that *we* determine jointly how we understand ourselves, what is compatible with our identity. Ultimately, however, this too is a question that is directed at the self-understanding of individuals, namely, at how they understand themselves as members of this ethical community. The thesis of the intersubjective constitution of the self must not lead here to the view that ethical communities are themselves subjects that reflect independently and decide for their members. Communal ethical justification also remains dependent upon ethically autonomous persons. The collective identity of an ethical community and the individual identity of members are therefore interwoven in both respects: answers to ethical questions must be compatible with both dimensions, but ultimately we must be able to assume responsibility for them individually. What matters here too is to overcome the alternative between atomism and social monism and to understand the phenomenon of intersubjectivity correctly: autonomous persons are intersubjectively constituted persons, and their autonomy is an autonomy “with” others, but they remain autonomous persons. Only as such can they understand themselves and be esteemed and recognized in communities as individuals.

The validity mode of ethical values is simultaneously subjective and communal: a value is valid when it is identity-determining for me as part of an ethical community. The reasons supporting its validity are reasons that appeal directly to my self-understanding as the person I am—in the communal relations that are constitutive of my identity. I cannot observe these relations “from without,” but I can criticize them “from within.” I can raise and answer ethical questions in no other way than by referring to what I can identify with. The validity mode is: *this is good for me* as the person I was, I now am and would like to be. A value is justified because it endows my

life with *meaning*, contributes to my *good life*. This meaning is disclosed to me through others, but it is of greater significance to me than to others. The good for a person is the good for the person who he or she alone is—it provides him or her with a place in the historical and communal world. Just as the ethical community is not a universal, comprehensive community, the language of the ethical is not universal either. Ethical sentences distinguish values as “good” and derive from these values certain virtues, dispositions, and ways of action, which have their place only within a social practice, the narrative of a community.

Ethical values obligate ethical persons as members of communities in that these persons “feel” obligated; and, on not doing their ethical duties to the family, to friends, or to others, they would find their lives deficient. Self-esteem, which is constituted in ethical relationships, would be hurt if we did not live up to the ethical expectations that others have concerning us (see chapter 5.3). As has already been mentioned, these obligations have not been adopted by a resolution that is free in the “detached” sense; we “grow,” as it were, into them, but of course we adopt them consciously. We are obligated in the innermost core of ourselves: one would not be the person one is, and wants to be, if one did not act in the ethically commanded manner. The problems that arise when different ethical expectations placed on a person—for instance, as a family member and as a friend—come into conflict can then be responded to on the basis of one’s own self-understanding, insofar as no moral questions are involved. Here a person asks him- or herself what is “really” important to him or her, even though this search for a “deeper” self-understanding and for “stronger” evaluations must not be understood in the sense of a self-transparency where one discovers one’s own “core.” The “authentic,” the “true” self is, as Taylor (1992b, 66) says, always also an interpreting *creation* of a self and encompasses overcoming social conventions or hitherto favored role interpretations. In the process a person cannot cast off the “horizons of significance” of a cultural-ethical language or existing bonds to others or emotional dispositions, habits, and character traits. To do “justice” to them is the task of an “authentic” self-understanding of a person who can “abide by him- or herself.” It is too strong a thesis to claim that this value constellation given to ethical reflection is, as Taylor (1992b) believes, a constellation of ultimate values of “a larger order” (89) that transcends human striving (35, 41), so that in the final analysis it is not our prerogative to determine what is “really” important to us. True, ethical autonomy consists, generally speaking, in choosing the good, and in every society or culture there are certain value standards for what is considered “good.” These cannot however claim to have an “objective” character in the sense that a life is necessarily an ethically “bad” or alienated life—but it certainly could be—if it does not correspond to these values fully or partially (which is in turn

a question of interpretation).¹³ For, first of all, value standards of the good are changeable; and, second, the value constellation of modern societies is of itself pluralistic and the source of incommensurable values. The fact that ethically autonomous decisions evolve in shared contexts of value and depend upon a value-related affirmation by others is compatible with a plurality of ethical communities and value interpretations—a plurality that can no longer be assimilated into a comprehensive and synthesizing language of values that is ethically *binding* for persons (be it in a society or within a culture).

In ethical questions, therefore, ethical communities are justification communities; and they are these, on the one hand, in questions of the common self-understanding of a collective integrated through shared values: the response to the problem of the good “for us” must be given jointly and be able to stabilize the existing collective identity—or the ethical community ceases to be such a community. On the other hand, ethical communities are also justification communities in questions of the good “for me”—which must always also be answered in questions of the good “for us.” Not only in their genesis are the reasons on the basis of which I decide to lead my life as a meaningful and valuable one dependent upon those other persons with whom I share (to varying degrees) my life; these reasons are also dependent upon other persons in respect of their validity, albeit in an indirect sense: other persons must be able to regard these reasons as “commendable.” *Who* these others are who have the “authority” to judge my ethical reasons as good or bad is itself, however, an ethical question. Here, unlike in the case of moral questions, there is no special audience prescribed; it might be a person or a friend or another particular ethical community (and is usually a combination of these). Ethical persons are dependent upon affirmation by others, who on the basis of the identity of the person concerned—and not on the basis of external values—can judge whether he or she is acting meaningfully; they are a constituent of this person’s life. This judgment of course presupposes that the person regards these others as ethically “significant” and understands him- or herself as a member of this ethical community. No “ultimate” reasons can lead the way out of this hermeneutic reciprocity when we are dealing with questions of the good. A person him- or herself must, like no one else, be able to live with the reasons he or she regards for him- or herself, together with others, as ethically justified.

Persons are therefore to be called *ethically autonomous* when they are in a position to answer meaningfully and with justification the question of their good on the basis of a reflection on their communally and value-dependently constituted identity. They act according to “second-order desires” (Frankfurt 1971), which they consider valuable—for instance, as a part of “comprehensive doctrines” (Rawls). They consciously identify with

such values because they consider them valuable, not because they “cannot but do so.” Ethical decisions are “reasonable” if they endow life with meaning *for a person*, if they form a person’s past, present, and future as well as his or her bonds and roles—relations to the world in general—into a narrative unity that does not have to be oriented by a future, linearly reachable telos; nor does it have to be without ruptures, insofar as they remain identifiable as radical changes in *one* life (cf. Honneth 1995b, 269–70). This meaning must be intelligible *for others* in a general respect so that a person him- or herself can regard it as meaningful; in a particular respect it must be acceptable and of value to the communities that “constitute” a person’s identity and are recognized by him or her as an ethical “authority.” At least to this degree, an ethically “thick” language must be intelligible, and ethical reasons must be “shareable” reasons. In this sense they are open to critique,¹⁴ to which an autonomous person must be able to respond even though he or she remains the “final authority” on the life for which he or she is responsible.

(II) LAW

As individuals, legal persons are also normatively responsible members of a community, but in a way different from ethical persons: whether as Saul of Tarsus or Paul the Apostle, a person is a member of the legal community and a person of law; each person must obey the laws and has certain rights as such a person. Ethical values are valid in respect of the particularity of a person, legal norms in respect of his or her attribute of being a “person” as such: they enjoy general and binding validity. They are not constitutive of identity; rather, they constitute the “outer” framework of “negative liberty” that both enables and limits, in the form of a “protective cover,” the positive liberty of self-realization. Persons of law do not have to identify with these norms, but they must come to terms with them: these are the norms of reciprocal respect that persons have to grant mutually and bindingly in order to enable social cooperation with legal certainty.

Legal norms are not justified by and through legal persons; lawmaking has this task and, if law wants to redeem its claim to being generally valid (and that means valid for every person as an addressee of law), must constitute a general justification by the citizens as the authors of law. The “basic norm” (Kelsen) or “secondary rule” (Hart) of law, which endows it with general legitimacy, must satisfy this requirement (in whatever concrete form it comprehends it). “In the validity mode of law, the facticity of the state’s *enforcement* of law is intertwined with the legitimacy-grounding force of a procedure of *lawmaking* that claims to be rational because it guarantees liberty” (Habermas 1996a, 28).¹⁵ It is a demand of practical reason on the validity of law that legal subjects as political citizens be authors of the law and that general justification be guaranteed in procedures of lawmaking.

“Legal person” and “citizen” therefore refer to each other but are nonetheless different in a normative respect: the concept of person of law is connected only in democracies with that of “full citizen,” and here there are also persons who are legal subjects but are not fully entitled citizens (who as permanent members of a legal community should not however be denied political rights to participation). Citizens are responsible *for* the law, legal persons are responsible *before* the law. At the level of legal person, “justification” thus means that persons must justify their *actions*, and this with reference to the “lawfulness” of these actions under the terms of established law. Reference to one’s own conception of the good, to what is politically correct, or to what is morally commanded do not count here as reasons, just reference to the law. Legal obligation means assuming responsibility for one’s own actions under the terms of established law. Legal norms refer to “outer” action and consequently leave the motives for (lawful) action to people’s discretion. Law is a “coercive” framework: the coercion to act lawfully is a coercion supported by outer not inner sanctions. This coercion does however presuppose “legal consciousness” in the sense of respect for others as equally entitled legal persons.

Legal-personal autonomy therefore refers to the legally granted liberty of persons to be self-responsible, accountable actors in different social spheres regulated and stabilized by law. As long as a person moves in this sense within the legal framework, he or she does not owe anyone *any* justification for his or her actions, and here lies the “liberating” element in this conception of autonomy. Law nonetheless expects of a legal person that he or she respect the legal personality of all, and thus their equal right to an identity “of their own.” This “negative” conception of autonomy does not thereby *describe* what it means to be autonomous in a “positive” sense, it designates a *right* to positive autonomy (cf. Hill 1991b, 48). The “reasonableness” required of legal persons is however normatively demanding: legal autonomy presupposes not only reciprocal respect and tolerance as well as mutual legal duties but also accountability and responsibility for one’s own actions.

The concept of legal person has a “moral,” a “political,” and an “ethical” dimension. The *moral* dimension accounts for the content of the natural-law protection of human dignity, in that legal persons are guaranteed basic rights that persons must grant one another; rights to personal autonomy are rights that can be justified with reciprocal and general arguments. In this sense, the recognition of basic rights—formulated in positive law—to respect for persons’ integrity is a moral demand (see chapter 2.4). The *political* dimension accounts for the content of the positivistic counter-theory that law must be the positive law of a community and cannot be understood as a duplicate of natural rights. This does not however release law from the procedural-normative requirement to base its factual claim to

validity on a mode of general justification—in procedures of consultation and of lawmaking. Correspondingly, law has an *ethical* dimension not because it presupposes and embodies a priori certain values, but because citizens' ethical claims, needs, and interests enter the procedure of lawmaking, insofar as they can be justified with general reasons and can rely on general norms. Because procedural law is not value-bound from the outset, it is open to particular claims of citizens to be treated as equals. Moreover, Klaus Günther (1993, esp. part 4) has demonstrated to what degree law's claim to procedural impartiality extends into the context-sensitive, impartial, and discursive application of law.

Legal norms are generally justified in a different way than moral norms, namely, as positive-legal norms of a politically *limited* legal community (and not the universal community of all moral persons), which can in turn form a plurality of ethical communities. This possibility opens up a spectrum of potential conflicts between legal norms, on the one hand, and ethical values, political ends, and moral norms, on the other. The validity of a legal norm ("this is legally permitted or forbidden") can collide with an ethical conviction ("this is not consistent with my beliefs"), with a political end ("this ought to be regulated differently"), or with a moral norm ("nobody may demand this"). Legal persons have the obligation to obey the law and to assume responsibility for their transgressions. And in this case it is possible that a legal person refers to ethical, political, or moral reasons (and duties normatively superior in his or her view) in order to justify disregarding his or her legal obligation. This is an unavoidable problem for persons who exist equally in all four normative contexts, without the forms of community and obligation being identical. Legal persons do not surrender their identity as ethical persons, citizens, or moral persons at the entrance to a legal community; they continue to be enveloped in these duties and responsibilities. Legal systems envision different guidelines as to how one can proceed in normative conflicts (cf. Greenawalt 1987, part 4). This gives rise to questions of civil disobedience and conscientious objection, which must be distinguished in respect of their motives and ends.¹⁶ Ethical reasons for refusing to obey the law refer to values that are constitutive of a person in his or her ethical identity—values such as religious beliefs—and appeal to the legal community to recognize not indeed the truth of these reasons, but their existential significance to the person laying claim to them. This is a claim to the recognition of difference, which is however a claim to equal recognition insofar as an appeal is made to general insight that it is unreasonable to mutually expect the observance of a particular law under given circumstances. The unreasonableness consists in the fact that abandoning the ethical conviction, which obeying the law would entail, would mean abandoning one's own identity. In such a case a legal community must ask itself whether this ethical claim can be rejected or recognized for

moral reasons (and not merely out of political considerations). The recognition of religiously motivated exemptions from military conscription is such a case.

Cases of this type must be distinguished from politically justified resistance to law (civil disobedience). Here citizens appeal to their fellow citizens as authors of the law to change certain laws because they discriminate against some citizens—that is to say, they cannot be defended with general arguments. Even if it is here a matter of an ethical community (for instance, an ethnic minority or a socially discriminated group or form of life), that does not constitute an ethical justification for resistance, for one argues here not with ethical but with political reasons—principles, standards, and practices that are valid in a political community but are either one-sidedly formulated or one-sidedly applied. Established law's claim to generality and legitimacy is thereby put into question. In democratic constitutional states such objections are aimed at deficiencies in the lawmaking procedure's required generality—resistance is thus the demand for realizing the democratic principle of general legislation (cf. Maus 1992). For that reason, this kind of opposition is to be articulated in political discourses and not in discourses concerning the application of law in the narrow sense. But also in the case where a general law is applied only selectively (be it by the executive or the judiciary)—for example, when racial discrimination is practiced by institutions of the state even though it is legally prohibited—resistance to the practice of law is politically justified.

Finally, there can be morally motivated resistance to law (another form of civil disobedience): persons speak here not primarily as ethical persons on the basis of “their” values, but as members of the community of human beings. It is not ethical values or political principles of equal treatment that are the basis of the argument, but moral precepts that a legal community must not violate, not in respect of its own citizens or “foreigners,” or in respect of succeeding generations. Moral persons then speak on behalf of the speechless or the nameless, the victims of legal decisions that, for instance, run counter to the long-term legitimate interests of humanity. In such cases, law must deliberate on how to evaluate the lawbreaking in consideration of the motives; the political community, in contrast, must ask itself whether these objections do not perhaps give effect to moral norms that cannot be ignored by any political community. Issues of nuclear energy and weapons of mass destruction are such questions of long-term responsibility; more immediate are questions that concern, for instance, the observation of human rights within a legal system.

(III) CITIZENSHIP AND DEMOCRACY

As fully entitled members of a political community, citizens are persons with individual-negative, political, and social rights. As citizens, persons are

not only addressees but also authors of law—Ingeborg Maus (1992, 216) speaks of the “personal union of bourgeois and *citoyen*” in the explication of sovereign citizenship. This does not of course mean that citizenship is not a legally guaranteed status or that there is a legal obligation for citizens to engage in political action. It does however mean that there is a difference between, on the one hand, a person’s being responsible *for* the law as a citizen together with all other citizens and, on the other, a person’s being responsible *before* the law as a legal person. In comparison to ethical or moral autonomy, these two dimensions of autonomy are therefore combined in a particular way: here the concepts of addressee and author of norms are differentiated within *one* community (insofar as the said personal union exists). This points to the internal connection between law and democracy and the concepts of legal person and citizenship. While persons as legal persons are obliged to assume responsibility within the framework of law for their actions and to justify themselves, as citizens they themselves must justify to one another the legal norms under which they live. As citizens they assume responsibility not only for their own actions but also for the political community—this is what *political autonomy* means. In political discourses, politically autonomous citizens owe good reasons to all those who belong to this political community. Political responsibility means being, as part of the community, responsible to one’s fellow citizens and “responding” in discourses, finding a common language. Moreover, political responsibility has a further dimension: the responsibility for their actions that members of the community assume jointly vis-à-vis third parties (whereby different levels of indirect responsibility have to be distinguished in a temporally differentiated respect).

Citizens understand themselves not only as legal persons who live in a legal community but also as members of a political-historical project to which they feel obligated to the degree to which it lends expression to certain principles they consider worth supporting—vis-à-vis themselves, their fellow citizens, and third parties. This does not mean that the “nation” is an ethical community; but a political-collective identity is the self-understanding of a particular community even when it is essentially based on moral principles of reciprocal recognition and embeds these in a concrete context. The political community is a communal good with which all citizens are charged—and the standard according to which the claim to being a “community” must be measured is the inclusion of all citizens. A political community stands or falls with this claim.

The validity claim of a political norm (“this ought to be valid for the political community because it is in the general interest”) can be redeemed only discursively; the generality of the norm must be verified before it can become a legal norm. Only this discursively established generality can support law’s claim to legitimacy and obligate citizens *politically*. It can then be

expected of citizens that they obey the law as *their* law, not just as established law. Political obligations are self-imposed obligations (cf. Pateman 1985, ch. 8). At the level of citizenship and democracy, “justification” therefore refers primarily to the reciprocal justification of norms that are to be generally valid for the political community; it refers to the autonomous self-legislation of citizens.

As communities of persons who are always also moral persons, political communities have moral duties to respect morally other persons and communities not belonging to this political community. These duties refer to norms of international justice, which place certain conditions on the legal order of a political community—the question of the right of asylum is such an instance. It is a right that political communities must grant moral persons insofar as they have lost the minimum of legal protection that every person needs for maintaining his or her moral integrity. Here the interests of the political commonwealth meet the limits set by the moral commonwealth of all human beings. The duty to “help another when he is in need or jeopardy” is, according to Rawls (1971, 114), a “natural duty” of moral persons.

(IV) MORALITY

This notion of a commonwealth of all human beings brings the discussion to the characteristic features of moral questions. Here the question What ought I to do? poses itself not primarily as the question of who I want to be and what is good for me, nor as the question of what the law commands, nor as the question of what is in the general interest of all citizens, but as the question of what is *morally* justified, of how one ought to act as a “human being.” What is morally valid must be valid for all moral persons as human beings. Every moral person has the duty to *all* moral persons (and that means to *each one*) to defend the action-guiding norms he or she holds to be justified with reasons that cannot be rejected reciprocally (by “concrete” individuals) or generally (by all the members of the moral community). As such they are generally “shareable” reasons. *Moral autonomy* therefore means acting according to norms that are valid generally in a morally unrestricted sense. They cannot be contested with good reasons; their validity is unconditional, categorical, and universal. This procedural-discursive formulation of the Kantian concept of autonomy does not however require of moral persons that they refrain from moral action until the strict generality of validity has been established “once and for all”; it simply requires that the norms asserting, This is valid for all human beings, be able to “redeem” this validity claim before all—and that means before every concrete person in view of a moral problem. The moral validity constituted by the fact that something cannot be reasonably rejected is a universal claim that is not located over persons’ heads but corresponds to the necessity of the

basic moral recognition of persons as such to whom one must justify oneself reciprocally. That the community of all human beings is the justification community in moral questions is not of “abstract” but of concrete moral significance in the sense that no one may be excluded from this community, and good moral reasons must be able to prove themselves at all times to be moral reasons. Morally autonomous persons respect themselves and others as authors and addressees of moral validity claims; moral responsibility means recognizing every person’s basic right to reciprocal justification. As a member of the moral community, he or she is a moral “authority.”

There is therefore no opposition between the grounding of norms and the justification of actions, which would ascribe the former to the context of the legitimation of law and the latter to the context of morally universalizable maxims in situations; nor is there a need to assume a strict separation between the justification and application of norms within morality.¹⁷ The autonomous justification of moral actions in contexts relies on the fact that reciprocal *and* general reasons speak for the correctness of an action: the element of reciprocity fulfills here the function of observing the veto right of moral persons as “concrete” individuals, while the element of generality guarantees the universality of the action-justifying reasons and connects the reciprocal acceptability of certain *modes of action* with general *norms* in such a way that good reasons must in principle consider the normative veto right of *all* possible moral persons. The claim to the moral justification of an action implies the claim that it can be justified in the light of morally justified norms: on the basis of general and not just restrictedly valid reasons. The reasons that speak for moral actions must therefore be *at the same time* reasons for general moral norms. What is morally commanded (and justifiable) must correspond to an ought sentence that can be generally formulated and justified. Even if the justification of a moral action might appear to be a matter between two or more concrete persons, the reasons that justify an action *morally*—and not just by way of a compromise or an arrangement—are not such a matter. Actions claiming to be morally justified must not only *not* violate moral norms, they must be entirely justifiable on the basis of these norms and be able to stand up to possible moral objections.

Just as the justification of actions cannot be separated from the question of the justification of norms, norm justification and norm application cannot be strictly separated either—if one bears in mind the two criteria of reciprocity and generality. The same reasons considered to be the foundation for moral norms that cannot be reasonably rejected must be able to justify moral actions *concretely*. In accordance with their validity claim, action-guiding and action-justifying norms rest on reasons that must prove to enjoy not only general but also concrete reciprocal justification in action situations. Thus the validity basis of a norm already bears in itself the cri-

teria for a nonrigorous application that seeks to avoid unjustifiable consequences—consequences that would contradict the justified validity of the norm itself. In the context of moral justification, the reasons justifying norms and actions *equally* are put to the test: the *criteria* that justify moral actions normatively and norms as action-legitimizing are fundamental. They tie together grounding and application in the concept of justification. To see this connection between actions, reasons, and norms means to understand moral validity neither too concretely—solely oriented toward restricted reciprocity—nor too abstractly—primarily oriented toward universal generality (*universale Allgemeinheit*). The universality of a norm is not a “bad universality”; moral justification demands respect for each individual and for all persons as authors and addressees of validity claims. Moral universality is a “reflective” not a “subsumptive” universality. In that sense, moral autonomy—the autonomy of reasonable and justifying persons—requires moral judgment, which seeks to justify concretely the morally right precisely because of its claim to universality.

That moral judgment has a context-sensitive and a context-transcending element has been underscored by Arendt in her interpretation of the Kantian concept of the “broadened way of thinking” as part of the *sensus communis*. According to Kant, the universality of a judgment presupposes that our thinking be not only “unprejudiced” and “consistent” but also “from a universal standpoint” (Kant 1987, § 40). In the course of her concern with the case of Eichmann, Arendt came across the problem of judgment, namely, to demand of a person to judge morally in a situation in which the “mores” or laws of a political community require of this person that he or she carry out immoral duties and obey immoral laws.

What we have demanded in these trials, where the defendants had committed “legal” crimes, is that human beings be capable of telling right from wrong even when all they have to guide them is their own judgment, which, moreover, happens to be completely at odds with what they must regard as the unanimous opinion of all those around them. (Arendt 1983, 294–95)

Kant’s specification of reflective judgment seemed to be helpful here: in consideration of the concrete, to come to a universal concept. But Arendt’s attempt at explaining judgment as a joint political activity among citizens was not adequate with regard to Eichmann’s problem; just as inadequate was the notion that only the observer of historical events could pass *ex post facto* a universally valid judgment.¹⁸ Nor was it enough to attempt to distinguish “thinking” normatively as a dialogue with oneself and as a response to the authority of conscience, and, accordingly, to highlight Eichmann’s inability to think critically (Arendt 1971). For there was a need for a “ban-nister” in a world *without* reliable ethical standards, a need for moral reflection that gave effect to the voices of the victims condemned to silence

and public invisibility. Kant's explication of the *sensus communis*, which all human beings as human beings possess, as "a power to judge that in reflecting takes account (a priori), in our thought, of *everyone else's* way of presenting [something], in order *as it were* to compare our own judgment with *human reason in general*" (Kant 1987, 160; italics added except in the phrase "as it were")—and thus as a "broadened way of thinking" that adopts the perspective of all possible victims of actions—appeared to Arendt to refer ultimately to what is truly "human" in the capacity to judge. "It is by virtue of this idea of mankind, present in every single man, that men are human, and they can be called civilized or humane to the extent that this idea becomes the principle not only of their judgments but of their actions" (Arendt 1982, 75; 1978, 271). A "crime against humanity" is a (moral) "crime against humankind"; it means failing to carry out the moral duty to recognize every human being in his or her moral integrity as a representative of humanity as such and to regard him or her as an authority to which one must justify oneself. To judge morally means regarding, as a human being, other human beings as members of the comprehensive community of all human beings and behaving toward each one here and now in a way that can be justified with general reasons. That is the meaning of "reflective" judgment, which does not subsume the particular under the general but equips the particular with the authority to demand generally justified reasons for modes of action. The contrast between a context-sensitive *phronesis* and a universalistic judgment is misleading here: it is precisely in the element transcending concrete social standards that there lies the moral element of respect for other concrete persons with whom one knows one is connected within a common "context of being human."¹⁹ Thus understood, moral universalism is a vindicating not a decreeing universalism.

The problem of moral judgment points to the more fundamental question—one I will deal with presently when I consider *all* four contexts of justification—of how a coherent theory of practical judgment is possible in view of the plurality of normative spheres. For this it is essential to distinguish between judgment *in* one of the said dimensions and judgment *between* them. Persons must be able to judge at what level a practical question poses itself and what it means at this level to find an answer that can claim validity. Here, judgments in contexts and judgments between contexts are connected to one another in a complex manner, for many practical questions are problematic by reason of the fact that they represent conflicts between these spheres.

It is therefore important to consider what a justified answer to a practical question consists in: who must be able to accept it and what counts as a sufficient reason. To the question What ought I to do? there are ethical answers (do this because you can best identify with it and can justify yourself

to yourself as the person you are or want to be), as well as legal (do this because it is lawful), political (do this because it is conducive to the general interest), or moral answers (do this because it is morally commanded). It is obvious that all these dimensions come together in the ideal case; in the nonideal case it is essential however to decide what answer a practical question *demand*s. And this demand is an intersubjective demand: it is the others who demand an answer to the question Why are you doing this? Actors must ask themselves (and are asked) how they can justify themselves. To that extent, the faculty of judgment is indeed a subjective faculty, but judging itself is a form of intersubjective justification. Yet others cannot relieve acting persons of the question of how to decide between the claims of different justification communities. Here lies the irreducible element of the *autonomy* of persons. With regard to problems that affect different spheres, they must *first* ask what, for instance, ethical, legal, and moral duties it is essential to do, in order *then* to ask how these are to be weighed against one another. First a person must know what duties conflict and then ask which dimension is the more fundamental. Creon says, “and if any holds / A friend of more account than his own city, / I scorn him” (Sophocles 1994, vv. 181–83), to which Antigone responds, “Nor could I think that a decree of yours— / A man—could override the laws of Heaven / Unwritten and unchanging” (vv. 453–55). The “tragedy” accompanying the disintegration of Greek political and ethical unity (which Hegel highlights in the *Phenomenology of Spirit*)²⁰ cannot be *aufgehoben* by the proposed distinction. This proposal does however allow a differentiated perspective on practical conflicts within and between the individual contexts of justification. It shows that persons are *simultaneously* members of (usually various) ethical communities, of a legal community and a political community (the latter two largely coinciding), and, finally, of the comprehensive moral community of all human beings; from this simultaneous membership there follows the possibility of criticizing one of these communities in the light of the others. This analysis shows, finally, what *criteria* are the ones on the basis of which practical questions must be answered in different contexts; that is, what reasons—in a formal sense—are good, responsible reasons in these contexts.

The analysis also makes possible a differentiated view of the problem central to the controversy between liberalism and communitarianism, the problem of the *priority* of the good or the right: in moral questions, the priority of the right “predominates,” in ethical questions the priority of the good. An ethical answer cannot be given to a moral question, or rather: every answer must be justified in a certain way. In the spheres of law and democracy, therefore, the good and the right have a particular place; here, however, the priority of equal rights prevails, on the one hand, and the priority of what is generally justifiable, on the other. Thus, in none of these

contexts is the intersubjectivity of the “situated” self or its connectedness to community neglected—not even where the priority of morality is asserted.

Against this background one must differentiate the thesis of the normative, tragic fragmentation of the practical world—according to which there is no all-embracing “formula” (Berlin 1969b, 169) for the order of values or no external standpoint that could reconcile (cf. Williams 1993, 162–67) us with the world—in two respects. First, many practical questions can be determined as ones that justifiably belong in one of the contexts and are not located between them. Even then, especially in ethical questions of the good, the world of possible values is pluralistic and “unordered” in the metaphysical sense, and a person may face a decision in which equally good reasons (or equally bad ones) speak for both alternatives. Decisions are “tragic” not because human beings are doomed to choosing from a totality of “objective” (and incompatible) values (a thesis that owes its existence to a value-metaphysical legacy), but because in a situation they might be forced, in a sense, to abandon a part of the identity they have had until now. This possibility does not of course rule out a “relatively” good solution to an ethical conflict (one that might retrospectively turn out to be the “only correct” decision).

Second, conflicts between normative spheres (cf. Antigone’s conflict) are not necessarily irresolvable conflicts in the sense that they admit of no “correct” answer (in a nonobjectivistic sense). Thus ethical or political considerations that are themselves unconnected with moral duties cannot provide any “good reasons” not to act morally. In a conflict between ethical commitments and moral duties (see the discussion of Williams’s example above), a mixture of ethical and moral points of view (helping a person close to oneself) rather than another moral point of view (helping a stranger) represents in certain circumstances (if only one person can be helped) a good reason to act according to ethical considerations; but ethical values (art, for instance) cannot outweigh moral responsibility toward others. That the decision for “my” good life restricts the life of others in a manner that cannot be justified reciprocally makes this decision into a moral and not primarily ethical question, and it therefore requires the consideration of moral criteria. It is first and foremost a person him- or herself who must “be able to live” with ethical decisions; in the case of moral decisions, however, those persons affected must also be able to live with them. The *plurality* of ethical values is not an argument against the possibility of *one* morality but an argument for it, for the justified foundation of the common life of ethically different persons. Between the different levels, therefore, there can be *practical* disparities that make it impossible for a person in a situation to recognize or to do the “right thing.” The thesis of a *conceptual* and thus necessary disparity between these levels is however

too strong (see the discussion of Nagel above). What one “owes” to oneself, to persons “close” to oneself, or to others as such, cannot be determined by a general formula, nor is it in principle indeterminable.

A theory of the normative world can register only the dimensions of responsibility and the (formal) criteria of good reasons that persons have to consider; it cannot predetermine *how* they should do this specifically. In this openness lies the scope for persons to “determine” themselves in the normative world. This world does not however disintegrate into incompatible value spheres: the theory’s ideal continues to be persons who are autonomous in *all* contexts.²¹ Being members of different justification communities, persons accept—or mutually present to one another—the autonomous connecting of ethical, legal, political, and moral responsibility vis-à-vis themselves and others as the central practical task. One would call such individuals responsible, autonomous in a comprehensive sense, and reasonable in the practical sense. To this demanding concept of responsible persons there corresponds the concept of a responsible society that makes their practical existence possible (and is itself made possible by it).

The task of integrating different spheres of autonomy therefore presents itself in various ways both to individuals in particular and to the basic structure of a society as a whole. With regard to the former, it must be emphasized that the demand directed at persons to integrate ethical, legal, political, and moral autonomy is itself a normative demand. Persons can be ethically (or legally) autonomous without understanding themselves as morally responsible “moral persons” or as politically responsible “citizens”; even if under social conditions of reciprocity one is to assume that persons see their good life connected in a comprehensive sense with being recognized by others and with recognizing others, the unity of the good and the just is one that must be established and reciprocally demanded ever anew and is not itself ethically commanded in the name of a “deeper” or “higher” good.

The latter—the integration of different contexts within the basic structure of society—leads to the question of *justice*: principles of justice protect ethical autonomy by means of rights to personal self-determination; moreover, they represent procedural principles and political rights to the political self-determination of citizens as well as principles of social justice, which help realize personal and political liberty. In addition, they must satisfy moral criteria of the recognition of persons. A conception of justice is itself “autonomous” and justified as a conception of practical reason if it combines these contexts of justice. Such a theory lies beyond the question of the priority of the ethically good or the morally right; it integrates the priority of reason as well as an intersubjective perspective on the “contexts” of person and community in which one can speak meaningfully (and crit-

ically) of the priority of the good, individual rights, the generally justified, or of the morally right.

Of course, such a theory of justice also integrates these contexts as “contexts of recognition.” From the moral-theoretic explication of the justification question as seen from the *performative* perspective of persons who must redeem validity claims before and within communities, it follows that at these levels persons, as members of (different) communities, are *recognized* and recognize themselves and others. The analysis of the different justification communities—which is based on a conception of justifying, practical reason—therefore points to different relations of recognition. Their analysis is *not*, however, of theory-vindicating, but of explicative importance; it supplements and explains the idea of normative contexts and registers phenomena of recognition—and especially phenomena of the lack of recognition—to which a theory of justice must be conceptually sensitive.

5.3. CONTEXTS OF RECOGNITION

Not least because of the diversity of the ways he employs it in his writings from the *System of Ethical Life* (1802) to the mature system of the *Encyclopaedia* (1830), Hegel’s concept of “recognition” (*Anerkennung*)—and especially the idea of a struggle for recognition—has been the object of numerous interpretations that have attempted to make this concept, which is central to his practical philosophy, fertile for reflections on theories of subjectivity, morality, and society, as well as on the philosophy of history. Proceeding from Fichte’s concept of “demand” (*Aufforderung*), Hegel connects the idea of self-relation mediated through others with the doctrine of the state of nature and the development of law from out of the struggle for the recognition of individual normative claims—a struggle that can be resolved only in a state of law in which individuals are reciprocally recognized as equally entitled subjects and on the basis of which other forms of political and social recognition develop.²² In this approach we find the core of the idea of recognition: the qualitative self-understanding of a subject develops through recognition (and affirmation) by other subjects, which in turn presupposes recognizing these subjects as equals. All subjectivity is “constitutively” related to reciprocal intersubjectivity—and is so at different levels of the relation of the self to others.

As Axel Honneth (1995a, part 1) shows, Hegel’s “original insight” (Habermas 1974, 146)—that of explaining the formation of *sittlich* forms of generality and of self-consciousness through the mutual recognition of and by others—leads in the early writings (especially in the *System of Ethical Life* and in the *First Philosophy of Spirit* in 1803–4 [*Realphilosophie*, I]) to the theory of a dialectical mediation of individuality and generality at different

levels of intersubjective relationships (love, law, *Sittlichkeit*); whereas in the Jena Lectures on the Philosophy of Spirit in 1805–6 (*Realphilosophie*, II) the levels of intersubjective recognition are already determined as “moments” within the comprehensive movement of absolute Spirit back to itself (as finally executed by Hegel in the *Phenomenology of Spirit* in 1807). This determination in turn leads to a reinterpretation of the intersubjectivity of ethical-general consciousness in the direction of a substantive-objective generality of Spirit, as carried out by Hegel in the *Philosophy of Right*. Through this step of substantializing objective Spirit and of completely mediating subjectivity and objectivity in absolute Spirit, Hegel “suppresses” the idea of an open and unfinished intersubjective constitution of “universal consciousness.”²³

This is a step fraught with consequences, as can be seen in the debate between liberalism and communitarianism. Hegel’s formulation of the alternative in the conception of *Sittlichkeit*—“either we start from the substantiality of the ethical order, or else we proceed atomistically and build on the basis of single individuals,” whereby the latter option is *geistlos* (without Spirit) (Hegel 1967, 261 [addition to § 35])—leads to the dichotomy between atomism and substantialism, which does not seem to permit a third option: namely, a conception of intersubjectivity that allows for a view of different forms of community in which persons are both independent, autonomous individuals and “situated” community members. The “constitutive relation” between individual and collective identity is to be understood as a *reciprocal* relation, not a unilateral or substantialist one. The critique of atomism in moral theory and in the theory of political community is not doomed to an intersubjective monism (of community); it is precisely the concept of recognition (with or against Hegel) that generates the possibility of connecting reciprocity and generality with the nonsubsumptive recognition of individuality—the possibility of combining identity and difference without absolutizing one side. The point of the concept lies in the nonreductive mediation and dynamic development of “individuation and socialization,” as Habermas (1992c) says following Mead, who seeks in his theory of symbolic interactionism to explain the intersubjective (not one-dimensional) constitution of the self through linguistically mediated recognition by other subjects (see Honneth 1995a, ch. 4).

In what follows I do not discuss the model of recognition with reference to its multifarious dimensions in Hegel (or beyond him). Instead, I argue that the concept of recognition makes it possible to interpret the “contexts of justification” as “contexts of recognition”; this enables a differentiated view of different forms of the practical *relation-to-self* (recognition of oneself), which at the various levels correspond to relations of *being recognized* by others and of *recognizing others*. This analysis leads to a distinction be-

tween different forms of individuality and of community connectedness in a subjective-intersubjective respect.

In the debate between liberalism and communitarianism it was seen at various places that the concept of recognition offers conceptual possibilities that meaningfully mediate both positions. With reference to Sandel's critique of the "unencumbered self," for example, it became clear that his alternative of the "constituted self" cannot adequately explain the possibility of distancing reflection and individual identity, since it remains bound up with a one-sided understanding of constitution. Intersubjective constitution and ethical recognition do not however rule out ethical autonomy. At the second level too, that of law, it was seen that the recognition of persons as ethical persons and members of ethical communities must be distinguished from the recognition of persons as legal persons, with the former nonetheless being legally protected through the latter. Third, the significance of "citizenship" in a pluralistic society could be explained on the basis of the various dimensions of the recognition of ethical difference and legal, political, and social equality. Here, especially in connection with social justice, the "primary good" (Rawls) of self-respect enjoyed by the political community's fully entitled members played a central role. Finally, it proved to be necessary to consider a fourth dimension of reciprocal recognition: recognition as a moral person beyond all membership in particular communities. "Recognition" therefore means reciprocal recognition as an *individual* and a *communal being* in all these spheres, which are linked to one another but must not be confused with one another. If the communitarian thesis of the intersubjective constitution—or more generally, of the situatedness—of the self and the thesis of the community connectedness of law, democracy, and morality are taken seriously, all attempts to understand "intersubjectivity" or "community" one-dimensionally will come to nothing.

The perspective provided by the theory of recognition demonstrates how the concepts of the theory of justice are anchored in social and subjective life. This methodological expansion of perspective accommodates Judith Shklar's (1990) demand that every theory of justice—and especially a theory of "contexts" of justice—be able to appropriately consider phenomena and (subjective or collective) experiences of *injustice*. Put positively, this means that the theory must make clear what forms of recognition a just society has to guarantee.

Honneth's interpretation of the struggle for recognition, which connects up with the early Hegel and Mead, is the most comprehensive attempt to distinguish the various stages of reciprocal recognition that develop in a dialectic of conflicts about the reciprocally granted recognition of claims to autonomy and individuality. To these stages there correspond—in a positive respect—different relations to the self and—in a

negative respect—different experiences of recognition denied, which drive each attained level in the struggles for the recognition of equal rights and unique individuality beyond itself. In this perspective it is possible to distinguish the stages of *love*, of mutual recognition as persons of *law*, and of the *solidarity-based* recognition of individuality; a person's self-confidence, self-respect, and feeling of self-worth (or self-esteem) are constituted at these stages (Honneth 1995a, ch. 5; 1992a, 195–96). To these modes of positive recognition (and self-recognition) there correspond modes of disrespecting identity claims: disrespecting the bodily or legal integrity of persons or the value of their forms of life. A reformulated concept of *Sittlichkeit* must therefore include universal rights as well as consider forms of the solidarity-based recognition of particular identities in the light of shared values, so that “subjects can assure themselves of the social significance of their individual capacities” (Honneth 1995a, 87). Society as a whole is thus the authority to which claims to the recognition (esteem) of an individual life's value in its particularity are directed. A *sittlich* form of recognition has the task of connecting the openness of the horizons of possible personal autonomy with the existence of particular and limited horizons of common values within which every person can esteem him- or herself as a valuable and particular person in his or her chosen life.

The differentiation between (self-) respect and (self-) esteem that is at the center of Honneth's distinction between “law” and “solidarity” has already been addressed (chapter 5.2). It designates an important difference regarding what it means to recognize a person in a general sense, a sense due equally to all persons, and to recognize a person as a particular individual with particular capabilities. We respect all persons in an equal way (and without gradations) because they are persons, but we esteem a person in a particular way because he or she has a “personality” that embodies certain values that we consider estimable (cf. Spelman 1978). To esteem a person as the person he or she is means of course not only that we esteem this person as a special embodiment of a value that seems essential for a good character, but also that this person him- or herself accepts this value and understands him- or herself accordingly. The person's feeling of self-worth—his or her self-esteem—must be constituted by this value. David Sachs's (1981) distinction between self-respect and self-esteem thus binds self-respect to attributes that one has in common with all human beings. One can therefore never have too much self-respect, but too little self-respect can lead to abandoning oneself. One can, however, be more or less convinced of one's own worth; too much self-esteem means overestimating oneself, whereas too little means underestimating one's achievements and capabilities. In Darwall's (1977) view, a form of “recognition respect” that is due to persons as persons and is therefore morally required can thus be

distinguished from an “appraisal respect” that constitutes a positive appreciation of a person’s character traits.

The distinction between appraisal respect and recognition respect for persons enables us to see that there is no puzzle at all in thinking both that all persons are entitled to respect just by virtue of their being persons and that persons are deserving of more or less respect by virtue of their personal characteristics. (1977, 46; cf. 1983, 150)

Here it is evident that conceptions such as those of MacIntyre’s, that a person can conceive of him- or herself solely as an ethical person and be recognized only as such, fail to see the dimensions of other forms of recognition.

With regard to the question of the determination of contexts of the reciprocal esteem and respect of persons, the methodological difference between Honneth’s theory of three forms of recognition as necessary conditions for successful self-realization—which taken together form the conception of a posttraditional type of *Sittlichkeit*—and a theory of contexts of justice—which correspond to different contexts of the practical justification of values or norms—does however lead to important differences in content. The methodological difference points again to a basic problem in the controversy between deontological theories of morality in the Kantian tradition and communitarian models closer to Hegel. Can a theory based on a notion of practical reason that stresses (at the level of the theory of validity) a procedural mode of justifying norms get a clear view of anything other than universal norms alone, that is to say, the conditions of the self-realization of persons as a whole and not just their autonomy as moral persons? By means of the formal definition of the good, Honneth’s model of a conception of *Sittlichkeit* based on a theory of the good and “successful” life (see 1995a, 172–75) avoids giving normative preference to the specific values of a particular community and tradition; yet it links up with the critique of the one-sidedness and incompleteness of deontological conceptions. According to Honneth, the theory must develop its normative concepts and standards from within, as it were, from the (in particular, negative) experiences of concrete individuals; only in this way—with the help of empirical theories—can the theory develop a sensorium for “the social conditions under which human subjects can develop a positive attitude towards themselves” (1995a, 169).

The theory of different “contexts of justice” escapes, however, this critique of deontological theories by showing to what extent an appropriate distinction of conceptions of person, community, and autonomy—conceptions not limited to morality—corresponds to an analysis of the justification modes of values and norms. One thereby identifies conditions of justification that are not blind to persons’ concrete claims and needs: in the dif-

ferent contexts, the justification of general norms always relates to the claims of concrete persons—for instance, in the question of the legitimacy of law and especially in questions of social justice. The normative distinctions between different conceptions of person and community correspond (as it were) to different practical “relations of justification,” which are not to be understood as being abstract in the wrong way: they are contexts in which persons demand *reasons* for existing nonreciprocal relations. They are thus also, and above all, contexts of social conflicts about justice, which can be described at least partially in the concepts of struggles for recognition—for instance, recognition in the basic sense as a moral person or in political contexts as equally entitled citizens. To be relevant to social theory, however, this description is dependent upon empirical theories.

Nonetheless, the central methodological point is that these analyses of relations of recognition have the character of a more extensive explication, description, and supplementation of the proposed theory of justice’s conceptions of person and community; they do not have the function of justifying these conceptions. They are conceptions tailored to (the contexts of) questions of justice and are therefore not, in the sense of Honneth’s approach, aimed centrally at a universal and comprehensive theory of recognition—developed in the genetic perspective—or at a “formal theory of the good.” For two basic reasons, such a theory of invariant structures of being a self could not bear the normative burden of justification for a theory of *justice*: since it rules out substantive conceptions as being a priori prescribed and binding, it cannot explain the criteria as to *which* justice-relevant claims of persons directed at other persons or communities (in various contexts of, say, social or moral justice) are justified; nor can it explain the *generally* (and not ethically) obligating character of justice norms without the idea of “reasonable,” reciprocal and general justification. The conceptual *sensorium* for claims to recognition cannot be connected with *criteria* for the evaluation of these claims without a conception of practical justification: insofar as it represents the foundation of justice claims, the good must show itself to be “reasonable” and justifiable (see chapters 4.4 and 5.2); the concept of justification must have methodological priority in a theory of justice.

Against the background of this methodological difference, two important content-related differences to Honneth’s theory concerning questions of justice stand out. The first pertains to the context of the “respect,” the second to the context of the “esteem” of persons.

Although “posttraditional” societies, on the assumption of which Honneth proceeds, are characterized by *legal* structures that essentially incorporate universalistic *moral* principles, it is nonetheless important to distinguish between the respect (*Respekt*) of legal persons and the respect (*Achtung*) of moral persons. Terminology is not central here, though in

German there is a lexicographical difference between *Respekt*, which suits the distanced recognition of legal persons, and *Achtung* in the Kantian sense, which refers to the moral recognition of persons who are the autonomous authors and addressees of moral validity claims. The recognition of persons in the form of respect for their “individual autonomy” (Honneth 1995a, 109–10, 114) is thus to be distinguished according to whether a person’s moral autonomy or legal-personal autonomy is respected. In one case, respect is morally commanded, and it is required to respect the person as a moral “authority” even if *no* actionable rights command this respect; in the other case, respect is commanded in accordance with established law, and it is a person’s “accountability,” in the sense of his or her “negatively” defined freedom to act, that is respected. In one case, it is expected of persons that they show themselves “worthy” of moral autonomy; in the other, it is left to the respected persons’ own discretion how they live their lives and how they avail themselves of the latitude granted by these rights. Finally, the self-respect constituted by reciprocal respect is, on the one hand, the self-respect of a person who is morally respected and respects others morally and, on the other, the self-respect of a person who has actionable rights vis-à-vis others and may exercise them (cf. Honneth 1995a, 120; Feinberg 1980; Wildt 1992b). They correspond to different forms of relation-to-self and different relations to others. (I return to this.)

Autonomous persons are normative members of both a concrete legal community and the comprehensive community of human beings. This postulate links up with an interpretation of Mead’s “I” (which can be construed in different ways [see Honneth 1995a, 86–87]) according to which the concept of the “I” designates not only the spontaneous creativity of the self pushing beyond the communally constituted “me,” but also the actual moral authority for criticizing an existing community by turning to a “higher” or “larger” community (Mead 1962, 167–68, 199): “A man has to keep his self-respect, and it may be that he has to fly in the face of the whole community in preserving this self-respect. But he does it from the point of view of what he considers a higher and better society than that which exists” (389; cf. 271–72). In this reflection on the “wider commonwealth of rational beings” (1964, 405), on the community of all human beings that goes beyond ethical or legal-political communities, lies a special feature of moral autonomy (cf. Habermas 1992c, 184–85) and the self-respect of moral persons.

The second difference concerns the question of persons’ “solidarity-based” esteem and “ethical self-reassurance” (Honneth 1992a, 195) in the light of a society’s shared general values “that allow the abilities and traits of the other to appear significant for shared praxis” (1995a, 129; cf. 1993). According to this conception, individual self-esteem is constituted by how society esteems the significance of a person’s contribution to the commu-

nity, a contribution considered by all to be unique, valuable, and indispensable. The community participates in the life of individuals on an affective level. This notion presupposes that a posttraditional society is normatively integrated through common horizons of strong evaluations and shared ethical goals; ultimately, by means of a particular conception of the good that cannot be formally defined in this context. This strong assumption would make a political community into an ethical community, albeit a more general one; and it would affect the system of individual rights of autonomous persons. The assumption would not however do justice to an ethically pluralistic society of different forms of life, and that is why Honneth emphasizes that the common social horizons of values are to be understood as open horizons in principle. An “ineluctable tension” thereby enters this conception of *sittlich* recognition. The common horizons of ethical values must, on the one hand, be sufficiently abstract in order not to fix any particular, exclusive conceptions of the good and to be open to various forms of life without, on the other hand, “losing the solidarity-generating force of collective identity-formation” (1995a, 179).

This tension presents a dilemma. On the one hand, social esteem is seen as being constitutive of persons’ self-esteem; on the other, the values on which this esteem is based are themselves the object of social conflicts (see 126–27, 164–65) and do not therefore form a homogeneous background of values. On the part of the actors in these conflicts—such as the opposition to certain value conceptions that are reflected in law (e.g., rejection of homosexuality)—it must however be *presupposed* that they esteem their particular form of life and consider it estimable, for otherwise they would neither have the strength to stand up for it in solidarity with one another nor have an argument to present in public debates. Because they esteem their form of life, they struggle against the legal and social exclusion accompanying its ethical discrimination; their feeling of self-worth already exists therefore—as something constituted within ethical particular communities. What they are struggling for can thus be (tentatively) called “second-order esteem”: recognition as fully and equally entitled members of society. Their end is tolerance, nonexclusion, and material equality. This *political* recognition designates the reciprocal responsibility of citizens who recognize one another in a substantive sense as ethically different, legally equal, and, in political and social terms, as equally entitled members of the political community (see chapter 3). The political community, socially just and inclusive in this sense, consisting of reciprocally responsible citizens is not however an ethically integrated value community—if it is to be inclusive. Political and social inclusion enables the development of nondiscriminated ethical communities within which persons are esteemed as particular individuals; but it is not itself based a recognition form of reciprocal esteem. *Ethical* recognition, on the other hand, has its place in ethical con-

texts—in families, among friends, in local communities, associations—in communities that comprehend their lives on the basis of particular, shared values and in which concrete, biographically individuated persons can be perceived and esteemed as specific and “unique.”²⁴ In a posttraditional society, the pluralism of incommensurable values and forms of life can no longer be ethically sublimated in superordinate values—which does not imply the absence of a normatively demanding political integration of reciprocal responsibility among citizens, a form of integration that is located between a “formal-legal,” “thin” and an “ethical,” “thick” form, as it were.

For this reason I suggest that in the dimensions of *recognizing*, of *being recognized*, and of *recognizing oneself* it is possible to distinguish the four following modes of recognition: ethical *esteem* (and self-esteem); legal *respect* (and self-respect); political *responsibility* (and second-order self-esteem); and moral *respect* (and self-respect). I elaborate these modes—at least in broad strokes—in what follows.

(a) *Ethical Person*

Ethical autonomy was defined in the preceding chapter as self-realization within the framework of strong evaluations, which are regarded as determinative of identity for a self and the community with which its identity is very closely connected. One’s own life is perceived as “good” if it can be affirmed on the basis of commonly shared values. Ethical questions are questions of identity and orientation in a communal world, questions a person answers *for him- or herself*, but *together with others*. Ethical persons are recognized in ethical communities as *unique* persons with an individual and “singular” biography. A person’s uniqueness is “real” only as a recognized uniqueness: only by being recognized by others do I experience my own identity as a particular and at the same time “connected” identity. Particularity is recognized individuality confirmed by others. Persons are both “independent” individuals and *communal* beings who, for a community, *cannot be substituted by others* (*unvertretbar*) and are irreplaceable in their particularity. They identify with, and at the same time stand out from, their “constitutive” communities; they want to be esteemed as individuals who embody the shared values of this community in a particular way. The dialectic of ethical recognition—and ethical life’s law of motion—lies in this tension between communality and individuality, between socialization and individuation. Via the perspective of the “generalized other,” to put it in Mead’s terms, the self is constituted as a “me,” as a social existence; but as an “I” it reflects these norms and conventions in a unique way and strives to go beyond them. To say “I,” to have a “character,” and to have a “personality” mean that I speak an ethical language in a particular way.

The more pluralistic a “postconventional” society is, the more individuals

must of course integrate different roles, doing so without recourse to the values of a comprehensive communal identity. This circumstance can lead to phenomena of social life in which persons lose community bonds in a way that makes it impossible for them to find a value foundation that allows them to experience their lives as meaningful and valuable. As communitarians point out, “the dark side of individualism is a centering on the self, which both flattens and narrows our lives, makes them poorer in meaning, and less concerned with others or society” (Taylor 1992b, 4). In such a situation, the human “need for recognition” (Taylor) cannot be satisfied; the result is an impoverishment of subjective as well as social life (cf. Bellah et al. 1986). Here, of course, one should not place the level of ethical communality in false competition with the level of equal rights; though the universalization of rights evolved in connection with the “disenchantment” of traditional understandings of the world and community, rights do not pretend to take the place of ethical bonds. Not all “individualistic” normative concepts compete with “communal” concepts. Even if Berger (1984, 153–54) correctly sees the development of the concept of the “dignity” of the human being in connection with the decline of “honor”—the latter attaches a normative person status to social roles in an ethical universe, whereas “dignity” is ascribed, outside all social relations, to all persons as human beings—this development does not mean that the dignity of persons requires that they understand themselves as solitary selves in their ethical lives. Yet one can legitimately ask how within a differentiated political community persons can promote forms of social life that connect personal autonomy (e.g., in demarcation from conventional role perceptions) and ethical-communal integration (cf. Walzer 1990a).

Ethical communities are communities of identification, communities of value, in which the identity of persons is formed in the force field between the “I” and the “we.” In his or her individual, communal, and temporal existence, the person is a part and, at the same time, more than “just” a part of a comprehensive whole. Here the temporal dimension of individuality and communality is of particular importance: “singularity” is a concept that refers both to the uniqueness and (in the sense of occurring once) to the temporality and ephemerality of “my” (*jemeinig* is Heidegger’s term) life. On the one hand, communities cannot “own” individuals but must leave them to live their lives themselves. On the other hand, persons “belong to” communities that give them a “temporal location.” Communities of recognition are in this sense “communities of memory” (Bellah et al. 1986, 282) that not only give a life a (revisable) temporal-historical orientation but also keep the individual life “in remembrance.” A community is in Arendt’s (1958, 198) words “organized remembrance” (cf. Forst 1990).

Ethical communities are communities of memory on the basis of a com-

mon notion of the good that connects individual and collective identity in a way of life, in an ethically “thick” language (cf. Hampshire 1989, 114–15). Ethical communities can be, but do not have to be, language communities in a comprehensive sense; in all ethical communities, however, there are certain shared meanings of concepts and symbols that are valid only “for us” and understood “by us” against the background of common experiences. Such meanings are part of a community’s practice and “symbolic world.”

The “closer” and more stable the ethical community is, the more intensively persons recognize one another both as unsubstitutable members and as unique individuals. In love, the closest form of an identity-constitutive ethical community, the recognition of commonality is at the same time the recognition of the particularity of the other; and it is a joint task to keep the balance between commonality and individuality (cf. Honneth 1995a, 95–107). As, for instance, Simone de Beauvoir (1989, 335) shows (following Sartre’s theory of the objectivizing “look”), the relationship between the sexes harbors the danger that “recognizing oneself in the other” brings about not real reciprocity but the reproduction of relations of inequality (cf. Benjamin 1990). In a wider sense, the family is a form of community constituted by love; in it, the bonds of commonality may be weaker but persons are recognized to a special degree as unique individuals who are integral constituents of the community. In friendship too there is this strong double structure of commonality and unsubstitutable singularity—friends cannot be arbitrarily replaced since they alone in their particularity constitute the commonality. In large ethical communities such as religions and associations or clubs that are integrated via particular ends and purposes, members’ relationships are formalized to a certain degree; yet there is still a common identification on the basis of common values and ideals that connect individuals with one another in a strong way. Ethical communities are integrated through consciousness of cultural belonging, but they are already abstract, “imagined” (Anderson 1991), and in part “chosen” (Waters 1990) communities. Yet here too one can still find what is special about the ethical relation of recognition: one’s ownmost particular individuality is defined and constituted—a process fraught with tension—through community with others. This constitution always includes a dividing line drawn between “our” identity and that of others who are not “like us,” a demarcation that is all the greater, the more one feels one’s own identity to be insecure. The symmetry of ethical recognition within a community does not rule out asymmetry to other communities, but it does not necessarily include it either, if asymmetry is understood as devaluing other communities (cf. Karst 1989, 21–27).

As a rule, a person’s self-esteem is connected not solely with the values of *one* community, and not necessarily just with the particular values of local

communities either. A person can, as Mead (1962, 209–13) underscores, evaluate his or her life in the light of an “ideal” community—in the light of values that seem idiosyncratic or even inferior against the background of existing conventions. This is however one ethical possibility among others; though the critical reflection on one’s own self-worth presupposes ethical autonomy and role distance, it does not—even in a “postconventional” understanding—necessarily presuppose the anticipation of recognition by an “unlimited” recognition community (cf. Habermas 1992c, 186–93). Such a community is also usually an idealization of certain ethical standards.

The loss of the ethical feeling of self-worth can follow either from the fact that a person does not meet the ethical standards he or she and others recognize as valuable—that a person “fails” in the view of others, but primarily in this person’s own view—or from the fact that, in view of discrimination by others, an ethical community’s members see their form of life and their beliefs as not justified and as deficient, and experience an identity crisis. In the present context I cannot examine in detail the complex connection between evaluation by others and evaluation by oneself. Concerning the said problem of collective devaluation, however, the connection between ethical esteem and political recognition is again important. The political recognition of persons as equally entitled citizens with certain rights to participate in the political community and to share in its resources does not mean that the values of their forms of life are generally *shared*; it just means that the forms of life are neither *condemned* nor discriminated against. In his essay *Anti-Semite and Jew* Jean-Paul Sartre describes how the incessant social discrimination of a minority leads to its members’ evaluating themselves as being inferior. Humiliation leads to self-degradation, devaluation, and finally to denial of one’s own identity. The relation-to-self is riddled with doubt about one’s self-identity and its value; one’s own identity becomes a prison; “for whatever effort we made to reach the *person*, it was always the *Jew* whom we encountered” (Sartre 1995, 77). The victims of such discrimination react, according to Sartre, in different ways. They adopt the perspective of others and regard themselves as inferior; accordingly, they attempt either to become like the others and cast off their identity or, if they do not succeed, to resign themselves to the role of “second-class citizens.” The first reaction is itself an attempt to save one’s self-worth by discovering in oneself attributes whose bearers are not discriminated against, whereas the second means surrendering one’s self-worth (cf. Shklar 1990, 67). According to Sartre, Hegel’s dialectic means however that such a minority is charged with a “struggle for self-consciousness” in the sense of the feeling of self-worth, and the first step in this struggle consists in accepting one’s own identity, which is regarded by the members of the minority *themselves* as estimable; and the second step consists in asserting

this identity vis-à-vis others. In this struggle it is a matter of recognition as equal “human beings” and fully entitled citizens with an autonomously determined, ethically different particular identity that has to be *respected*. Examples such as African Americans’ step-by-step struggle for acquiring what is called “full membership” in a political community bear witness to the multifarious forms of legal, political, and social exclusion and the problems of overcoming them in a way that links the recognition of legal-political equality with the recognition of difference (not perceived as inferior).²⁵ In the words of W. E. B. Du Bois (1965, 215), the goal is “to be both a Negro and an American without being cursed and spit upon.”

(b) *Legal Person*

To be recognized as a legal person means to be respected, in accordance with the law, in one’s personal autonomy to determine one’s own life oneself. Individual rights to liberty are granted to every person as a person of the law; they are defined in positive law and apply to all persons equally. Legal persons are therefore recognized as legal *equals* and as independent *individuals*. This form of recognition is not to be understood “atomistically”: persons confer these rights reciprocally—rights are “relationships” between persons (Young 1990, 25)—and these rights grant the latitude within which persons themselves determine what ethical forms of life they affirm. This legal self-determination must not be read ontologically; that persons have the legal possibility for individual self-determination does not imply that they are “unencumbered” subjects (see chapter 2). “Encumbered” persons also need such rights as a “protective cover,” and not just when communities disintegrate (or threaten to suppress persons) but also to protect their communities themselves.

Hobbes points out that the Latin word *persona* means “mask,” “the *disguise*, or *outward appearance* of a man” (1973, 83). The “person” appears as the representative of him- or herself and has “Authority,” is the author of his or her own actions, and is to be respected as such (cf. Mauss 1985, 14–19). To be a person therefore means not to be a slave, it means to be able to represent oneself, to be regarded as a self-responsible author of one’s own action, and to have civil rights that secure one’s “own sphere” (of property, for example). The artificial character, the “mask” of the legal person, signifies the “status” of a person to possess this authority before the law. In this sense, Arendt (1973b, 108) speaks of the “protecting mask of a legal personality.”

In his discussion of the conception of legal person, Hegel emphasizes this abstractness and artificiality of legal “personality,” which refers to the “external sphere” of the legal person’s freedom (Hegel 1967, 40 [§ 41]). The relation to oneself in this sphere is, according to Hegel, purely formal

and “contentless” (37 [§ 35]); the will of the person is free but undetermined and abstract. “The abstract will, consciously self-contained, is personality. Man’s chief glory is to be a person, and yet in spite of that the bare abstraction, ‘person,’ is somewhat contemptuous in its very expression” (235 [addition to § 35]). To recognize the person—according to the “imperative of right”: “‘Be a person and respect others as persons’” (37 [§ 36])—means recognizing his or her liberty and free will beyond all particularity; to recognize a person *solely* as such, however, means viewing the person merely as a “rigid unyielding self” (1977, 290), as a self without the determination that it undergoes as an “ethical” self. As Hegel argues in the *Phenomenology of Spirit*, the status of the legal person is a positive status to the extent that the person as a category of law is “something whose validity is *recognized* and *actual*” (292); it is negative to the extent that this is an abstract and “inessential” form of subjective and intersubjective (self-) recognition (291–92). To call someone merely a “person” means distancing oneself from this person, reducing him or her to the status that exists before any value-related determination that makes of him or her an ethical person.

The “mask” of the legal person is the mask of public appearance before the law, not of public appearance as an ethical person. Legal communities are not communities of memory or communities of identification; the form of recognized individuality and communality prevailing here is the *respected* independence of persons as members of the legal community. In this regard, a person’s self-respect depends upon being recognized as an “authority” in being able to defend and realize “his or her” rights (cf. Feinberg 1980, 143–58; Wildt 1992b). It means having the right as a person to be treated as an equal and to be respected in accordance with laws that apply to all. This is by no means a trivial specification; Hegel, who regards the legal form of recognition as being incomplete in contrast to the ethical form, also underscores the liberty-guaranteeing function of abstract law.

(c) *Citizenship*

A conception of political recognition—recognition as a citizen—must take into account the dimensions of ethical and legal recognition as well as the necessity of realizing, in terms of political autonomy and social reality, the recognition of ethical difference and legal freedom and equality. The dimension of political participation and that of the social sharing of resources reflect what is particular about being politically *responsible* and what citizens expect of one another: a discursive responsibility that demands general reasons for generally valid norms, and a solidarity-based responsibility that makes it possible for citizens to be politically and personally autonomous, that is, to lead a life enjoying equal rights and “without shame.” This con-

cept of shame refers both to the necessity of not discriminating against “different” forms of life and to the social resources necessary to enable, according to social standards, a nonstigmatized life in the community. The first form of shame generated by social and legal exclusion has already been mentioned, but the second form too, exclusion through poverty, is of essential importance to an analysis of what political recognition means. Mechanisms of cultural and socioeconomic exclusion frequently overlap and imply one another—and originate in the hegemonic claims of one form of life—but must be distinguished; corresponding to the dimensions of political recognition—ethical difference, legal equality, political codetermination, social inclusion—are different levels and ends in struggles for recognition. “Citizenship” therefore refers more to a *process* of acquiring and extending civil rights than to a well-defined status (cf. Marshall 1992; Honneth 1995a, 115–18). Rights are to be understood as “rights to equal recognition” (S. Smith 1989, 128) in the sense that they are rights to recognition in all these dimensions.

A “second-order self-esteem” is constituted by political recognition, the consciousness of being a “full” member of the political community. Political solidarity is a solidarity on the basis of joint political responsibility, not an ethical solidarity on the basis of identity-determining values: action founded on political solidarity aims at creating a community of fully entitled citizens; ethical solidarity aims at maintaining and defending a common good life—and thereby one’s own identity.

(d) *Moral Person*

Persons encounter one another not only as members of ethical or political communities but also as “strangers” without the “network” of common values or reciprocal rights claims. What they have in common is only the context of shared humanity, and what they demand of one another is recognition as a *human being*. To be human means to be a member of the community to which all human beings belong as human beings, as moral persons. Moral universality implies respecting every person as a representative of the universal human community, as a “fellow human being.” Persons are therefore recognized as vulnerable and autonomous *individuals*, and at the same time as members of the *human community*.

Moral recognition is a form of *respect* for others and of being respected by others, which makes self-respect as a human being possible—self-respect as a human being who is reciprocally respected by others as an authority to which they must justify themselves morally; in Kantian terms, as an end and not as a means to other ends. This is what a *right to justification* signifies. Moral self-respect presupposes respecting oneself and others as authors and addressees of moral norms. Moral recognition respects the boundary

between persons on the basis of consciousness of common human vulnerability and of being a human *self*—not “who” we are is respected, but “that” we are vulnerable, self-determining, autonomous human beings. A person abandons his or her self-respect when he or she abandons the claim to self-determination, his or her claim to freedom from bodily harm and to a life that is worth calling “my” self-responsible life. Whereas the loss of the feeling of self-worth springs from a judgment of having failed, as measured according to a certain standard, the loss of moral self-respect lies at a deeper level. The perception of an ethical failure is based on one’s own expectation that one could (and should) have satisfied the required value, whereas the loss of self-respect calls the very presupposition of such reflections into question: confidence in human capabilities as such is destroyed. To lose one’s self-respect means to become unable to raise the rights claim to be recognized as a self-determining person—to become unable to raise the rights claim to being recognized as a moral authority to which others must justify themselves.

The case of slavery illustrates all four forms of the denial of recognition. Slaves are not esteemed on the basis of common values but are regarded as “valuable” solely in the instrumental sense; they have no rights or, at any rate, no equal rights to the freedom to act; they are (at best) “second-class citizens,” and they are denied the basic right to be masters of their own bodies or their own lives. They are *Leibeigene*—their bodies are owned by another—who are “socially dead” (Patterson 1982). Not to be respected any longer as a moral person does not of course mean immediately losing one’s self-respect. The denial of intersubjective recognition should not be connected too closely with the loss of subjective recognition. Loss of respect leads to a loss of self-respect only if a person adopts the role of the slave, abandons him- or herself, and gives up the last resistance to being controlled by another, the resistance of the body (cf. Sachs 1981, 353). Abandoning oneself completely in this way is the most extreme case of the loss of self.

In her description of concentration camps as laboratories in the experiment of the total domination of human beings and of the latter’s transformation into mere “bundles of reactions,” Arendt (1993, 242) gives such an example and distinguishes stages in the loss of recognition and the loss of self—stages in the death of the person before physical death (240). According to her, the destruction of the “judicial person” represents the first stage in extermination, arbitrary arrest without any connection to provable guilt and without judicial procedure. The second stage in the “preparation of living corpses” (1979, 451) consists in the destruction of the “moral person,” the creation of a world in which the standard moral concepts of respect, guilt, and conscience no longer play a role, in which all martyrdom is senseless, and where survival depends on working with the

perpetrators against the victims. Moral self-respect must yield to the force of an immoral world, the voice of conscience is silenced. The final step in this “hellish experiment” is the destruction of “individuality” brought about through torture, the destruction of all bodily resistance that rises up against overwhelming force and rape. These persons no longer have the strength for individual, spontaneous expressions—they shrivel into objects that go willingly to their death since life has already been destroyed in them (1973a, 447–57; cf. Sofsky 1993, 105–6, 229–36). This third dimension, “individuality,” control over one’s own body, designates the most fundamental dimension of human personality as such: the basis of any normative relation-to-self. It is “the most fundamental form of practical relation-to-self, namely, one’s underlying trust in oneself” (Honneth 1995a, 133), and it is protected by moral respect for persons’ physical integrity. In the recognition of the moral person, speaking of respect for the human being’s “dignity” acquires the sense of respect for persons as bodily, vulnerable, and as “their own” beings who have the right to live their lives themselves in physical and psychical integrity—not because they “possess” themselves but because no one possesses a person more than this person him- or herself. As such, they have the moral right to a reciprocal and general justification of all actions that affect them in their integrity. The basic form of moral recognition lies in conferring this right.

I can thus conclude by way of the following. The communitarian thesis that practical problems always confront “situated” persons as members of communities and must be responded to *within* intersubjective contexts is not to be rejected, but it must be differentiated. Practical questions pose themselves in *different* contexts and require answers that are justified differently; and these community contexts can be described as spheres of reciprocal ethical, legal, political, and moral recognition that belong to a complete conception of justice. The basis of the distinction between these spheres, of their normative characterization, and of the definition of justice, does not of course lie in a particular formal idea of a good life recognized in all these dimensions; rather, the discussion has shown how a differentiation of practical contexts follows from the conception of practical reason that stipulates that values and norms must be intersubjectively justified. Hence universal moral norms with a claim to universal validity must be justifiable to each human being and thus to all human beings as human beings; political decisions that lead to legal norms are to be justified to all fellow citizens; accordingly, law raises a claim to general legitimacy that both enables and constrains persons’ liberty and can in turn be questioned in political discourses; and, finally, ethical questions are questions of identity concerning the good life, and the answers to which, though they cannot be given in solitude, do not have to be justified “publicly” in a moral or

political way. The principle of justification based on practical reason calls for a differentiation of practical questions with reference to these four contexts of intersubjective justification.

The debate between liberalism and communitarianism thus teaches us that it is not enough to simply juxtapose the good and individual rights / the morally right, community and justice, *Sittlichkeit* and morality, concrete contexts and abstract reason; the analysis proposed here has shown that the person at the center of questions of justice must be comprehended not solely as an ethical person, a legal person, a citizen, or a moral person, but as a person in all these dimensions of community. The task of a theory of justice consists in appropriately determining and bringing together these contexts of justice. According to this theory, the society that unites these contexts may be called *just*.

NOTES

PREFACE

1. On the history of this symbolization in the European tradition, see the informative study by Curtis and Resnik (1987).

2. For some of my more recent work in which the approach developed in the book is elaborated with respect to various issues, see "Politische Freiheit," *Deutsche Zeitschrift für Philosophie* 44 (1996): 211–27; "Foundations of a Theory of Multicultural Justice," *Constellations* 4 (1997): 63–71; "Die Rechtfertigung der Gerechtigkeit: Rawls' Politischer Liberalismus und Habermas' Diskurstheorie in der Diskussion," in *Das Recht der Republik*, ed. Hauke Brunkhorst and Peter Niesen (Frankfurt am Main: Suhrkamp, 1999), 105–68; "The Basic Right to Justification: Toward a Constructivist Conception of Human Rights," *Constellations* 6 (1999): 35–60; "Praktische Vernunft und rechtfertigende Gründe: Zur Begründung der Moral," in *Motive, Gründe, Zwecke: Theorien praktischer Rationalität*, ed. Stefan Gosepath (Frankfurt am Main: Fischer, 1999), 168–205; "Towards a Critical Theory of Transnational Justice," *Metaphilosophy* 32 (2001): 160–79; "The Rule of Reasons: Three Models of Deliberative Democracy," *Ratio Juris* 14 (forthcoming); "Tolerance, Justice and Reason," in *Reasonable Tolerance: The Culture of Toleration in Diverse Societies*, ed. Catriona McKinnon and Dario Castiglione (Manchester: Manchester University Press, forthcoming).

INTRODUCTION

1. The importance of Rawls's theory in this respect is emphasized by Gutmann (1989).

2. Thus, for instance, Michael Walzer, who considers communitarianism to be a necessary but "inconstant feature of liberalism" (1990a, 6), criticizes the general characterization of his position as "communitarian" (1992e, 286). Taylor (1989b), too, warns against one-dimensional readings of the controversy.

3. Joas (1993) underscores this difference in meaning with reference to pragmatism. Since I do not deal with this in what follows, it should be mentioned here that communitarian critique is connected with attempts within American historiography and sociology to link up with the "moral resources" (Vorländer 1988; cf. Kallscheuer 1992) of the religious or republican currents in the political tradition of the United States. On this, see in particular the "republican revisionism" in historiography: Bailyn (1967), Wood (1969), Pocock (1975); see also the discussions in Kramnick (1982) and Rodgers (1992). This is also a strong motif in Sandel (1984a). Bellah et al. (1986, 1991) and Lasch (1988) represent this tendency in sociology; for critiques, see H.-P. Müller (1992) and Phillips (1993).

The concept of communitarianism acquired a concretely political meaning through the Responsive Communitarian Platform, a nonpartisan initiative for the renewal of social and political institutions in the interest of the common good, one whose self-understanding has been formulated in large part by Etzioni (1993, 253-67), Galston, and Glendon (see also the journal *The Responsive Community*). However, this translation of communitarian arguments into a political program that combines culturally conservative and democratic-participatory elements is just one possible communitarian position and cannot be regarded as *the* communitarian position par excellence. See also Barber (1986a) and Sandel (1988).

4. A survey of these four levels in the debate can be found in Forst (1993).

5. "Beyond" is to be understood here neither as a claim to synthesize both sides in the sense of a comprehensive *Aufhebung* (sublimation) nor as being "disengaged from" these sides, but in the sense of a position that has emerged critically from the debate and attempts to go further.

6. This explication of the concept of context shows its fundamental difference from Walzer's (1983) theory of distributive "spheres of justice"; his theory, which is located on a methodological plane entirely different from that of my discussion, attempts to reconstruct a society's "shared meanings" that determine what goods are to be distributed and according to what criteria.

1. THE CONSTITUTION OF THE SELF

1. See Teitelman (1972), Schwartz (1973), Nagel (1989), and Rawls's reply (1975c). In addition, see Lukes (1973, ch. 11), Macpherson (1973), Fisk (1989), and, by way of a summary, DiQuattro (1983).

2. I discuss the principal features of Rawls's theory subsequently in connection with Sandel's critique rather than sketch them separately here. Nonetheless, the two principles of justice that follow from the original position may be presented at this point: "(1) Each person has an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for all. (2) Social and economic inequalities are permissible provided that they are (a) to the greatest expected benefit of the least advantaged, and (b) attached to positions and offices open to all under conditions of fair equality of opportunity" (Rawls 1978, 57; on the changes to this formulation, see Rawls 1982a, 5 and chapter 3.4 below).

3. Taylor himself, however, is more reserved in his critique of Rawls, who in his view is "by no means a prisoner of the atomist perspective" (1985i, 274n. 9).

4. On the concept of “qualitative identity,” see esp. Tugendhat (1986, 254–62).
5. [Translator’s note: although the functional equivalent of the distinction in German legal theory between *subjektive Rechte* or *Freiheitsrechte* on the one hand and *objektives Recht* on the other would be simply “rights” and “laws” in English, here as elsewhere in the book, the term *subjektive* has been translated as “individual,” that is, rights pertaining to the individual. *Freiheitsrechte* has been variously translated as “liberty rights” and “liberties.”]
6. I deal in detail with Taylor’s own conclusions from this model in chapter 4.4.
7. See the introduction to *The Metaphysics of Morals* (Kant 1991).
8. On Sandel’s arguments against Dworkin, see chapter 2.3.
9. See the critique by Barry (1984) and Larmore (1984). With reference to discourse ethics, see Benhabib (1989a).
10. Mead (1962, 164–78); on this, see chapter 5.3. Selznick (1987) and Post (1989) mention Mead’s theory in the context of a critique of Sandel, but only just in passing.
11. See the critiques presented by Gutmann (1985), Larmore (1987, 121–30), Thigpen and Downing (1987), Waldron (1993c), Dworkin (1989), Kymlicka (1990, 213–15), Phillips (1993, ch. 8); the critique by Holmes (1989), however, is excessive.
12. Bell (1993) does not deal with this problem either; he does distinguish various forms of “constitutive communities” but assumes their unitary concordance. Informative discussions of the concept of community can be found in Plant (1978) and Peters (1993, 96–133).
13. Rawls explains the difference in Kantian terms: “Finally, the way in which the Reasonable frames the Rational in the original position represents a feature of the unity of practical reason. In Kant’s terms, empirical practical reason is represented by the rational deliberations of the parties; pure practical reason is represented by the constraints within which these deliberations take place” (1980, 532).
14. Rawls (1985, 239); Rawls (1993a, 27) is also clear on this, where he regards Sandel’s interpretation as an “illusion caused by not seeing the original position as a device of representation.”
15. On the morally “reasonable” person, see chapter 2.1.
16. In this sense too we are to understand his remark that this conception of citizenship is implied in the political culture of a democratic society—for it *must* be implied so that this society can be legitimately designated “democratic.” The fact that political philosophy normatively highlights concepts of a particular political culture is unavoidable and is not a problem as long as it is the right concepts, that is, those for which there are *moral* arguments. This fact is necessary because no political culture provides unequivocal “shared understandings” that are not in need of normative interpretation (cf. Rawls 1993a, 9, 44). On this issue, see chapter 4.2.
17. Elementary assumptions about the temporal continuity of persons identical with themselves are however made; see Rawls (1993a, 29n. 31, 31–32n. 34) on Parfit (1984), and already Rawls (1975b, 15–20).
18. The conception of “legal person” is determined here provisionally as “a bearer of individual rights and a subject of law.” It will be developed fully in the course of the following discussion in contradistinction to (and in connection with) the conceptions of “ethical person,” “citizen,” and “moral person,” some of which

have already been employed here. It will be seen that these are distinctions that go beyond Rawls's terminology.

19. This conceptual distinction means neither that these communities exist in a sphere that is not generally regulated by law nor that principles of justice do not apply in these communities—for instance, in families or ethnic communities. On this, see chapter 2.

20. On the compatibility of rights and communities, see Waldron (1993e), Buchanan (1989), Kymlicka (1989a, chs. 2, 3), Honneth (1991a), Tomasi (1991), Caney (1992).

21. I thereby link up with Habermas's (1990a, 108; 1993a) validity-theoretic distinction between questions of the good life and questions of "justice"—with the latter concept being differentiated with regard to law and morality (see Habermas 1996a, 104–18). On ethics and morality, see also the discussions in Wingert (1993, 28–40) and Strawson (1974). According to the latter, the "region of the ethical" consists of incompatible life projects and worldviews, whereas "morality" designates reciprocally justified rules in the observation of which persons have an essential "interest." This notion of interest remains however criteriologically too undetermined to be able to explain moral validity.

2. THE ETHICAL NEUTRALITY OF LAW

1. On the origins of liberalism, see Rawls's introduction to *Political Liberalism* (1993a, xiii–xxxiv).

2. Berlin (1969b, 129) writes of negative, legally guaranteed liberty: "liberty in this sense is not incompatible with some kinds of autocracy, or at any rate with the absence of self-government. Liberty in this sense is principally concerned with the area of control, not with its source."

3. See John Stuart Mill, *On Liberty* (1989, 16): "The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily or mental and spiritual."

4. See Dworkin's detailed discussion of the concept of equality in relation to distributive justice (Dworkin 1981a, 1981b), personal liberty (1987a), and political equality (1987b).

5. Cf. the classical discussion between Devlin (1959) and Hart (1963) on an "enforcement of morals" ("morals," that is, in the sense of mores or ethical values); on this, see Dworkin (1989) and the discussion in O'Hagan (1984, ch. 5).

6. Coing (1959) represents an example for a natural-law conception of individual rights, whereas Kelsen (1960, 178) conceives of the legal person positivistically as the "union of a complex of legal duties and individual rights."

7. Accordingly, the neutrality discussion in Ackerman and Larmore does not relate primarily to a theory of democratic procedures; however, it does have important implications in this respect (see chapter 3.1). Larmore makes it clear that he is concerned with the philosophical justification of the neutral validity of liberal principles: "Liberalism and democracy are separate values whose relation, it seems to me, consists largely in democratic self-government being the best means for protecting the principles of a liberal political order" (1990, 346n. 15).

8. A further example of the tension between pluralist and proceduralist elements is Hampshire's liberal theory, which proposes a "bare minimum concept" of "procedural justice" (1989, 72–73) that, on the basis of universal human needs, represents a peaceful coexistence between ways of life. Going beyond the minimal content of moral prohibitions, "justice" in this sense of "procedural" means nothing more than that certain rules of fair compromise are to be observed. Accordingly, just conditions are a *modus vivendi* whose substantive fairness cannot however be adequately judged on the basis of Hampshire's theory. To reach this judgment, a conception of "rational" justification would be needed—a conception Hampshire mistakenly criticizes in Rawls (Hampshire 1993, 45–46).

9. In connection with this argument, the difference between moral and legal norms is still to be examined.

10. A moral conception "is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole" (1993a, 13).

11. I return to this issue in chapter 4.2.

12. Rawls refers here to Berlin's (1990) view that not all values can be realized together.

13. Cohen (1993, 283) leaves the criterion of general validity too undetermined when he demands of reasons that they be "compelling" for reasonable persons, that is, for critically reflecting ones.

14. Cf. Waldron (1993a, 56): "The hunch is that, although people do not share one another's ideals, they can at least abstract from their experience a sense of *what it is like to be committed to an ideal of the good life*; they can recognize this in others and they can focus on it as something to which political justification ought to be addressed."

15. See Larmore (1987, 44), Rawls (1988, 261–62), Kymlicka (1989b), Marneffe (1990), Ripstein (1992).

16. I return to Habermas's determination of the relation between morality and law at the end of this chapter.

17. Cf. Habermas (1996a, 158–68). It is thus misleading, as Habermas himself (1996b, 452 [esp. n. 3]) critically remarks, to speak of different types of ethical, pragmatic, or moral *discourses*; in political discourses, all of these *reasons* come together, but they require appropriate treatment in each particular case, and that is what matters.

18. Such a distinction between various justification criteria makes it possible to determine more precisely a problem raised by Nagel (1991, 159–68), namely, that of the domain where a person cannot be forced by good reasons to recognize the standpoint of a majority as the basis of legitimate, generally binding norms; the differentiation, proposed by Gutmann (1993, 200), between fundamental moral-substantive principles and political conflicts that are regulated procedurally could thus also be conceptually explained in the sense of a "deliberative universalism," without falling back upon pre-given (anthropological) moral principles.

19. This issue will be discussed critically with reference to liberal models in chapter 3. On this, see especially Greenawalt (1988), Perry (1988), and Galston (1991, ch. 5); as well as Rawls (1993a, lecture 6; 1997).

20. See Larmore (1987, 43), Rawls (1988, 262), Nagel (1991, 166). Raz's critique (1986, ch. 5) rests basically on the fact that he imputes the thesis of the neutrality of effects to liberal theories. On this, see Waldron (1993b).

21. See section 2.3.

22. Cf. the objections raised by Frankfurt (1982).

23. This is the view of Isaiah Berlin (1969a, li–liii; 1969b, 167–72; 1990). See also Williams (1981d; 1981e; 1993, ch. 6). The concept of “values” is however used here in a very broad and criteriologically ambiguous sense. I return to this in chapter 5.2.

24. Cf. Rawls's (1971, 426) Aristotelian Principle: “other things being equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity.”

25. Dworkin's central argument concerning the question of abortion also rests on the priority of rights over values. Insofar as a fetus (at least in the first part of pregnancy) cannot be regarded as a moral or “constitutional” person (1993, 23) (which would also rule out exceptions in special cases such as rape or incest), arguments for or against abortion are based on various conceptions of the “intrinsic” or “sacred” value of life or of the “investments” of a natural or human kind in a life. According to Dworkin, these debates about the value of unborn life or of the quality of life are of a (quasi-) religious kind; they represent various interpretations of a superordinate ethical value that determines the value of one's own life. That is why the primacy of the right to religious freedom and to freedom of conscience applies here: a majority cannot impose an interpretation of the good life upon a minority (157)—it must respect the *right* to an ethical identity of one's own.

26. For a critique of Rawls from the perspective of a “moral perfectionism” in the tradition of Emerson, see Cavell (1990, 101–26).

27. Cf. Schnädelbach's (1987–88) discussion of neo-Aristotelianism.

28. In this respect, Galston's list of basic human goods differs from the “thick vague theory of the good” that Nussbaum (1990a; 1993) proposes. Galston is oriented by Finnis's (1980, 81–99) list of seven “basic forms of human good”: “life, knowledge, play, aesthetic experience, sociability, practical reasonableness, religion.”

29. This narrow alternative is also the basis of the arguments for an ethical liberalism advanced by Mulhall and Swift (1992), Fitzmaurice (1993), and Hampton (1993).

30. Galston (1990, 330) criticizes this as “liberal totalitarianism.”

31. On this objection, see also Raz (1986, 214; 1990) and Kymlicka (1992a, 45): “The problem is to explain why anyone would accept the ideal of autonomy in political contexts unless they also accepted it more generally.” I owe thanks to Adam Swift for raising critical questions on this point.

32. On the problem of moral motivation that the question of “insight” refers to, see chapter 5.2.

33. Further ethical-liberal positions are represented by Neal (1987) and Mason (1990); in this connection, Rodewald (1985) and Beiner (1992) present their critique of (ethical) liberalism; Rosenblum (1987) defends liberalism against communitarianism in light of the romantic ideal of individuality, whereas Menke

(1993a) favors the romantically inspired communitarian critique of the liberal conception of freedom as self-disposition. Both models of personal freedom can be found in liberal theories, but neither one is *the* model of liberal freedom.

34. Glendon (1991) protests the negative consequences in private and political life that follow from a fixation on individual legal rights. This critique does not affect the normative justification of rights, but it does concern the question of its use. Here, it is nonetheless important to inquire into the causes of certain social processes described too generally as a “loss of *sensus communis*.” This is of normative significance to the institutional consequences following from an analysis such as the one proposed by Etzioni—especially concerning the problematic thesis that law embodies “values that the community holds dear” (Etzioni 1993, 81).

35. In his dissent on the famous ruling of the Supreme Court in *Plessy v Ferguson*, 163 US 537 (1896), which laid down the principle of “separate but equal” races, Justice Harlan observed: “Our constitution is color-blind, and neither knows nor tolerates classes among citizens.” Cited in Gunther (1991, 647).

36. Sandel is referring to the case *Goldman v Weinberger* 475 US 503 (1986); on this, see also Michelman (1986, 5–17, 33–36).

37. A position that seeks to mediate between liberal rights and community values can be found in Selznick (1992, ch. 14). There remains however ambivalence concerning the question of whether values are worthy of protection in their importance primarily for the integration of the political community or for the individual ethical person.

38. The case here is that of *Bowers v. Hardwick*, 478 US 186 (1986), in which the Supreme Court upheld a law in the state of Georgia that forbids sodomy.

39. See Okin (1989, chs. 2 and 3), Friedman (1990), Rössler (1992), and Honig (1993, 186–95).

40. See Rhode (1989, 117–25), Maihofer (1990), Habermas (1996a, 419–27).

41. The definition of the legal person as a protective cover that is outwardly formal and “hard” and inwardly “soft” (Forst 1992, 298–99) presupposes the possibility of changing the outer form on the basis of concrete and justified claims. On the concept of privacy, see also Michelman (1990), Okin (1991), and Jean Cohen (1993).

42. See the cases *DeFunis v Odegaard*, 416 US 312 (1974), and *Regents of the University of California v Bakke*, 438 US 265 (1978).

43. With reference to Canada, see Kymlicka (1989a, 167).

44. Steinfath (1993, 583) hints at this in his critique of Taylor.

45. On this discussion in the United States, see the bibliographic review by Vorländer (1992).

46. Cf. the case of *Wisconsin v Yoder*, 406 U.S. 205 (1972), in which the Supreme Court granted the Amish community limited exemption from compulsory education. Cf. also the decision of Germany’s Federal Administrative Court (25 August 1993, BverwG 6 C 8.91 = *Neue Zeitschrift für Verwaltungsrecht* 1994, 578) on releasing a twelve year-old Islamic schoolgirl from the obligation to participate in coeducational school sports (cf. as well as the case mentioned in note 36 above).

47. That the limits of individual freedom have to be justified reciprocally and that this freedom can be restricted only in this way does not therefore mean that the contents of ethical autonomy have to comply with general ideas about the good

or that individual rights are justified primarily as political rights that are beneficial to discursive norm justification. Wellmer (1998a, 24–29) has this in mind when he argues for negative rights “not to be fully rational,” thus getting into conflict with the principle of communicative rationality. However, one has to distinguish between practical contexts: insofar as “nonrationality” is understood *ethically* as nonconformism, it is protected by a reciprocally and generally justified right—and only by this one; it can nonetheless also be conceived of as the right not to have to participate in *political* discourses—there is no duty to participate; however, insofar as the right “to violate the demands of communal rationality” (29) is considered in a *moral* sense, as the refusal to recognize the moral claims of others or to justify such claims to others, such a right does not exist (which Wellmer does not in any case claim).

48. See Günther’s (1992) discussion of a fundamental moral right to freely take a position, a right following the moral principle that universal norms have to be able to be based on universally acceptable reasons. According to Günther, this moral right enters law primarily as the right to political participation; however, since persons cannot be forced to take a position, this proposition implies a right to “negative liberty.” Yet, if the right to taking a position is understood as the right to justification, as suggested above, negative liberty can also be determined in a moral sense (which undoubtedly befits it): not as freedom from communicative processes, but as a positively realizable personal freedom within the framework of norms that cannot be mutually rejected.

49. This connection between rights, law, and democracy is neglected in Höffe’s (1995) attempt to explain the legitimation of coercive law with the help of the “distributive advantage” (37–43) that exists in the mutual waiving of unlimited rights to freedom of choice (257–58).

50. In their complete juridical, rights-related significance, citizens as legal persons are bearers of individual negative rights (*Abwehrrechte*), political rights to participation, and social rights to share society’s resources (cf. the four dimensions of Jellinek’s status theory discussed in Alexy [1986, 229–48]). To understand the genesis of and conceptual connection between these dimensions, it is however important to distinguish between the conceptions of “legal person” and “citizen.” Parsons (1971, 21–22), Marshall (1992), Riedel (1972), and Koselleck (1991), for example, show the historical development of the concept of the citizen from “subject” as the object of law to *citoyen* as the author of law. With regard to the differences between “contexts of justice,” what is essential is the distinction between persons as addressees and as authors of law, and, correspondingly, between legal-personal and political autonomy, various concepts of responsibility, and different forms of reciprocal recognition. On the basis of this, it is possible to understand normative focal points of liberal and republican theories, for example; against this background, moreover, distinctions within law between legally protected persons and fully entitled citizens (cf. Mark J. Miller [1989] and, with reference to the Basic Law [constitution] of the Federal Republic of Germany, Hesse [1991, 221]) can be thematized and critically questioned (e.g., in the matter of a too restrictive, ethical understanding of citizenship; on this, see chapter 3.4).

51. [Translator’s note: translation altered slightly.]

52. The criteriological threshold of strict or restricted generality (see chapter 2.1) does not imply that a moral realm of independently determined norms is

separated off from political-pluralist discourses or that politically legitimate decisions have to be based solely on strictly moral, consensual reasons, as McCarthy (1996) criticizes in respect of Habermas.

53. These demands are not metaphysical—to which Habermas objects in the postscript (1996b) to *Between Facts and Norms*—in the sense of a hierarchy of laws, nor are they anthropologically justified (Höffe 1993); the right not to be forced “to comply with a norm of action when it is not possible . . . to recognize through reason the validity of that norm” (Larmore 1996, 220)—a right Larmore emphasizes over against democratic procedures—is rather a right contained *in* procedures of justification themselves; and in this way, finally, O’Neill’s (1993) reservations about a violation of the criterion of strict reciprocity and generality in democratic discourses (if I may formulate these reservations thus) are taken into consideration.

54. The legal theories of Ely (1980), Michelman (1986; 1988), Habermas (1996a, 267–86), and Sunstein (1993) respond to this.

3. THE ETHOS OF DEMOCRACY

1. The concept of the *normative* integration of a *political* community refers not to social integration in a comprehensive sense but to what the citizens of a political community have in common in terms of norms and values—commonalities on the basis of which they understand and recognize themselves and others as *members* of the community. On this, see Peters’s (1993, 176–94) discussion of “legal-political systems.”

2. See Tocqueville (1988, 691–92), along with MacIntyre (1984a, 71), Bellah et al. (1986, ch. 11), Taylor (1979, 11; 1992b, 9–10), Walzer (1990a).

3. Benhabib (1989a, 383) refers to the latter as the “integrationist” vs. “participatory” models.

4. See Holmes and Larmore (1982, xviii), who contrast Luhmann’s theory of social integration via binary codes with Durkheim’s theory of normative integration.

5. The two principal parts of *Political Liberalism* represent this distinction between two stages (see Rawls 1993a, 133).

6. Unlike Larmore’s comprehension of the term, *modus vivendi* is to be understood here in the sense of a strategic arrangement.

7. See the objections raised by Greenawalt (1988), Perry (1989), Macedo (1990b), Galston (1991, ch. 5), McCarthy (1994).

8. This is a central concept from Leo Strauss’s (influential) Aristotelian political philosophy; see Strauss (1953), Cropsey (1986), Diamond (1986).

9. Cf. Hegel (1967, §§ 268, 289) on patriotism.

10. See Gleason (1980), Fuchs (1990); for a critique of Kallen, see Higham (1975, 211), Steinberg (1981, 261).

11. Taylor (1992c, 10–11) criticizes this Rousseauian conception too.

12. Cf. the conception of the political in Mouffe (1988; 1990).

13. Cf. Münkler (1992), along with Heater’s (1990) discussion of political virtues. [Translator’s note: Shils’s article is the German translation of a text that, to my knowledge, Shils did not publish in this form in English but apparently later expanded into two separate essays: “Nation, Nationality, Nationalism and Civil So-

ciety” and “The Virtue of Civility,” in *The Virtue of Civility: Selected Essays on Liberalism, Tradition, and Civil Society*, ed. Steven Grosby (Indianapolis: Liberty Fund, 1997), 188–224 and 320–55.]

14. Here is the starting point of theories of “deliberative” institutions, which I cannot examine in detail in what follows. See Elster (1986; 1991), Dryzek (1990), Buchstein (1992; 1993), Goodin (1992), Baynes (1992b, 59–62), Sunstein (1993, ch. 6), J. P. Müller (1993, 148–204). In various ways (and on the basis of different conceptions of political actors), these theories are directed at the implementation of procedures of public, reciprocal justification that make joint problem solutions possible; an important question here is the degree to which the “laundering” force of institutional mechanisms (forms of checks and balances) presupposes or can indeed compensate certain “deliberative,” normatively substantive capabilities and attitudes on the part of citizens themselves. I return to this point in the next section.

15. See Habermas (1992d). Cf. (in addition to the works mentioned in the previous note) Peters’s (1993, 327–44) theory of “sluice gates” between a periphery consisting of social opinion and will formation processes and a center consisting of political institutions.

16. See Miller’s (1992) discussion of social choice theories; in addition, Sunstein (1993, 135): “A goal of politics is thus to reflect on and sometimes to change existing preferences, not simply to implement them. Preferences are not static; they are a subject of conversation and debate. People must justify social outcomes by reference to reasons.”

17. The critique of the parties of the original position as contextless subjects who are unable to really take the perspective of the “concrete other” but can only adopt the stereotypical perspective of the “generalized other” (Benhabib 1987) overlooks the fact that the original position is not a representation of real discourses as well as the fact that this thought experiment is limited just to the justification of the two basic principles of justice (and indeed on this level, a critique of the original position is possible; see chapter 4.2). For that reason, the original position presupposes on “our” part moral reflection in this connection (see the three points of view, namely, that of the parties, of citizens, and of “ourselves” in Rawls [1980, 533]); it does not however presuppose a feeling of care on “our” part or even on that of the parties (as Okin [1990] argues).

18. See Young (1990, 119–20), Benhabib (1992b, 92–93), Okin (1991, 87–90), Cohen and Arato (1992, 397–410), Habermas (1996a, 313).

19. In Sunstein (1993, 133–41) the four principles mentioned return in a modified form, one in which the procedural and institutional sides of deliberative democracy are more strongly emphasized.

20. See the discussion between Leist (1990), Löw-Beer (1990), and Wingert (1991).

21. The history of the United States and the debates on what it means to be an “American”—especially with reference to questions of immigration and the granting of citizenship—demonstrate that defining inclusion and the “substance” of a multiethnic society is a conflict-ridden, unfinished process. See Smith (1988), Fuchs (1990).

22. Here Rawls does not yet distinguish terminologically between self-respect and self-esteem; see Rawls (1985, 251n. 33).

23. See Scanlon (1982, 120–28), who discusses further problems of the original position (especially with regard to the derivation of the justice principles).

24. [Translator's note: this quote appears on page 157 of *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Belknap Press of Harvard University Press, 1999). In Rawls (1971, 180), it reads "to their [human beings'] expectations." The revised edition, which was the text for the German translation cited by the author, was published after the completion of the manuscript. The only other revisions appearing in quotes here are in the following quote and in chapter 4, notes 10 and 13.]

25. [Translator's note: this quote appears on page 131 of the revised edition of *A Theory of Justice*; see preceding note.]

26. See also Williams (1987, 101) and Michelman (1989, 340); a sociological analysis of the loss of self-respect through "deficient status" can be found in Neckel (1991, 218–20).

27. Nussbaum does not distinguish sufficiently between moral and political contexts of recognition. Insofar as she is oriented toward the former, a list of essential human functional capabilities remains abstract and highlights certain basic forms of respect; if she goes beyond this, she is in danger of neglecting the social index of the "good." On this, see Sen's (1993, 47) reservations and Scherer (1993).

28. I return to these two concepts of justice in chapter 4.1.

29. See Gill (1987), Downing and Thigpen (1986), Thigpen and Downing (1987), Warnke (1990b), Galston (1991, 51), Buchstein and Schmalz-Bruns (1992).

30. See Karst (1989, 10): "[R]eal membership in the community is more than a legal status, and real equality before the law can seem trivial only to those who are secure in their places as equal citizens."

4. UNIVERSALISM AND CONTEXTUALISM

1. See Herzog (1985), Shapiro (1990), Warnke (1992).

2. See Walzer (1981, 389; 1983, 5, 30; 1987, 10–18; 1990d).

3. According to Warnke (1992) a hermeneutic understanding of political community requires a dialogic, common interpretation of "justice." The concept of practical justification thus presupposed—and of openness to voices as yet unheard (149)—can however be derived not from the idea of mutual learning as the goal of conversation (157) but from a principle of practical reason (which implies a "procedural" criterion of "good" interpretations [163]). The hermeneutic emphasis on "thick" contexts in contrast to "external" Kantian moral concepts (1–12) falls short of the mark; it does not distinguish between ethical, political, and moral contexts in which practical questions require special—"reasonable"—answers in each particular case.

4. I cannot go into the "just war" discussion here; see especially Walzer (1992c, 51–124; 1980b, 216–17) and the preface to the 2d ed. of *Just and Unjust Wars* (1992c, xi–xxxi).

5. See also the preface to the German edition of *Spheres of Justice*, "Vorwort zur deutschen Ausgabe," trans. Claus Offe, in *Sphären der Gerechtigkeit*, trans. Hanne Herkimmer (Frankfurt am Main: Campus, 1992), 11–14.

6. Thus this concept—in contradistinction to its employment by Ferrara (1990) with reference to Walzer and MacIntyre—is not to be understood in contrast to a “procedural universalism.”

7. See Honneth (1991b); the formal element of “reiterative universalism” is undervalued in Brunkhorst’s (1992) critique.

8. Such an anthropological example is Turnbull’s (1972) study of the Ik, an African tribe whose members, according to his description, have no sense of moral or ethical duty toward others, not even toward the members of their own families (I owe this reference to Michael Walzer).

9. In Walzer (1994b, 26–27) these two constraints are expressed very clearly. [Translator’s note: the author has added this note for the English edition.]

10. See Neal (1990), Galston (1991, 136), Schwarzenbach (1991, 547), Kukathas and Pettit (1990, 142–51).

11. [Translator’s note: the phrase in brackets appears in *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Belknap Press of Harvard University Press, 1999), 226].

12. See Baynes’s (1992a) study of the theories of Kant, Rawls, and Habermas.

13. On “narrow” and “wide” reflective equilibrium, see Rawls (1975b), Daniels (1979; 1980).

14. On Rawls and Kant, see Johnson (1974; 1977), Darwall (1980), Höffe (1984), Davidson (1985), Baynes (1992a, ch. 2). [Translator’s note: see note 10 above on the phrase in brackets in the Rawls quote.]

15. On this, compare Rawls’s elucidation of the particular construction procedures in (1989b, 98–99) with (1993a, 103).

16. See, in addition, the illuminating discussion of constructivist theories by Barry (1989, part 2, esp. 371–72).

17. [Translator’s note: italics omitted in the English translation of the *Critique of Pure Reason*.]

18. See Habermas (1979; 1984; 1984–87, 1:273–377; 1992a; 1994); Apel (1976; 1980; 1987).

19. In chapter 5.2 I return to this question of the relation between moral and ethical reasons.

20. This evaluation would violate the requirement of reciprocity; and the criterion of generality rules out the possibility of the norm’s addressee accepting non-reciprocity and of this acceptance being given as the moral justification.

21. See also the concepts of solidarity and justice in Habermas (1990b, 200; 1990c, 244). Here, “justice” refers to the equal respect of individuals who cannot be represented by others and “solidarity” to the recognition of others as members of a shared community, which is however extended in a universalist moral sense and thereby loses its particularist element.

22. If different contexts of justice (not understood in the narrow sense of moral justice) are differentiated, “solidarity” can mean different things, but it does refer primarily to recognition between persons as “members” of communities: (a) in ethical solidarity (that of a family, for instance); (b) in legal “equity” in view of special cases (as Habermas [1990c, 249] indicates at one point); (c) in social solidarity between citizens; and (d) in altruistic moral action; (the concept of solidarity is especially appropriate in the first and third uses, where reference is made to particular communities; on the other levels one can speak more fittingly of “equity” or

“altruism”). In some of these respects, “solidarity” is part of justice ([b] and [c]), in others it goes beyond it, for instance, in the sense of supererogatory acts (as in [d]) or can clash with it (as in [a]), for example, in the case of unjustified preferential treatment of one’s own ethical community.

23. Cf. the subject-relative conception of moral reasons in Gosepath (1992, 323, 340) and Williams (1981d). I discuss this more extensively in chapter 5.2.

24. The conception of a moral context constituted by the comprehensive human community points to a further problem, that of international justice. I examined the problem of human rights briefly and in very general terms in chapter 4.1; the more extensive questions of a democratic “world society” (to which Apel [1993, 163–65] and Wellmer [1998b, 54–61] refer) and of distributive justice between states cannot be dealt with specifically here either (see O’Neill [1991] and Thompson [1992]). Especially interesting in this connection is Rawls’s (1993b) attempt to extend the political conception of justice—with the help of the model of an original position between states—to questions of the law of peoples. On the one hand, this conception comprises “politically neutral” (69) human rights and therefore—according to Rawls—human rights that are acceptable not just to liberal states (rights, nonetheless, whose moral justification remains open); on the other hand, however, it does not include (contrary to Beitz’s [1979] and Pogge’s [1989] interpretations) a “difference principle” for distributive justice between states.

25. Cf. Honneth’s (1988) discussion of Taylor’s anthropology.

26. See my discussion of his analysis of society in chapter 3.2 as well as, in particular, Taylor (1985i).

27. See Tugendhat’s (1992c) critique of Taylor’s (1985b) conception of the person.

28. Taylor’s response to Löw-Beer’s (1991) objections shows that he underestimates the difference between ethical and moral validity by grasping the principle of mutual moral justification as a “good” of dialogic identity formation that ought to be *ethically* recognized for the sake of *one’s own* identity (1991a, 252–53).

29. See also Seel (1991a, 358–65; 1991b). I am grateful to Martin Seel for his critical rejoinders on this point. For a restatement of Seel’s position, see his *Versuch über die Form des Glücks*, (Frankfurt am Main: Suhrkamp, 1995), esp. 191–255. [Translator’s note: the author has added this latter reference for the English edition.]

30. See Tugendhat (1984, 165–68) and Wellmer (1991, 207–11).

5. CONTEXTS OF JUSTICE

1. See also Hampshire’s (1983) and Larmore’s (1987, ch. 6) theories of the heterogeneity of moral points of view.

2. On the incompatibility of different objective values, see Berlin (1969a, li–liii), Williams (1981c; 1981e).

3. See Williams’s (1981b) example of the painter Gauguin and his problem of having to decide between the needs of his own family and artistic creation. Williams (23–24, 38–39) (cautiously) defends the thesis that the decision for art can be regarded as justified retrospectively, even in the moral sense (despite a serious

“moral cost” not further specified). Cf. Wolf (1993) and Menke (1993b), who in varying ways refer to the relation between ethical and moral questions, but who do not explicitly highlight the criterion of moral, reciprocally and generally shared reasons.

4. Recent, illuminating discussions can be found in Nagel (1970, ch. 2), Williams (1981d), Darwall (1983, 51–61), Korsgaard (1986), Brink (1989, 37–43), Gosepath (1992, 228–36).

5. Here I take no account of whether this form of rational deliberation narrows ethical questions too.

6. See Rawls’s Kantian distinction between “rational” and “reasonable,” which was discussed in chapters 1.2 and 4.2.

7. See Hill’s (1992a, 1992b) Kant interpretation in contrast to Harman’s (1977, ch. 6).

8. In what follows I refer primarily to Tugendhat’s presentation of his model in *Vorlesungen über Ethik* (1993a). On his “Drei Vorlesungen über Probleme der Ethik” (1984, 57–131) and the ensuing “Retraktationen” (1984, 132–76), see especially Wolf (1984); on these texts and further changes (Tugendhat 1990; 1992a; 1992b), see the critiques by Habermas (1993b, 43–48) and Wingert (1993, 242–52).

9. See Tugendhat (1993a, 46, 60, 89) and the references to Foot (1978) and Williams (1985).

10. Cf. Arendt (1978, 191): “Conscience is the anticipation of the fellow who awaits you when you come home.”

11. See Wildt (1982; 1992a), Tugendhat (1986, 245–50; 1984, 135–42); for a critique, see Wolf (1984, 213–17).

12. In Berlin (1969b), for instance, one can find alongside his defense of personal autonomy, which as legally secured autonomy offers negatively defined freedom, various “positive” determinations of autonomy pertaining to ethical self-realization (Mill), political autonomy (Rousseau), and moral action (Kant), which have to be connected within the basic structure of a society, as I attempt to show.

13. See Raz’s (1986, chs. 14 and 15) discussion of ethical-personal autonomy, which is “valuable” as a conscious and independent choice of the good within a (pluralist) framework of sociocultural values (cf. chapter 2.2 above).

14. On the relation between ethical autonomy and critique, see Anderson (1994, 117–18) and Cooke (1994); in her understanding of “accountability,” Cooke does however place a requirement on autonomous persons that is primarily morally justified.

15. [Translator’s note: translation altered.]

16. On the question of civil disobedience, see Walzer (1970), Rawls (1971, §§ 55–59); Dworkin (1978b; 1985a), Habermas (1985), Rödel, Dubiel, Frankenberg (1989, 22–46).

17. In what follows I refer to arguments—without going into any details—developed by Wellmer (1991, 195–204) against the discourse-theoretic model of justifying moral norms, and to the responses given to Wellmer by Günther (1993, 45–58) and Habermas (1993b, 35–39), who argue for a distinction between justification and application discourses. Compare also Wingert’s (1993, 123–31) arguments for considering “personal” and “local intersubjective” aspects when justifying norms.

18. On the first point, see Arendt (1977a) and chapter 3.3 above; on the second,

see Arendt (1982); on the latter, see the different interpretations by Beiner (1982), Bernstein (1986b), Benhabib (1988), Wellmer (1998c), Passerin d'Entrèves (1994, ch. 3), who do not however discuss as a central problem the “solitary” moral judge as actor—the issue that presents itself in this context.

19. This faculty of judgment includes moral sensitivity (or empathy) as well as the cognitive element of not restricting the addressees of moral respect to certain others.

20. Hegel (1977, 266–94); see also Nussbaum (1986, ch. 3), Menke (1991).

21. See the differentiation of various conceptions of autonomy (with the exclusion of political autonomy) that have to be integrated: Hill (1991a; 1991b) and Honneth (1995b).

22. See Siep (1974; 1992), Wildt (1982; 1992b).

23. See Theunissen (1982), as well as Habermas (1974), Hölsle (1987, chs. 6 and 7), Honneth (1995a, 57–63).

24. See also Löw-Beer (1994, 129–30). A dimension central to self-esteem is that of labor, whose value and regard are a *social* (though rarely unequivocal) category (cf. Honneth 1995a, 89–91). It is however doubtful whether a complex society based on a division of labor, where certain kinds of labor would not be discriminated against as being inferior, can be grasped as a community with a common ethical self-understanding and shared ends. Here too, being esteemed would probably be constituted by particular ethical communities (within the pluralistic horizons of divergent ideas of value). Moreover, the (self-esteem-constituting) value of labor to a person does not have to be unequivocally tied to the socially recognized value of this labor; other factors such as self-responsibility, communication, collegiality, or creativity, which relate more to the form and organization of labor, might be more important in this respect (cf. Lane [1982, 23–26]).

25. See the appraisal in Jaynes and Williams (1989, especially ch. 4).

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