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Critical Theory and the Struggle for Recognition

*David Ingram*¹

Abstract: I focus on the recent attempt by Habermas to provide a formal criterion for testing the legitimacy of group rights. Habermas argues that group-rights are legitimate only when they protect groups from discrimination by other groups. Group rights that aim to preserve groups against their own members, by contrast, are illegitimate. In my opinion, this way of drawing the distinction overlooks the link between anti-discrimination and preservation. Furthermore, I argue that preservation of a group identity can be legitimate so long as the group in question allows freedom of exit from the group.

Indigenous peoples and old-order religious sects are often praised as proponents of sustainable collectivist economies that respect nature and community against the rapaciousness of capitalism. These groups sought – and acquired – special rights to self-governance and exemptions regarding education, property, and business. These rights, however, also protect cultural patterns that sometimes reinforce conformity to the group and patriarchal hierarchy. Therefore, they seem problematic from the standpoint of a critical theory that esteems individual emancipation and social equality.

Yet critical theory's recent preoccupation with multicultural struggles for recognition suggests a different assessment of group rights. My goal in this paper is not to retrace the vast literature on this topic that has been generated by Honneth, Fraser, Benhabib, and other critical theorists.² Instead I shall focus on the recent

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2 A. Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: 1996); A. Honneth and N. Fraser, *Redistribution or Recognition:*

attempt by Habermas to provide a formal criterion for testing the legitimacy of group rights. Habermas argues that group-rights are legitimate only when they protect groups from discrimination by other groups. Group rights that aim to preserve groups against their own members, by contrast, are illegitimate. In my opinion, this way of drawing the distinction overlooks the link between anti-discrimination and preservation. Furthermore, I argue that preservation of a group identity can be legitimate so long as the group in question allows freedom of exit from the group.

I. Critical Theory's Ambivalence Toward Groups

One might ask, why should critical theorists take group rights seriously in the first place? Marx's emphasis on class struggle as an engine of historical progress led him to advocate for the rights of the proletariat against the rights of the bourgeoisie. If we allow that the motivation underlying this struggle stems from a feeling of indignation and insult on the part of the oppressed, then one might follow Honneth in describing this dialectic in Hegelian terms, as originating in a failure to achieve mutual recognition. But Marx did not understand it that way. According to Marx, recognition of the humanity of the proletariat – or rather, recognition that the proletariat's interests embody the interests of humanity – does not entail reciprocal recognition of the bourgeoisie and its interests. Indeed, Marx believed that a fully emancipated classless society would abolish the kinds of economic differences that underlie Hegel's struggle for recognition entirely.

What Hegel may have had in mind by the famous struggle for recognition between master and slave discussed in the Jena *Phenomenology* and Berlin *Encyclopedia*, as well as his references to recognition in his discussion of objective spirit in such places as the *Philosophy of Right*, is certainly debatable. Robert Pippin, for one, argues that Hegel introduced recognition to capture what can only be characterized as an essential, ontological category of free agency.³ Free

A Political-Philosophical Exchange (London: Verso, 2003); S. Benhabib, *Situating the Self: Gender, Community, and Postmodernism in Contemporary Ethics* (London: Routledge, 1992); *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002).

3 R. Pippin, *Hegel's Practical Philosophy: Rational Agency as Ethical Life* (Cambridge: Cambridge University Press, 2008)

agency requires that one be capable, in principle, of justifying one's actions to others by appeal to reasons they would recognize as good reasons. Recognition here functions as a medium for obtaining self-certainty, or intersubjective validation of what one has done and what one has made of oneself. Such a conception of other-facilitated self-determination and self-ownership is undoubtedly related to how persons identify themselves and their actions, and so is related to notions of personal and social identity. However, Pippin insists that this conception of "recognitive politics," or politics of mutual justification and accountability, is but thinly related – if at all – to the struggle for recognition that animates what Charles Taylor⁴ and Axel Honneth have separately addressed under the headings of a "politics of recognition" or (simply) "identity politics," wherein members of discrete groups seek psychological fulfillment and others' esteem.

Without entering into the debate between Pippin and Honneth on Hegel's notion of recognitive politics,⁵ it bears repeating that whatever analogies commentators have drawn between Hegel's struggle for recognition and class struggle are probably overwrought or, as we shall, misplaced. Unlike class struggle, the Hegelian struggle for recognition aims at recognizing individuality and difference; in the framework of those contemporary discussions of "identity politics" that have been developed by Honneth, Taylor, and others, recognitive politics aims at preserving groups whose members share a distinctive religious, ethnic, national, or racial identity. Although Marx's early reflections on the Jewish question show that he was acutely sensitive to the right of particular religious groups

4 C. Taylor, "The Politics of Recognition," in A. Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994), 25-73.

5 For an attempt at mediating the difference between Pippin and his critics, see my "Recognition within the Limits of Reason," *Inquiry* (forthcoming). Habermas and Honneth also differ from Pippin in arguing that it was *only* in Hegel's early writings, viz., in the *System of Ethical Life* and *First Philosophy of Spirit* (1802-04), that Hegel developed a fully *dialogical* account of recognitive politics of the sort that they, along with Robert Brandom, have developed. For Habermas's contribution to this discussion regarding the development of Hegel's thought, see J. Habermas, "From Kant to Hegel and Back Again," in *Truth and Justification* (Cambridge, MA: MIT, 2003), pp. 190-202; "Equal Treatment of Cultures and the Limits of Postmodern Liberalism" in *Between Naturalism and Religion* (Cambridge: Polity Press, 2008), esp. pp. 293-96; "Struggles for Recognition in the Democratic State" in *The Inclusion of the Other: Studies in Political Theory* (Cambridge, MA: 1998), pp. 203-36.

to protect their identity against those who would demand their assimilation, such reflections hardly constitute an unqualified endorsement of a right to be recognized. For Marx, such recognition rights reflect the limited standpoint of liberalism – a strictly political form of emancipation that cannot be dissociated from the egoism of a civil society constituted by private property.

Here one might chide Marx for collapsing recognition rights into property rights, especially since his critique of abstract notions of formal equality and formal right, which he continued to develop in later years, displays a keen sensitivity to the irreducible individuality of persons and their needs. It is precisely this appreciation of individuality that later critical theorists appropriated in confronting the hegemonic conformism of a capitalist society composed of consumer monads. Most important for our purposes, their grasp of the psychological and sociological dynamics underlying processes of individuation led them to develop a highly ambivalent attitude toward groups and their identities. On the one hand, critical theorists increasingly came to see specific groups – religious groups and counter-cultural groups, to name just a few – as embodying forms of communal solidarity that aspire to a utopian reconciliation with nature and the other. On the other hand, the psychological dynamics underlying group solidarity struck them as regressive and conformist. To restate the problem dialectically, it seemed to them that the psychodynamics of group identity extinguished the very individuality that groups were supposed to foster, in contradistinction to the abstract “atomistic” individualism of mass society.

This same ambivalence towards group solidarity continues to haunt the work of second- and third-generation critical theorists. Habermas, Honneth, and Benhabib – just to name a few – by no means dismiss the importance of group membership for healthy individuation, autonomy, and solidarity. Following their thought, it is reason – specifically communicative reason – that prevents groups from solidifying to the point where they stifle the autonomy and individuality of their members.

But how congenial is critical rationality to the continued survival of a group bound together by an inherited – that is to say, involuntarily acquired – identity? Might not the rational demand to open one’s doors to all manner of belief and practice threaten to so radically transform a group’s identity that it no longer makes sense to say that it remains the same group after this critical encounter?

This is indeed one of the possibilities entertained by Habermas, but it cannot be one that, without further qualification, he endorses, and for two reasons: first, it returns us to the postmodernist idea that culture is simply an assortment of detachable goods that can be voluntarily chosen for this or that reason – as if these goods did not constitute one’s innermost identity. Second, it runs counter to the liberal right to associate and communicate freely with those with whom one agrees. The democratic right to self-determination entails a protective group right to non-interference that effectively entitles the majority of a group to close its doors to outsiders and to expel heretical insiders. More importantly, it sometimes entails the official granting of exemptions and privileges that protect the group from discriminatory treatment at the hands of society.

II. Habermas on Multiculturalism

Unlike many Leftists, Habermas seems untroubled by the fact that identity politics has assumed greater prominence than class struggle in many parts of the world. I will not here explore the reasons why this is so except to note that his main concern in this as in most of his recent discussions about the interface of law and democratic politics is theoretical rather than practical. While many critical theorists are keen on deconstructing group identity or raising questions about the very concept of recognition, Habermas, like Rawls, is concerned about the reasonable limits of multicultural pluralism in liberal society. The question of limits must be raised because different ideological groups vie for political power, thereby potentially threatening the neutrality of the state which is so essential for guaranteeing an equal protection of liberty. Habermas and Rawls assume that most cultural groups agree in their reasonable acceptance of liberal values. They also assume that reasonable groups will not only tolerate each other but will offer each other ideologically neutral arguments when discussing basic rights and other constitutional essentials.

But how unequally can the state treat the various groups that make up civil society without ceasing to be neutral? ⁶ On one hand, people expect to be treated

6 Habermas notes one important difference between multicultural struggles over identity and recognition and feminist struggles of the same kind: “. . . from the point of view of members of the majority culture, the revised interpretation of the achieve-

the same way in virtue of their humanity. On the other hand, they expect to be treated differently in recognition of their particular cultural identity. Protecting the cultural identity of a particular group with special privileges and protections, however, contradicts the principle of equality. Indeed, the contradiction only deepens when the groups clamoring for special rights are themselves illiberal and undemocratic.

Habermas denies that group rights necessarily contradict liberal equality. He insists that affirmative action policies, bilingual education programs, and laws that exempt members of pacifist religions from military service are properly understood as protections against forms of discrimination. These policies aim at ensuring the *equal inclusion* of persons who have different needs. For Habermas, cultural groups are not self-acting agents that claim rights over and above the rights of their individual members (BNR: 302). Rather, they designate conditions of agency to which their individual members claim a legal right. This right, in turn, derives from an individually held right to be treated with self-respect (BNR: 300).

ments and interests of others does not necessarily alter their own role in the same way that the reinterpretation of the relations between the sexes alters the role of men” (IO: 211-12). This assumption can be questioned. Although multicultural struggles for recognition can take the form of an *identity-preserving* politics that aims to resist assimilation, it is hard to imagine how this kind of politics does not also *transform both* how the minority group understands its identity and how the majority group, in recognizing the distinctive identity of the minority, understands *its own* identity). For example, the “politically correct” acceptance of African-Americans’ expression of “Black Pride” versus the *un*-politically correct expression of “White Pride” by European-descended persons has led to a questioning among whites regarding the meaning of their own “whiteness.” Habermas’s tendency to underestimate the extent to which multicultural struggles for recognition can be “transformative” of the dominant majority’s understanding of its own identity may stem from his failure to adequately distinguish between different types of identity struggles (for example, he lumps together the struggle “of oppressed ethnic and cultural minorities”). Struggles for racial (and sometimes ethnic) recognition directly involve struggles against racism and its entrenched social hierarchies; struggles for cultural recognition (as in the case of French-speaking Quebecois) typically do not. The latter’s assertion of their own right to self-determination need not affect in any deep way the self-understanding of English-speaking Canadians. For further examination of the complex issues surrounding race, ethnicity, and culture as it pertains to the question of whiteness as an identity, see chapter two of *Rights, Democracy, and Fulfillment*. I thank Drew Pierce for bringing these difficulties within Habermas’s text to my attention.

However, because culture is necessary for constituting personal identity, it is not merely instrumental to the pursuit of personal preferences.⁷ In Habermas's words,

The concept of a person acting instrumentally who selects from fixed options according to culturally shaped preferences fails to clarify the intrinsic meaning of culture for an individual's way of life . . . Against this background it makes sense to derive cultural rights directly from the principle of the inviolability of human dignity (Article I of the German Basic Law): the equal protection of the integrity of the person, to which all citizens have a claim, includes the guarantee of equal access to the patterns of communication, social relations, traditions, and relations of recognition that are required or desired for developing, reproducing, and renewing their personal identities (BNR: 295-6).

According to Habermas, the distinction between culture as an involuntary condition of agency and culture as an instrumental good, or resource, that can be voluntarily acquired marks out a distinctive niche for "identity politics" (or the "politics of recognition"). Siding with Fraser in her debate with Honneth,⁸

7 See W. Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), pp. 34-48. For a critique of Kymlicka on the concept of a societal culture, see my *Group Rights* (loc. cit.), pp. 80ff.

8 See N. Fraser and A. Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange* (London: Verso, 2003). Honneth argues that the struggle for recognition provides a unitary normative framework capable of explaining the struggle for economic justice (redistribution). Fraser, by contrast, sees these struggles as analytically distinct (but empirically intertwined). In her opinion, recognition involves positively affirming another person's distinctive identity, while the redistribution aims at securing parity of resources or capabilities. Still others, such as Brian Barry, reduce struggles for recognition to struggles for redistribution (voluntary access to and choice for goods), so that the injustice committed against Sikhs when they are forced by mandatory motorcycle helmet laws to remove their turbans is simply a "restriction in their range of opportunities for choosing one or another religious committee." In Hegel, the category of recognition (as developed in the master-slave dialectic of the *Phenomenology*) is linked to non-domination. Despite Habermas's earlier acceptance of Honneth's reduction of all political struggles to a struggle for recognition (see chapter 3) his position is close to Fraser's; rather than classify mis-recognition (or lack of recognition) as a simple form of domination or economic oppression, he understands it as an exclusion from equal citizenship. See B. Barry, *Culture and Equal-*

he clearly distinguishes struggles for social justice that revolve around social status and oppression – the unequal distribution of goods and resources – from struggles for recognition that revolve around domination and unequal inclusion.

The discussion of “multiculturalism” calls for a more careful differentiation within the concept of civic equality. Discrimination or disrespect, nonpresence in the public arenas of society, or a collective lack of self-respect point to an incomplete and unequal inclusion of citizens who are denied full status as members of the political community. The principle of equality is violated in the dimension of membership, not in the dimension of social justice. The degree of inclusion concerns the horizontal relations among members of the political community, whereas the scope of the system of statuses concerns the vertical relations among citizens of a stratified society. Social strata are conditioned by patterns of distribution of social wealth . . . whatever counts as economic exploitation and social underprivilege . . . and whatever counts as deprivation. . . The inequality lies in the dimension of distributive justice, not in the dimension of the inclusion of members (BNR: 294).

Habermas follows this passage with an important qualification: questions of distributive justice and cultural recognition, he notes, “are almost always empirically intertwined.” Indeed, his own account of cultural rights tends to blur these two aspects of civic equality, as when he observes that “[collective rights] empower cultural groups to preserve and make available the resources on which their members draw in forming and stabilizing their personal identities” (BNR:297). Now, Habermas’s conflation of culture as instrumental resource and culture as condition of identity is not without significance. Habermas’s emphasis on culture as “involuntarily acquired” identity leads him to stress the preservative function of collective rights while his treatment of culture as resource leads him to privilege the rights of individuals to appropriate culture according to their preferences.

Let us examine more closely the weaker current in Habermas’s thinking about group rights. If the language community into which we are originally socialized

remains, for most of us, a permanent part of our identity, whether we will it so or not, then protecting and preserving that identity – extending it into the future – will obviously be very important to us. Rights that “grant the representatives of identity groups to organize and administer themselves” also enable them to “police” the identity of the group by limiting membership to those who accept that identity. The right to associate with like-minded persons permits members of a group to exclude outsiders who reject that identity. Indeed dissenters are viewed no differently than outsiders.

The right of the group to preserve and protect its identity is acknowledged by Habermas when he asserts that a group can legitimately restrict the freedom of its own members if it permits them full freedom *to exit the group*. Citing William Galston,⁹ he observes that “realistic” conditions for exit must include the following provisions: First, members must have the freedom to inform themselves of alternative lifestyles; second, they must have the freedom to reflect on these lifestyles; third, they must not be coerced in their thinking by group-programming; and finally, they must not be denied skills that enable them to live outside the group should they choose to do so. (BNR: 303).

As we shall see, Habermas uses these conditions to argue against “strong” multicultural rights on the grounds that they “violate” the rights of individual members. However, it is important to note that in this context his insistence on exit conditions implicitly acknowledges the right of groups to protect and preserve their identity even when it is not liberal or democratic.¹⁰

Although Habermas does not discuss the deaf culture movement (DEAF), its demand for protective group rights exemplifies the problem of exit noted above. The use of cochlear implants in deaf children threatens the survival of sign language around which deaf culture is based. The smaller this community becomes

9 W. Galston, “Two Concepts of Liberalism,” *Ethics* 105 (1995), p. 533.

10 Like Rawls, Habermas holds that principles of justice apply only *indirectly* to private associations (Rawls, but not Habermas, would say that they apply indirectly to the family, as well). Private associations, however, must respect the basic human and civil rights of their individual members. The Catholic Church is a hierarchical organization that excludes women from the priesthood as a part of its dogma; but women are not officially treated or recognized as inferiors. Hence, the Catholic Church merits a group right to be tax exempt - unlike Bob Jones University, which was threatened with losing its tax exempt status because of its racist admissions policy (BNR: 298).

the less political clout it has to get the resources it needs for its members, many of whom cannot speak or understand oral language with facility. At the same time, denying deaf children cochlear implants violates the capacity and fitness conditions for exit stipulated above, since acquisition of an oral language must occur at an early age if deaf children are to have a good chance of learning it.

The example of Deaf Culture also illustrates four conflicts between individual and group rights that Habermas expressly highlights. Three of these conflicts involve violations of equal protection. These violations occur “(a) when different identity groups dispute each other’s rights and privileges, or (b) when, as is typically the case with multicultural claims, one group demands equal treatment with other groups, or (c) when, as in a complementary case, nonmembers see themselves as disadvantaged in relation to members of privileged groups (white people, for example, by quotas for nonwhites)” (BNR: 297). Taking Deaf Culture as our example, we observe these conflicts reflected in decisions concerning whether (a) scarce resources should be diverted to signers and other resources for the deaf, (b) Deaf Culture – which arises from a disability – defines a genuine cultural group that has a *pima facie* right to exist; or (c) affirmative action hiring quotas for deaf people don’t discriminate against the hearing.

However, it is the fourth conflict between individual and groups rights that worries Habermas. This conflict arises whenever “elites use their expanded organizational rights and competencies to stabilize the collective identity of groups, even if it entails violating the individual rights of dissenting members of the group” (ibid). This last case, Habermas believes, is fundamentally different from cases in which claims advanced by different cultural groups conflict with each another. In these latter cases, protecting groups from *external* threats by other groups can be justified because respecting others in their individuality can scarcely be accomplished without also respecting their cultural identities. Habermas therefore concludes that group rights that *make available* particular cultural resources – such as providing bilingual education, easing burdens of religious practice, and so on – are thus wholly in keeping with liberal demands for equal inclusion and may even be necessary to combat the spread of a mass-consumer, Americanized mono-culture (PC: 75).

But it is the fourth case – involving a group’s right to protect its identity against *internal* threats – specifically against individual non-conformists – that Habermas thinks is most problematic. In this connection Habermas expressly takes issue with a number of landmark legal decisions, ranging from the U.S. Supreme Court’s decision to allow Amish parents the right to remove their children from school upon completing eight years of formal education¹¹ and the Canadian Supreme Court’s decision to allow patriarchal tribal councils to function as the last court of appeal for processing women tribal members’ legal suits against gender discrimination¹² to Quebec’s language laws, which require that

11 Writing for the majority in *Wisconsin v. Yoder* (1972) Chief Justice Warren Burger upheld the right of the Amish to remove their children from public school after the eighth grade on the grounds that doing so was necessary to protect their way of life from “worldly influences.” Citing evidence showing that “Amish are quite effective and self-reliant citizens,” Burger denied that the state had a sufficiently compelling interest in educating Amish children beyond the 8th grade (age 14) that would warrant impeding the Amish in teaching their children skills of farming and domestic labor essential to their way of life. Writing for the minority, Justice William Douglas argued that removing children from public school at this age would “forever (bar them) from entry into the new and amazing world of diversity,” thereby stunting and deforming them. Although this dissent explicitly addresses the absence of conditions – specifically the absence of knowledge regarding alternative lifestyles and the absence of reflective capacities- that would enable Amish children to exit their religious community (despite their option to take a one-year hiatus from the community upon turning eighteen) – it does not address what – according to Nussbaum – is perhaps the most salient concern: the inequality in education received by Amish boys and girls. Whereas Amish boys learn skills, such as carpentry and farming, that are highly marketable in the outside world (thereby satisfying the fourth exit condition of “fitness”) Amish girls learn domestic skills that are much less so. Studies have also shown that the psychological pressures faced by Amish children – knowledge that they will be shunned and will lose their inheritance should they choose to leave the community – conspire with lack of knowledge about the outside world (they are denied access to televisions, radios, and most telephones) and their unusual style of behavior and language to discourage children from exercising their option (studies show that 75% of Amish children and 95% of Hutterite children remain in their communities after adulthood). Given these facts, Habermas’s assertion that the Supreme Court “accepts a violation of the civil rights of juveniles to basic education that would enable them to make their way in complex societies” (BNR: 299) is not entirely implausible, despite the fact that it ignores important gender differences that suggest that the rights in question are “diminished” (but perhaps not violated) in different degrees. See Nussbaum (2000), pp. 232-34 and Ingram (2004), pp. 193-94..

12 Habermas has in mind a number of cases cited by Kymlicka (loc. cit., p. 38ff) in

French-speaking parents and immigrants send their children to French-speaking schools. According to Habermas, in these instances *preservation* of cultural identity was allowed to trump the rights of (a) children to an education that would have enabled them to competently function outside of Amish society, (b) women to non-discriminatory treatment, and (c) parents to choose whether their children go to non-French-speaking schools (BNR: 299ff).

With the sole exception of tribal rights – which Habermas treats as morally justifiable “reparations” for past violations of sovereignty that sometimes permit “illiberal” forms of patriarchal authority and collective property that are “alien” to the egalitarian and individualistic premises of liberal constitutional law¹³ –

which patriarchal tribal councils denied women (but not men) who married outside the tribe the right to have their children included as members of the community in full standing. Another case not mentioned by Habermas involves Evangelical Christians who were denied access to their tribal threshing implements for refusing to participate in tribal religious ceremonies. In *Santa Clara Pueblo v. Martinez* (1978) the United States Supreme Court ruled in favor of the patriarchal council’s decisions regarding patrilineal descent on the grounds that doing so “conformed” to the tribe’s tradition. In the latter case the Court ruled in favor of the Evangelicals. For further discussion of these and other cases involving Indian tribes, see Ingram (2000), ch. 5.

- 13 According to Habermas, states such as the United States, Canada, and Australia are “morally compelled” – out of “equal respect for all” – to “rectify the historical injustice to indigenous peoples who were integrated, forcibly subjugated, and subjected to centuries of discrimination” by conceding “broad autonomy to maintain or restore specific forms of traditional authority and collective property, even though in individual cases these conflict with the egalitarian principle and individualistic character of ‘equal rights for all.’ The result (see note 26) is that “an ‘illiberal’ social group is allowed to operate a legal system of its own within the liberal state” which “leads to irresolvable contradictions” (BNR: 304). In contrast to this interpretation – which holds that the conflict in question “is reflected in law but does not emerge from it” since, ostensibly the episodes of subjugation and integration “predate the legal system” (BNR: 305) – one might argue that the conflict in question does indeed stem from the liberal legal system “colonizing” the indigenous community from the very beginning. The history of incorporating tribal peoples into the dominant liberal legal system occurred over a period of one hundred and fifty years in which tribal peoples first “lost” their treaty status as full-fledged sovereign nations, then lost their distinctive cultural identity, including their communal ownership of tribal property (replaced by individually owned plots of land), and then lost their status as aboriginals, having gained the rights of citizenship. Although the process of forced assimilation did not result in dissolving all reservations – tribal governments were often created and maintained by the government in order to justify its control over the extraction of mineral wealth – it did result in the eventual subsumption of indigenous peoples’ tribal rights under the basic rights guaranteed by

non of these efforts to preserve a cultural group identity appears justified. More precisely, they all threaten the kinds of individual rights that discourse theory of law regards as most basic, namely rights to free and open communication. Any law that grants a group the right to resist changes in its identity by shielding the culture and language of its individual members from “contamination” by other cultures and languages seems to constrain the very communication by which persons, from adolescence on, undertake to voluntarily shape their identities in relations of free and undistorted mutual understanding. Responding to Charles Taylor’s defense of Quebec’s language laws, Habermas writes that:¹⁴

[T]he protection of forms of life and traditions in which identities are formed is supposed to foster the recognition of their members; it does not represent a kind of preservation of species by administrative means The constitutional state can make this hermeneutical achievement of the cultural reproduction of worlds possible, but it cannot guarantee it. For to guarantee survival would necessarily rob the members of the freedom to say yes or no, which nowadays is crucial if they are to remain able to appropriate and preserve their cultural heritage. When a culture has become reflexive, the only traditions and forms of life that can sustain themselves are those that bind their members, while at the same time allowing members to subject the

the federal constitution (in the United States this happened in 1968, in Canada it happened in 1982). Tribal law, then, cannot contradict basic individual rights. Contrary to Habermas’s interpretation (BNR: 305), the relationship between the federal government and semi-sovereign tribal governments seems more analogous to the relationship between the federal government and other private associations (including the family). That is to say, liberal principles apply indirectly to these associations, which have a right to limited self-determination – and therewith the freedom to adopt illiberal forms of governance and collective property – so long as they do not violate basic rights and permit dissidents a right to exit. For more on this, see Ingram (2000), chapter five.

- 14 C. Taylor, et. al. *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994). According to Taylor, “one has to distinguish the fundamental liberties, those that should never be infringed and therefore ought to be unassailably entrenched, on one hand, from privileges and immunities [i.e., the right of francophone and immigrant Quebecers to send their children to English-speaking schools – D. I.] that are important, but that can be revoked or restricted for reasons of public policy – although one would need a strong reason to do this – on the other” (59).

traditions to critical examination and leaving later generations the option of learning from other traditions or converting and setting for other shores (IO: 222).

Quebec's language laws, Habermas fears, are designed to guarantee the preservation of Quebecois Francophone culture by denying parents the basic communicative freedom to say "no" to a particular kind of education (and therewith a particular kind of identity) for their children (BNR: 300). If we assume that parents ought to have a right to determine what cultural identity their children will initially acquire, so long as doing so doesn't deprive their children of the knowledge, critical aptitude, and psychological capacity that might enable them to later exit that cultural identity, then Quebec's laws must be deemed illegitimate.

The idea that parents shouldn't have this right against the community appears to rest on a deeply flawed analogy between cultural identity and species identity. It might be argued that cross-cultural "contamination" - either through cross-cultural marriage or cross-cultural exposure of some other kind - "dilutes" and thereby "weakens" the identity of a culture as much as cross-breeding "weakens" the genetic identity of a species. But any weakening of a form of life is bad for it and - given the value of diversity for the eco-system as a whole - bad for all of us. So cultural preservation - like species preservation - constitutes an overriding value that permits the dominant majority in a cultural group to limit the extent to which the group's members communicate with other groups.

Leaving aside the "preservationists" questionable assumption that cross-fertilization "weakens" rather than "strengthens" life forms and that the good of cultural preservation entitles groups to preserve their identity by whatever means, the very idea that cultural identities are self-contained and static - cut off from communication with other cultural forms of life - is deeply mistaken. As Taylor himself points out, members of any cultural group need recognition not only from their fellow members but also from members of other cultural groups. They need to know that their particular cultural identity is respected if not fully affirmed by others. More pertinent to our present concerns, Habermas argues that "the guarantee of the internal latitude necessary to assimilate a tradi-

tion under conditions of dissent is decisive for the survival of cultural groups.” To be precise, “a dogmatically protected culture will not be able to reproduce itself, especially not in a social environment replete with alternatives” (BNR: 303). Thus it is only by being freely interpreted – in dialog with other cultures – that a culture can be adapted to ever new and changing circumstances; and it is only through change in the face of new cultural challenges that a given culture’s practitioners relate to their own culture (and their own identity) with a degree of certainty.

III. Concluding Remarks

To conclude, Habermas’s understanding of group rights seems ambivalent. On one hand, the right to free association justifies the right of a majority to “support the continued existence of the cultural background of the collectivity directly” and this need not always happen “above the heads of its members” in a way that “would promote internal repression” (BNR: 301). Even if we agree with Habermas and Brian Barry that, ontologically speaking, “cultures are simply not the kind of entity to which rights can properly be ascribed,” we can scarcely deny that “communities defined by some shared cultural characteristics (for example, a language) may under certain circumstances have valid claims . . . that arise from the legitimate interests of the members of the group”¹⁵ (ibid). Perhaps it was this – wholly legitimate – democratic decision by the people of Quebec – and not, as Habermas contends, the postulation of Quebecois Francophone culture as an “intrinsic value” grounded in a “metaphysics of the good [that exists] independently of citizens . . . maintaining their personal identity” (BNR: 301) - that led them to want to preserve equal access to their provincial Francophone culture against the hegemonic incursion of the national Anglophone culture. These interests would have included maintaining a common political language against the threat of fragmentation, as well as protecting mono-lingual French speakers from potential discrimination in the workplace and in accessing public accommodations. Furthermore, the four “exit” conditions mentioned by Habermas would have been available to French-speaking and immigrant parents

15 Barry (2002), p. 67.

who preferred to leave Quebec or provide special tutoring so that their children would be assured of an Anglophone up-bringing.

On the other hand, Habermas's concern to preserve the open communication so essential to free and undistorted identity-formation leads him to embrace a very different kind of identity politics: not the identity politics that is oriented toward protecting access to cultural resources intrinsic to a group's already (largely involuntary) linguistic identity, but an identity politics of postmodern transformation and destabilization. As he puts it, "the aim of multiculturalism - the mutual recognition of all members as equals - calls for a transformation of interpersonal relations via communicative action and discourse that can ultimately be achieved only through debates over identity politics within the democratic arena" (BNR: 293). This identity politics has little to do with protecting, for instance, the group privilege enjoyed by Sikhs to be exempt from motorcycle helmet laws - a protective privilege designed to ensure equal religious freedom - but it has everything to do with changing the way Sikhs and non-Sikhs understand their own identities. Again, the awakening of "Black Pride" among African Americans and "sisterhood" among women in their struggle for recognition not only transformed how these misrecognized groups understood their own identities and needs, it also transformed how white people and men understood *their* own identities and needs.

In the end, Habermas is concerned that a politics of ensuring "equal access to cultural resources for any citizen who needs them to develop and maintain her personal identity" has already logically committed itself to a "politics of survival" in which the state undertakes to "ensure [the availability of these resources] in the future" (BNR: 300). However, the politics of cultural transformation which he offers as an alternative comes too close to abandoning the multicultural politics of equal recognition and equal protection that he himself regards as indispensable for maintaining a vibrant pluralistic society. Indeed, his criterion for a group's legitimacy - namely that it pass the critical threshold "of the autonomous endorsement of every single potential participant" (BNR: 302) - seems to retract the very thing that legitimates group rights in the first place, namely, that the cultural resources that such rights are supposed to protect are not voluntarily acquired and redistributed at will by individual members seeking to satisfy their own prefer-

ences, but are constitutive of identity, having been acquired involuntarily through socialization.

Finally, Habermas's distinction between legitimate "enabling rights" and illegitimate "protective rights" is impossible to maintain in practice. Habermas himself observes that "this distinction ceases to be useful when the same collective rights simultaneously serve both functions, as in the Amish case" (BNR: 299). But the point is not that collective rights sometimes serve both functions. The point is that internal dissenters are invariably regarded as external threats to group identity. It would therefore appear that what is most problematic is not that groups try to preserve themselves by policing their internal identities democratically but that they do so in a manner that fails to adequately respect their members' basic right to exit.¹⁶

16 The conditions for exercising this right robustly cannot always be met – as can be seen in the case of women who live in patriarchal religious communities and Evangelicals who live on tribal reservations. In some cases, exit strategies, even when formally available, may not be optimal for those who might take advantage of them. In these cases principles of self-determination and individual freedom may both have to be compromised in order to reach an equitable resolution. Indeed, there remains one striking case in which the conditions for exit are always problematic: persons who want to emigrate from their native community due to cultural persecution depend upon the hospitality of others to allow them to immigrate into their community under terms that are often uncertain.