

Chapter 1: Deconstructive Concepts and Ideals

Introduction: Political Concepts and Ideals

Political theorists study concepts and ideals. They use different concepts and ideals, they use them differently, and they disagree about their nature – think, for instance, of disagreements over the concepts and ideals of democracy and justice. But, even as, in the following, I focus on how political theorists use concepts and ideals, political concepts and ideals are not the property of political theorists. We use concepts whenever we study politics. For instance, political scientists draw on concepts such as agency and politics when studying electoral behavior, or on concepts such as institution and representation when studying parliamentary procedures. As political agents, we also draw on concepts and ideals. When I complain that the local council does not provide charging stations for electric vehicles, I draw on concepts and ideals about the relationship between public and private, responsibility, collective action, and so forth. And if I discuss child benefits with a friend, I draw on concepts and ideals of equality, justice, and rights.

Political concepts and ideals are ubiquitous, and this chapter asks what it means to think deconstructively about political concepts and ideals. I do so focusing on two concepts and ideals central to so many political issues today: rights in the first part of the chapter, and justice in the second part of the chapter. The rest of the book examines others political concepts through a deconstructive lens. In Chapter 2, I turn my attention to the concept of sovereignty, and in later chapters I examine democracy (Chapters 3 and 4), populism (Chapter 4), and truth (Chapter 5). In each case, I ask what those concepts and ideals look like once we take a deconstructive approach.

Examining the concepts and ideals of rights and justice in this chapter, I draw on the notion of iterability introduced in the Introduction when examining the concept of event. Iterability helps us understand political concepts and ideals as open-ended iterative processes of dis- and re-articulation. These processes should be understood as political struggles over the meaning and institutionalization of the concepts and ideals. I also bring into play the tension between conditionality and unconditionality, which concerns the relationship between the particularity and universality of concepts and ideals: while they are always articulated in particular ways and in particular contexts (this is the conditionality), there is a universality to concepts and ideals such as rights and justice that always exceeds their particularity (this is the unconditionality). In this way, deconstruction offers a distinct take on the relationship between particularity and universality.

In this and subsequent chapters, I combine two “styles” of deconstruction when reading discourses about political concepts and ideals. Jacques Derrida also refers to these two styles as “ways” or “practices” of deconstruction. In his words:

Deconstruction is generally practiced in two ways or two styles, although it most often grafts one on to the other. One takes on the

demonstrative and apparently ahistorical allure of logico-formal paradoxes. The other ... seems to proceed through readings of texts, meticulous interpretations and genealogies.¹

The quote is from “Force of Law” where Derrida engages with the concept of justice. That text is divided into two parts – originally given as two separate lectures – where the first part aims to identify general aporias about justice in a more or less systematic way, and where the second part is a reading of Walter Benjamin’s *Critique of Violence*. However, the first part is not a case of what we might call pure formalism as it also engages in close readings of texts; and the second part is not what we might call textual empiricism as it draws on general motifs. The two styles are grafted on to one another, and it is difficult to see how this could not be the case. The deconstruction of the concept and ideal of justice is not purely formal or universal, because it is always articulated one way or another. Concepts and ideals are always discursively inscribed. That is why I cannot write a chapter about political concepts and ideals in the abstract. It is always going to be about particular articulations of particular concepts and ideals, even if the concepts and ideals exceed this particularity. While never purely formal or universal, the concept and ideal of justice cannot be reduced to their particular articulations, for example, in a text by Benjamin. It is a question of more or less, and we can think of the two styles as complementary.

The first part of this chapter is organized around a close deconstructive reading of Seyla Benhabib’s writings on rights. It thus follows the second of the two styles mentioned by Derrida, but it is organized around a single concept: rights. I bring into play Derrida’s notion of iterability as Benhabib herself brings this into play. This offers me a way to contrast Benhabib’s Critical Theory approach with the deconstructive approach. The second part of the chapter consists of a more general and systematic statement of what deconstruction has to offer when it comes to political concepts and ideals. I organize this second part around the concept of justice, and I exemplify it with reference to John Rawls’ theory of justice; there, I draw on the notion of iterability, but I also introduce the tension between conditionality and unconditionality.

Universality, Particularity, and Iteration

Seyla Benhabib uses the term iteration to refer to the way in which universal principles, rights, and collective and individual identities are constituted. She describes iterations as “complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in the associations of civil

¹ Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority,’” in *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson (New York: Routledge, 1992), 21.

society.”² Benhabib brings the notion of iteration into play in two contexts in particular: debates about the rights of immigrants, and the claims of cultural and religious minorities.³ An example of the latter is the debates about the hijab in France since the late 1980s. As the parties to the French debates appealed to the separation of state and religion, French national identity, and the symbolic meaning of the hijab, the meaning of these were also changed in the process. The debates about the hijab raised questions such as “can an observant Muslim woman be a good French citizen and also be true to herself? And what exactly does it mean to be a ‘good’ French citizen? Who defines the terms here?”⁴ Benhabib’s point is that the terms of citizenship and democratic inclusion – what does *laïcité* mean? What is the place of religion in institutions such as schools? And so on – are defined through iteration.⁵ The girls’ actions and the headscarf can also be understood through the lens of iteration. Here, too, a struggle takes place over the significance – the importance and the meaning – of the hijab: Can you wear the hijab and be French at the same time? And so on. Thus, iterations of rights and identity claims are connected. Moreover, with the notion of iterations, Benhabib also seeks to give agency to citizens (and not just philosophers and judges) and to marginalized groups (and not just the majority population).

Benhabib introduced the notion of iteration to argue against what she calls subsumptive universality where particular cases are subsumed to a universal rule, and where the act of subsumption does not alter the universal rule. To subsumptive universality she opposes interactive universality, and iteration is supposed to capture the way in which universality is constituted in interaction with particularity.⁶ An example of a notion of subsumptive universality would be John Rawls’s theory of justice where the principles of justice are decided behind the veil of ignorance so that, once the veil is raised, the principles of justice and basic rights and institutions are given to citizens.⁷ Benhabib also found the notion of subsumptive universality in Habermas’s Kantian theory of morality. To some extent, Habermas took on board this criticism, and we can think of his post-secular approach to the role of religion

² Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004), 179. For an earlier version of the argument that follows, see Lasse Thomassen, “The Politics of Iterability: Benhabib, the Hijab, and Democratic Iterations,” *Polity* 43, no. 1 (2011): 128–49, <https://doi.org/10.1057/pol.2010.18>.

³ In addition to the ones mentioned in the following, she also employs the notion of iteration in the context of her most recent work on cosmopolitanism and human rights. Seyla Benhabib, *Another Cosmopolitanism*, ed. Robert Post (Oxford: Oxford University Press, 2005); Seyla Benhabib, “Another Universalism: On the Unity and Diversity of Human Rights,” *Proceedings and Addresses of the American Philosophical Association* 81, no. 2 (2007): 7–32; Seyla Benhabib, “Twilight of Sovereignty or the Emergence of Cosmopolitan Norms? Rethinking Citizenship in Volatile Times,” *Citizenship Studies* 11, no. 1 (2007): 19–36.

⁴ Benhabib, *The Rights of Others*, 182.

⁵ Benhabib, 183–98.

⁶ Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (London: Routledge, 1992), 153f, 227f.

⁷ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971).

in contemporary liberal democracies as a way to open the universality of constitutional rights to particular, religious arguments.⁸

Benhabib's view of the relationship between universality and particularity is captured well in the title of one of her articles: "Another Universalism: On the Unity and Diversity of Human Rights."⁹ There must be a unity – that is, universality – to human rights, so that they are not merely the expression of parochial interests. At the same time, we must respect some diversity in the interpretation of those human rights. This is what she has in mind with "*another* universalism," that is, a universalism that is neither given once and for all nor reduced to particular interests.

The democratic iterations are supposed to lead to learning processes on the part of both French society as a whole and the Muslim school girls. French society and the state should learn by listening to the girls' views, thereby reconstituting what it means to be French. And the girls "have to learn to give a justification of their actions with 'good reasons in the public sphere,'"¹⁰ which for Benhabib means that, when they invoke universal principles, they do so in terms that are not restricted by their particular religion. Thus, French universalism must expose itself to the girls' particular views because they too must have a say in what it means to be French, and in what it means to be an equal member of French society. And the girls' particular views must be articulated through a universalist language, which forces them to rearticulate their views in terms that are comprehensible to other citizens, including non-Muslims.¹¹

Iteration is, then, Benhabib's way to theorize the mediation between the universal and the particular, the general and the concrete. Iteration is not only an analytical category but also a normative category, at least insofar as iterations are democratic: "My answer to the question as to how to reconcile cosmopolitanism with the unique legal, historical, and cultural traditions and memories of a people is that we must respect, encourage, and initiate multiple processes of democratic iteration."¹² Interactive, or iterative, universality is better because it is more inclusive, and because it does justice to the otherness of the other.

The universals – principles and rights – are not independent of the iterations of them, but rather constituted through the particular invocations of them in particular circumstances. Insofar as we are dealing with liberal democracies, popular sovereignty is mediated by universal human rights norms, and so the demos can only constitute itself by simultaneously appealing to universal human rights. This means that the universals are constituted – repeated *and* altered – through the acts of self-constitution on the part of a particular demos. As such, the universals are always partial and exclusionary. However, insofar as the liberal democratic demos must make

⁸ Jürgen Habermas, *Between Religion and Naturalism: Philosophical Essays* (Cambridge: Polity, 2008), pt. IV.

⁹ Benhabib, "Another Universalism."

¹⁰ Benhabib, *The Rights of Others*, 192.

¹¹ Benhabib, 192–93; Benhabib, *Another Cosmopolitanism*, 57, 61.

¹² Benhabib, *Another Cosmopolitanism*, 70.

reference to universal norms in its acts of self-constitution, those acts of self-constitution can always be put into question in light of universalist norms that always exceed any particular instantiation of them.¹³

The identity of the demos is not fixed, but is constituted through democratic iterations. The self-legislation of the demos contains a moment of self-constitution. When the demos legislates, and especially when it legislates on what are to be the limits to membership of the demos in, for instance, immigration law, it simultaneously constitutes itself as a certain kind of demos with certain limits. “Political identities are endogenous and not exogenous to processes of democratic iteration and the formation of rights.”¹⁴ In short, identities are not simply given *to* the democratic iterations, but are always also constituted *through* democratic iterations. This iterative process is an open-ended process of resignification of both the universal (human rights, constitutional rights) and the particular (the identities of the majority political community and of minorities). The tension between the universal and the particular cannot be eradicated but is “mitigated” through democratic iterations.¹⁵

The Art of Separation

Now consider how Benhabib explains the interaction between constitutional principles and political claims:

There is a dialectic between constitutional essentials and the actual politics of political liberalism. Rights, and other principles of the liberal democratic state, need to be periodically challenged and rearticulated in the public sphere in order to retain and enrich their original meaning. It is only when new groups claim that they belong within the circles of addressees of a right from which they have been excluded in its initial articulation that we come to understand the fundamental limitedness of every rights claim within a constitutional tradition as well as its context-transcending validity.¹⁶

Benhabib notes the dialectic between “constitutional essentials” and “actual politics:” the constitutional essentials must be mediated by actual politics. However, this is so only “in order to *retain* and *enrich* their *original* meaning.” The democratic iterations reproduce and realize the constitutional essentials in a progressive fashion that gradually eliminates the remaining particularity in historical interpretations of the constitutional essentials.

Everything turns on whether the democratic iterations are constitutive of the universals. On the one hand, Benhabib writes, the universal rights “transcend,” and thereby “frame,” the democratic iterations, in which case the

¹³ Seyla Benhabib, “Democracy and Difference: Reflections on the Metapolitics of Lyotard and Derrida,” in *The Derrida-Habermas Reader*, ed. Lasse Thomassen (Chicago: Chicago University Press, 2006), 136–38.

¹⁴ Benhabib, *The Rights of Others*, 169.

¹⁵ Benhabib, *Another Cosmopolitanism*, 35.

¹⁶ Benhabib, 60.

universal rights are exogenous to the iterations;¹⁷ on the other hand, those rights can be revised and even rejected through democratic iterations, in which case the universal rights are a result of, and endogenous to, the iterations. Both before and a result of the iterations: this is the ambiguity expressed by the notion of iteration and characterized by Benhabib as variously an aporia, a paradox, or a tension.

The ambiguity is never absent from Benhabib's writings, but at key points she privileges the first view over the second, thus limiting the effects of the democratic iterations in advance. For instance, Benhabib writes that "[d]emocratic iterations do not alter conditions of the normative validity of practical discourses that are established *independently* of them."¹⁸ The universalist discourse theoretical assumptions about normativity and legitimacy – summed up by Benhabib as "communicative freedom" – are left intact by the democratic iterations. Indeed, the discourse theoretical assumptions provide the basis for judging "whether democratic iterations have taken place rather than demagogic processes of manipulation or authoritarian indoctrination."¹⁹ Benhabib separates the discourse theoretical assumptions from the iterative effects, and, in doing so, she can use those assumptions as a measure of the democratic character of the iterations. Indeed, the iterations are only democratic insofar as they stay within the limit set by the idealizations of discourse theory.²⁰

Separating the universals from the effects of iterability happens by separating the universals from the iterations, thereby doing away with the mutual articulation between universality and particularity. This separation also marks Benhabib's view of the place of culture in constitutional democracies, where she talks of "the art of separation." In her discussion of the French headscarf debates, Benhabib writes that citizens – including the Muslim women – must "learn the art of separation by testing the limits of their overlapping consensus" through democratic iterations.²¹ The separation here refers to the separation between the right and the good, between constitutional essentials and cultural particulars, and, indirectly, between public and private and between state and church.²² The quote may suggest that we should think of this separation not as a given, but as something to be established through open-ended iterative processes. In that case the distinction between the right and the good would not frame the political struggle as a fixed framework but would be a matter of political struggle. The terms of inclusion would be constituted through iterative processes. However, when dealing with the separation between constitutional universals and

¹⁷ Seyla Benhabib, "The Legitimacy of Human Rights," *Daedalus* 137, no. 3 (2008): 99.

¹⁸ Seyla Benhabib, "Claiming Rights across Borders: International Human Rights and Democratic Sovereignty," *American Political Science Review* 103, no. 4 (2009): 699, my emphasis.

¹⁹ Benhabib, 698–99.

²⁰ Ayten Gündoğdu, *Rightlessness In an Age of Rights: Hannah Arendt and the Contemporary Struggles of Migrants* (Oxford: Oxford University Press, 2014), 186.

²¹ Benhabib, *Another Cosmopolitanism*, 61.

²² Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002), 40f; Benhabib, *The Rights of Others*, 194f.

cultural particulars, Benhabib usually takes the distinction as a given that frames the democratic iterations. For instance:

Without establishing *very clear lines* between *nonnegotiable* constitutional essentials and those practices, rights, and entitlements that may be governed by different *nomoi* groups; and without specifying the capacity of constitutional principles to *trump* other kinds of legal regulations, we may not be resolving the paradox of multicultural vulnerability but simply permitting its recirculation throughout the system.²³

Benhabib introduced the notion of iteration in order to support another, more inclusive and just universality, but she ends up drawing “very clear lines” to the effects of the iterations. This is perhaps because of uneasiness with the fact that there is no guarantee that the iterations will be progressive. When talking about iterations as “democratic iterations,” Benhabib sometimes suggests that there is something inherently progressive about them.²⁴ She takes iteration as a process that “enriches” meaning,²⁵ adding that “[m]eaning is enhanced and transformed” through iteration.²⁶ Iterations are automatically democratic, and democratic iterations automatically progressive. In other places, however, she suggests that democratic iterations can be both progressive *and* regressive.²⁷ If iterations are not automatically democratic, then we need an account of the distinction between democratic and non-democratic iterations. That is also the implication of Derrida’s notion of iterability: there is no guarantee that the process is progressive or that the process will lead to any particular outcome.

This matters not only for how we interpret Benhabib, but also how we think of contemporary debates about how to defend democracy against authoritarians like Donald Trump.²⁸ Is it better to rely on judicial review or on citizens political contestation? Benhabib is critical of the subsumptive view of universality, which she associates with Rawls. The subsumptive view is, in turn, linked to the priority of constitutionalism over democracy and to judicial review over political contestation. Benhabib defends her notion of democratic iterations against Cristina Lafont’s argument for judicial review as a way to defend democracy. While Lafont veers towards constitutionalism and judicial review in defense of democracy, Benhabib has more faith in the democratic iterations of citizens. This may be because Benhabib is less risk averse and more willing to take the risks that come with the promise of democratic iterations. But it may equally be because Benhabib takes iterations to be

²³ Benhabib, *The Claims of Culture*, 128, my emphases.

²⁴ E.g., Benhabib, *The Rights of Others*, 212.

²⁵ Benhabib, 179.

²⁶ Benhabib, 180.

²⁷ Benhabib, 198; Benhabib, *Another Cosmopolitanism*, 61.

²⁸ Seyla Benhabib, “A Militant Defence of Democracy in Hard Times,” *Philosophy & Social Criticism* 47, no. 1 (2021): 7, 10.

automatically democratic and democratic iterations to be automatically progressive.

Expressed with a different notion from Derrida, which Benhabib also uses, the universals and the identity of the political community are “disseminated” in the iterations.²⁹ As such, the effects of the iterations cannot be governed from any particular point transcending the particular iterations (for instance, an origin or the intentions of a particular agent), and there can be no guarantee that the iterations will take us in a progressive direction. When drawing “very clear lines,” Benhabib may simply be looking for a way to guarantee that democratic iterations remain democratic, and that they take us in a progressive direction.

Another way for Benhabib to guarantee the democratic nature of iterations is to separate the origin of a constitutional order from ordinary politics. She writes: “Every act of foundation and every act of constitution may conceal a moment of exclusionary violence which constitutes, defines, and excludes the other.”³⁰ This is what happens when a small number of white propertied males get together and claim to speak in the name of Americans. The problem is that the authors of the constitution are only a small subset of the subjects to the constitution. Benhabib adds that “ordinary politics can embody forms of popular constitutionalism and can lead to constitutional transformation through accretion.” That may suggest that ordinary politics too can be inflicted by “exclusionary violence.”³¹ Nonetheless, she insists that “democratic iterations are about ordinary as opposed to constitutional politics.”³² The violence of the founding moment – the performative *coup de force* – of constitutional politics is relegated to the origin of the constitutional order, whereas the democratic iterations are themselves non-violent. The democratic iterations become constitutionally framed “institutional mechanisms for *controlling and self-correcting* the arbitrariness of original positings of authority.”³³ The effect is twofold: to safeguard the democratic iterations from the violence of the origin, and to safeguard the original positive content of the constitution from the potential subversive effects of iterations that would alter the core meaning of the constitutional principles.

²⁹ Benhabib, “Democracy and Difference,” 138; Jacques Derrida, *Dissemination* (London: The Athlone Press, 1981).

³⁰ Benhabib, “Democracy and Difference,” 136.

³¹ Benhabib, “The Legitimacy of Human Rights,” n. 99 n19. Is it a coincidence that Benhabib uses the word “accretion,” signifying increase? Could this be because she thinks of democratic iterations almost exclusively in terms of progress and tends to exclude the potential risks that come with iterability? For Benhabib, at least in what we could call the dominant reading of her work, democratic iterations mean more democracy, more justice, more inclusion.

³² Benhabib, 99 n19. Benhabib criticizes Derrida for focusing on the exceptional rather than everyday politics. It is indeed the case that Derrida tends to focus on exceptional moment when considering political legitimacy (the American Declaration of Independence, for instance, or the founding of the Apartheid state in South Africa). The danger of doing so is to isolate these founding moments from other moments of iterations/iterability. Ironically, Benhabib’s own example is Nelson Mandela and the transition from Apartheid to democracy in South Africa – hardly an everyday political occurrence. Benhabib, “Democracy and Difference,” 141.

³³ Benhabib, “Democracy and Difference,” 140, my emphasis.

Benhabib refers to the process whereby democratic iterations overcome the founding violence as a jurisgenerative process, which consists of “iterative acts through which a democratic people that considers itself bound by certain guiding norms and principles reappropriates and reinterprets these, thus showing itself to be not only the *subject* but also the *author of the laws*”.³⁴ Like Habermas, Benhabib considers the constitutional founding to be the beginning of a learning process set in motion by the introduction of constitutional essentials whose universality can be turned against the de facto exclusions from the universal (for instance of “woman” from “human”).³⁵ Democratic iterations consist of self-reflexive learning processes among both majority and minorities. Thus, when, as Benhabib proposes, we give immigrants a voice in the making of the laws of the polity, they can see themselves as part of, for instance, France and see France as also *theirs*.

Benhabib appropriates the idea of jurisgenerative politics from Robert Cover, but she interprets jurisgenerativity differently, and the difference between her interpretation and Cover’s interpretation of jurisgenerativity is instructive of what is at stake.³⁶ For both Benhabib and Cover, jurisgenerativity refers to the fact that meaning, including the meaning of the law and of normative principles, is subject to iterability: it is always possible to interpret, for instance, constitutional principles in new ways, and the interpretations can never be fully limited by those principles themselves. For Benhabib, “jurisgenerativity is not a process of *law making but one of law interpreting*,”³⁷ for Cover, jurisgenerativity not only interprets the law but also makes it. As a result, any universality is at once jurisgenerative (because it creates a world within which differences may co-exist) and jurispactic (because the differences are forced into a common world or political space, which is necessarily delimited). Every law and normative principle are exclusive, even if this violence is simultaneously the condition of possibility of the peaceful co-existence of differences within the space created by the law or the normative principle.³⁸ For Cover (and, we may add, Derrida), there is no iterability without exclusion and violence; for Benhabib, there exists the possibility of iterations that are non-exclusionary and non-violent.³⁹

³⁴ Benhabib, *The Rights of Others*, 181.

³⁵ Benhabib, “Democracy and Difference,” 136–38. Jürgen Habermas, “Constitutional Democracy: A Paradoxical Union of Contradictory Principles?,” *Political Theory* 29, no. 6 (2001): 766–81; critically Lasse Thomassen, *Deconstructing Habermas* (London: Routledge, 2008), chap. 2.

³⁶ Benhabib, *The Rights of Others*, 19–20, 180–81; Benhabib, *Another Cosmopolitanism*, 48–50; Seyla Benhabib, “Democratic Exclusions and Democratic Iterations: Dilemmas of ‘Just Membership’ and Prospects of Cosmopolitan Federalism,” *European Journal of Political Theory* 6, no. 4 (2007): 456; and Benhabib, “Claiming Rights across Borders,” 696; Robert M. Cover, “Foreword: Nomos and Narrative,” *Harvard Law Review* 97, no. 1 (1983): 4–68. Benhabib appropriates the concept of jurisgenerativity through Michelman’s use of it, and she is closer to Michelman’s use of jurisgenerativity than to that of Cover. Frank Michelman, “Law’s Republic,” *Yale Law Journal* 97, no. 8 (1988): 1493–1537.

³⁷ Benhabib, “Claiming Rights across Borders,” 696 n25.

³⁸ Cover, “Foreword,” 40, 53.

³⁹ In more recent work, Benhabib acknowledges the jurispactic nature of iterations, but she does not let this acknowledgement affect her argument. Seyla Benhabib, *Exile, Statelessness, and Migration*:

This does not necessarily mean that the iterations have a teleological character for Benhabib, but it does mean that the iterations are bound by certain constitutional norms in advance. They must be democratic iterations, and in order to be democratic they must meet certain conditions, for instance they must respect the separation between state and church. Separating those constitutional principles from the effects of iterability is a way for Benhabib to safeguard the promise of the universal that it may be extended to the inclusion of ever new groups and do justice to ever new claims.

However, this means that Benhabib has to reach back for what she initially set out to avoid, namely a form of subsumptive universality. Her universality may be interactive (iterative, jurisgenerative), but only up to the point when the normative content of constitutional norms is handed down to the agents, whose agency is thereby diminished. At the end of the day, Benhabib's understanding of the democratic iterations casts the French hijab wearers in the role of a cultural minority challenging the universality of the law and the state. Their challenge is that the law and the state are unnecessarily and illegitimately exclusionary and must be more inclusive. However, from the perspective of the hijab wearing women, the constitutional essentials are not constituted and altered through this iterative process of inclusion, they are merely *learned*. The women become the media for the realization of the constitutional essentials; they become the particular bodies functioning as the bearers of the universal.⁴⁰

Another Universality

Bonnie Honig reads Benhabib's notions of iterations as ultimately a subsumptive view of universality. Although she acknowledges that Benhabib makes noises to the contrary, she interprets Benhabib as leaving the universal untouched by the particularity of the iterations.⁴¹ There is enough in Benhabib's texts to support such a reading. Still, I want to suggest that another reading of Benhabib is possible, a reading that would assume the full implications of what Benhabib attempts with the move from subsumptive to interactive universality. As I have already indicated, there is a basis for this reading in Benhabib's texts. She herself refers to Derrida's notion of justice to-come, which the law "can never quite fulfil."⁴² If justice is to-come in Derrida's sense, it is because any attempt to realize justice in law is always marked by exclusion and violence, by jurispathos.

Playing Chess with History from Hannah Arendt to Isaiah Berlin (Princeton: Princeton University Press, 2018), 122.

⁴⁰ For similar critiques, see Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press, 2009), 119, 123; Nikolas Kompridis, "The Unsettled and Unsettling Claims of Culture: A Reply to Seyla Benhabib," *Political Theory* 34, no. 3 (2006): 392f; and Angelia Means, "The Rights of Others," *European Journal of Political Theory* 6, no. 4 (2007): 406–23.

⁴¹ Bonnie Honig, "Another Cosmopolitanism? Law and Politics in the New Europe," in *Another Cosmopolitanism*, ed. Robert Post (Oxford: Oxford University Press, 2006), 102–27.

⁴² Benhabib, *Exile, Statelessness, and Migration*, 29.

Derrida himself connects iterability to the “to-come” through the concept and practice of invention with its constative and performative dimensions.⁴³ An invention is like an event. For something to be an invention, it must create something new and not just replicate – repeat – what others have done. However, for something to be an invention, it must also be recognizable as such, and so it must, so to speak, cite existing conventions about inventions. This performativity and this citationality of invention are precisely what iterability implies, and so invention is marked by iterability.

The same can be said of the universality of rights and justice: that universality is invented, and we can think of this jurisgenerativity in terms of iterability. We do not first have a universal and then appeals to it or (re)significations of it; rather, universality is constituted at the very moment of appealing to it or (re)signifying it. This is not to say that universality can be reduced to particularity or to a particular context. Although there is an irreducible performative dimension at work because we cannot simply refer to universals in a constative fashion as something already there, the performative resignification is a resignification citing existing universals. The universal is neither given, as a subsumptive universality, nor can it be reduced to a particular performative *coup de force*.

To say that a particular instantiation of universality can always be resignified is to say that it can always be taken out of context and reinserted into a new context. We cannot take things out of context, and meaning is contextual, but no claim in the name of human rights, for example, is ever exhausted – or can ever be fully accounted for – by a particular context. A universal does not exist outside of a (particular) context, and it must be analyzed in context; but it cannot be reduced to a (particular) context. To see how this may be used for progressive purposes, consider Laclau and Mouffe’s argument for radical and plural democracy in *Hegemony and Socialist Strategy*.⁴⁴ They conceive of their radical and plural democracy as the extension of equality and freedom to ever new areas. They take the ideals – the universals – of equality and freedom as we have inherited them from the democratic revolutions of the French Revolution onwards, but their radical and plural democracy consists in taking these ideals out of their – often liberal and bourgeois – context of enunciation and putting them to work in new contexts. In this way, ever more forms of subordination – in the workplace or in the home, for instance – can be articulated as forms of oppression because they run counter to the ideals of equality and freedom. The appeal to equality and freedom is not the appeal to an essence of these concepts simply waiting for us to excavate and apply it to ever new areas. At most, it is a form of strategic essentialism.⁴⁵

⁴³ Jacques Derrida, *Psyche: Inventions of the Other, Volume I*, ed. Peggy Kamuf and Elizabeth Rottenberg (Stanford: University Press, 2007), 6, 39, 45–46.

⁴⁴ Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 1985), chap. 4.

⁴⁵ Diana Fuss, *Essentially Speaking: Feminism, Nature and Difference* (New York: Routledge, 1989), chap. 1.

In later work, Mouffe referred to human rights as polemical placeholders along the same lines. Human rights will always be articulated in particular contexts, and rights will be articulated through particular instances of democratic will formation, but any particular rights regime can be challenged “through reference to ‘humanity’ and the polemical use of ‘human rights.’”⁴⁶ By placing “humanity” and “human rights” in quotation marks, Mouffe is signalling that, although they exceed the identity of any particular people, they are not bedrock foundations. It is articulation – resignification, iterability – all the way down. Similarly, in a discussion of human rights, Derrida refers to them as “unfinished” and characterized by “historicity and ... perfectibility”.⁴⁷ Human rights are to-come, because we can always question their formulation, even to the point of questioning the presuppositions of the “human” of human rights.⁴⁸ They are inherently perfectible.

Judith Butler’s writings on universality can help us here. Butler conceives of ideals such as equality and inclusion as “futural.”⁴⁹ In an exchange with Benhabib, Judith Butler refers to this conception of universality as “permanently open, permanently contested, permanently contingent, in order not to foreclose in advance future claims for inclusion.”⁵⁰ In other words, universals and ideals such as equality and inclusion are to-come, and they are so because they are constituted through iterability.⁵¹ As a consequence, “we do not yet know who or what might make a claim to equality, where and when the doctrine of equality might apply, and ... the field of its operation is neither given nor closed.”⁵² This creates uncertainty as we cannot appeal to a universal concept or ideal as a foundation for distinguishing between democratic and undemocratic iterations of universals. The universals are open to a range of political appropriations, including conservative uses of equality, and the distinction between democratic and undemocratic is itself constituted through iterability.

Butler’s conceptualization of universality in terms of iterability and as inherently open does not amount to a rejection of universality: “I am not doing away with the category, but trying to relieve the category of its foundationalist weight in order to render it as a site of permanent political contest.”⁵³ This is

⁴⁶ Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000), 44–45.

⁴⁷ Giovanna Borradori and Jacques Derrida, “Autoimmunity: Real and Symbolic Suicides,” in *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, ed. Giovanna Borradori (Chicago: University of Chicago Press, 2003), 132.

⁴⁸ Borradori and Derrida, 133.

⁴⁹ Judith Butler and Ernesto Laclau, “The Uses of Equality,” in *Laclau: A Critical Reader*, ed. Simon Critchley and Oliver Marchart (London: Routledge, 2004), 330.

⁵⁰ Judith Butler, “Contingent Foundations: Feminism and the Question of ‘Postmodernism,’” in *Feminist Contentions: A Philosophical Exchange*, ed. Seyla Benhabib et al. (London: Routledge, 1995), 41; see also Judith Butler, “For a Careful Reading,” in *Feminist Contentions: A Philosophical Exchange*, ed. Seyla Benhabib et al. (London: Routledge, 1995), 128–32.

⁵¹ Butler, “Contingent Foundations”; Judith Butler, “Restaging the Universal: Hegemony and the Limits of Formalism,” in *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*, ed. Judith Butler, Ernesto Laclau, and Slavoj Žižek (London: Verso, 2000), 11–43; Butler and Laclau, “Laclau.”

⁵² Butler and Laclau, “Laclau,” 330.

⁵³ Butler, “Contingent Foundations,” 41.

not the place to enter into a discussion of foundationalism, non-foundationalism and post-foundationalism or to determine if Benhabib's approach is foundationalist.⁵⁴ What is interesting for my purposes here is that Butler conceives of the iterations of universals as hegemonic struggles in Laclau and Mouffe's sense.⁵⁵ That means that we cannot take universals as given. This obviously distinguishes Butler from those who would take modern, Enlightenment universals as trumps, which, to her mind, is the problem with Benhabib's position. But if we cannot take universals as given, this also distinguishes Butler from those who would reduce modern, Enlightenment universals to particularity and violence.⁵⁶ Universals are to-come; as such, any present instantiation of a universal will be marked by particularity, exclusion and violence. For instance, rights claims are usually made to a state, and so the subject of rights becomes dependent on the state for their status – in short, the rights are conditional on recognizing the authority of the state.⁵⁷ But it is equally the case that, as to-come, universals carry promises of equality and inclusion, and we can turn that promise against the present.

Benhabib, however, pulls back from this conclusion immediately after characterizing justice as to-come because that conclusion “questions the possibility that justice can ever be rendered through the court system.”⁵⁸ She is right, of course: there is no guarantee that the law will be just, that jurisgenerative politics will not also be jurispathic, or that iterations will be democratic. And that is why Benhabib conceives of human rights as trumps in Ronald Dworkin's sense.⁵⁹ But a universal to-come cannot be the last word as is implied in the notion of a trump. Benhabib conceives of the unconditionality of universals as trumps; with Derrida – and Butler, and Laclau and Mouffe – we can think of the unconditionality of universals in a different way: as an excess over any present universal, as to-come. We may appeal to universals, but only in a way that simultaneously points towards an undefined future. That does not leave us without a critical perspective. We may always question the universality of the universal in the name of a universal to-come understood as an excess over any particular universal, even if not as a critical or regulative

⁵⁴ Seyla Benhabib, “Subjectivity, Historiography, and Politics: Reflections on the ‘Feminism/Postmodernism Exchange,’” in *Feminist Contentions: A Philosophical Exchange*, ed. Seyla Benhabib et al. (London: Routledge, 1995), 118; Oliver Marchart, *Post-Foundational Political Thought: Political Difference in Nancy, Lefort, Badiou and Laclau* (Edinburgh: Edinburgh University Press, 2007); Lasse Thomassen, “The ‘Populist’ Foundation of Liberal Democracy: Jan-Werner Müller, Chantal Mouffe, and Post-Foundationalism,” *Philosophy & Social Criticism* 48, no. 7 (2022): 992–1013.

⁵⁵ See also Butler and Laclau, “Laclau”; Butler, “Restaging the Universal” Elsewhere, and following Laclau and Mouffe, I have proposed to study the articulation of universals - e.g., equality - as the articulation of chains of equivalence. Lasse Thomassen, *British Multiculturalism and the Politics of Representation* (Edinburgh: Edinburgh University Press, 2017), 72–82.

⁵⁶ As Butler herself notes, this is a departure from her earlier position on universality in *Gender Trouble*. Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, 2nd ed. (New York: Routledge, 1999), xviii.

⁵⁷ Honig, “Another Cosmopolitanism?”; Thomassen, *British Multiculturalism and the Politics of Representation*, chap. 2.

⁵⁸ Benhabib, *Exile, Statelessness, and Migration*, 29.

⁵⁹ Benhabib, *Another Cosmopolitanism*, 58.

ideal. The universal to-come is relative, but it is so not in relation to any particularity, but in relation to an unconditionality that cannot be defined, because it is simply an excess over any present conditionality.

It is iterability all the way down, and iterability is a general structure of the political ideals and concepts examined in this book. Whether we are thinking about the universality of political ideals or about the conceptuality of political concepts, the universality and the conceptuality are best understood as constituted through iterability. Thinking of ideals and concepts through iterability helps us avoid both an essentialism that takes universal essences as given and cannot account for difference and a relativism that takes differences as given. These twin dangers are also what Benhabib set out to avoid, but, in the end, she tends to subsume difference to a universality handed down to us.

Deconstruction and Justice

In the first part of the chapter, I started from a reading of Seyla Benhabib's work and moved towards a general conclusion about how deconstruction approaches political ideals and concepts. The rest of this chapter is dedicated to the most important concept in contemporary Anglo-Saxon political theory and philosophy: justice. I start with a general, programmatic statement about deconstruction and justice. I then turn to John Rawls, whose theory of justice has defined political theory and political philosophy for the last half century; my aim is both to show how Rawls's theory of justice differs from the deconstructive approach and to test how far in a deconstructive direction we may push Rawls.

Deconstruction is committed to doing justice to the other. For example, reading a text, one must not impose a single reading on it, but acknowledge the heterogeneity of the text. This is what Derrida claims to be doing when unfolding different readings of a text. It is also what can lead others to complain that deconstructive readings seem to never reach a conclusion. They are right insofar as there is no final word to a deconstructive reading, but, for deconstruction, that is part of doing justice. It is a justice that never arrives, however: it is always, structurally, possible to read a text otherwise, and so justice is to-come.⁶⁰

Likewise in the context of what we call politics; here, too, there is a deconstructive "imperative" to justice. However, justice is impossible. *Tout autre est tout autre*, Derrida writes: "every other (one) is every (bit) other."⁶¹ The other is singular and, so, wholly other, and, if we are to do justice to the other, we must do justice to the singularity of the other, whether it is a text or a person. At the same time, every other is equally other, and so we must do justice equally and impartially to every other. That can only happen according to some general rule, according to which we can determine and count the

⁶⁰ For a good example that prefigures Derrida's later writings on law and justice, see Jacques Derrida, *Before the Law: The Complete Text of Préjugés* (Minneapolis: University of Minnesota Press, 2018).

⁶¹ Jacques Derrida, *Politics of Friendship* (London: Verso, 1997), 232; Jacques Derrida, *The Gift of Death*, 2nd ed. (Chicago: University of Chicago Press, 2008), 82.

others as others and as equally others. It requires that we compare others in their singularity, which is, by definition, impossible. This is the aporia of justice, which is analogous to the aporias identified in the context of the concepts of event and invention: we must treat the other as singularly other while also treating the other as one among others. In the language of unconditionality and conditionality, justice requires an unconditionality towards what is other, yet the equality of others introduces a conditionality into justice as the others can only be counted as others, and as equally others, insofar as we represent them as equals. This is an aporia, and, for Derrida, this means that the inclusion of the other in their otherness is impossible.⁶²

This distinguishes Derrida from, for example, Habermas. In *The Theory of Communicative Action*, Habermas developed a theory of how law may colonize singular relationships when imposed on the lifeworld from the outside. Later, in *Between Facts and Norms*, he developed a theory of democracy and law whereby the other may be included in their otherness insofar as the subjects of the law can see themselves simultaneously as the authors of the law.⁶³ That option is available to Habermas because he can conceive of the law as generated within the horizon of the promise that only the force of the better argument counts; for Derrida, that option is not available because justice is to-come, and one can never be certain that the last word has been said.

The aporia of justice is not a contradiction that can be resolved. To say that justice is impossible means that it is impossible to do justice once and for all and to exhaust justice. Justice is never done; justice is to-come. What justice “is” is constituted through iterations of claims to justice and claims to have done justice. Those claims will draw on existing significations of justice, resignifying these to a larger or a lesser degree. There is no principle of justice that we can take as a constant independently of the iterations, or resignifications, of justice; the resignifications are not epiphenomenal reflections of some underlying essence of justice. Justice is always conditional vis-à-vis an unconditional justice to-come, in the name of which we can question any instantiation of justice.

Other political concepts such as democracy, hospitality, and sovereignty are similarly aporetic. Take, for example, hospitality: full hospitality must be unconditional and open to any other, and hospitality must not be a selfish act where we expect something in return because then it would not be hospitality pure and simple. At the same time, hospitality is extended from a home and a host (the nation, for instance), and so it is conditional. Hospitality must be, at

⁶² Lasse Thomassen, “The Inclusion of the Other?: Habermas and the Paradox of Tolerance,” *Political Theory* 34, no. 4 (2006): 439–62.

⁶³ Jürgen Habermas, *The Theory of Communicative Action: Reason and the Rationalization of Society. Volume Two* (Cambridge: Polity Press, 1987), 332–73; Jürgen Habermas, *Between Facts and Norms* (Cambridge, MA: The MIT Press, 1996); Thomassen, *Deconstructing Habermas*, chap. 3.

once, unconditional and conditional, and since the two are in tension, hospitality is impossible and always to-come.⁶⁴

In the context of justice, Derrida does not use the language of unconditionality and conditionality.⁶⁵ Often, Derrida identifies the aporia of justice in a slightly different way by tying justice to law.⁶⁶ Justice must be realized, and this can only happen through law, but law is always conditional on a particular institutional structure (state or otherwise), on determining the subjects of law as subjects who can be recognized as the bearers of rights. There is, then, a tension between the unconditionality of justice and the conditionality of law, and since justice can never be realized in any present law, justice is to-come. “Justice in itself, if such a thing exists, outside or beyond law, is not deconstructible.”⁶⁷ When Derrida refers to justice as undeconstructible, it refers to the unconditionality of justice, but this unconditionality is not something that exists at present or might exist in the future. Justice is not an ideal or a principle that can be determined; it is to-come.

In this version of the argument about justice, the tension between unconditionality and conditionality is not internal to justice but is situated between justice (as a concept) and law (as an institution). The argument only works insofar as justice and law are conceptually linked, that is, insofar as justice must be realized in law and only in law. However, as Jeremy Arnold rightly points out, this is not the case. First, the link between justice and law is contingent; we can imagine other ways to attempt the realization of justice than its institutionalization in law. Second, law itself is a historical and contingent institution, and by tying justice and law together, Derrida ties justice to a particular modern and Western institution, and so justice becomes conditional when it should be unconditional.⁶⁸

Nevertheless, we do not need to tie justice to law in order to argue that justice is to-come and is marked by the tension between unconditionality and conditionality. Justice is aporetic and to-come “in itself,” as I have shown above. Having said that, it is true, as Arnold points out, that justice is not a practice in the way that forgiveness, hospitality, and responsibility are.⁶⁹ In the case of justice, the aporia and the to-come are more conceptual than practical.

We can further nuance Arnold’s critique by considering how Derrida treats law. Even when Derrida connects justice to law, he is skeptical about

⁶⁴ Jacques Derrida, *Hospitality, Volume I* (Chicago: University of Chicago Press, 2023); Jacques Derrida, *Hospitality, Volume II* (Chicago: University of Chicago Press, 2024); Thomassen, *British Multiculturalism and the Politics of Representation*, chap. 5.

⁶⁵ Paul Patton, “Derrida’s Engagement with Political Philosophy,” in *Histories of Postmodernism*, ed. Mark Bevir, Jill Hargis, and Sara Rushing (London: Routledge, 2007), 157.

⁶⁶ Especially in Derrida, “Force of Law.” But also in the earlier Derrida, *Before the Law*; and Jacques Derrida, “The Laws of Reflection: Nelson Mandela, In Admiration,” in *For Nelson Mandela*, ed. Jacques Derrida and Mustapha Tlili (New York: Seaver Books, 1987), 11–42.

⁶⁷ Derrida, “Force of Law,” 14.

⁶⁸ Jeremy Arnold, *Across the Great Divide: Between Analytic and Continental Political Theory* (Stanford: Stanford University Press, 2020), chap. 6.

⁶⁹ Arnold, 166–68.

law and the state structures supporting it. I return to this in Chapter 2 in the context of sovereignty and the nation state, but consider Derrida's comments on the *sans papiers* in France. The question is how to do justice to the *sans papiers*. At the time of writing in the mid-1990s, an injustice was done to them by the French state, by the law, and by the way it was enforced. The *sans papiers* lacked legal status, and they lacked recognition by the law and the state.⁷⁰ With Seyla Benhabib, we might consider how an unfairly exclusionary immigration law may be politicized through iterative processes resignifying what it means to belong to France. Benhabib thinks of that in terms of rights. But Derrida suggests that the problem lies in the connection between justice and law, specifically in the way in which hospitality and inclusion are conceived in terms of legal recognition by a state, and in which rights are tied to state citizenship.⁷¹ Insofar as justice towards the *sans papiers* is only possible through law, justice will be conditional and, so, lacking. Insofar as the *sans papiers* are seen as lacking, this is only so because we approach the question of justice through law, and they lack the rights granted by a state. The rights claims by the *sans-papiers* may challenge the nation state because their claims challenge who can be counted as a citizen, but the claims directed at the state also shore up the state as the granter and purveyor of rights status. Despite all this, Derrida does not reject law as such, but proposes to change particular laws.⁷² In the meantime, he proposes civil disobedience in the name of a justice to-come as a way to address the gap between justice and law, a gap that can never be closed because justice is to-come.⁷³

With Arnold, and against at least one version of Derrida, we must insist on the contingent relationship between justice and law. Having said that, it may be that law is the most economical way to create a *more* just society here and now. Admitting this does not bar us from criticizing particular laws or even law as an institution; we can do so in the name of a justice to-come. It also does not bar us from thinking justice beyond formal, legal equality, and articulate justice as a matter of "social" and "economic" justice.⁷⁴ We can criticize particular events, phenomena, practices, and institutions (including laws) in the name of justice, but it is justice understood as unconditionality *qua* excess. Even if we cannot say, once and for all, "this is justice," justice is better than no justice, and more justice is better than less justice – with the caveat that there is no independent and transcendent yardstick against which to measure if there is more or less justice. Insofar as justice is to-come and always exceeds any conditional law or other phenomenon of justice, it bars us from good conscience: it is always possible to be more just.

⁷⁰ Jacques Derrida, "Derelictions of the Right to Justice (But What Are the 'Sans-Papiers' Lacking)," in *Negotiations: Interventions and Interviews, 1971–2001*, ed. Elizabeth Rottenberg (Stanford: Stanford University Press, 2002), 135.

⁷¹ Derrida, 139–40.

⁷² Derrida, 144.

⁷³ Derrida, 143.

⁷⁴ Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International* (New York: Routledge, 1994).

The Unconditionality of Justice

While others have used deconstruction to engage analytical or normative political theory, Jacques Derrida never engaged much with it.⁷⁵ Derrida mentions John Rawls – easily the most important contemporary normative political theorist and philosopher – in only two places.⁷⁶ One of those places is Derrida’s lengthy engagement with the concept of justice, “Force of Law.” There he writes that his deconstructive reading of how authors have treated the performative force of the law “could be brought into Stanley Fish’s discussion in ‘Force’ (*Doing What Comes Naturally*) of Hart’s *Concept of Law*, and several others, implicitly including Rawls.”⁷⁷ “Force of Law” can be read as a repudiation of the views of law found in both Stanley Fish and in analytical, or normative, legal and political theory of the kind of H. L. A. Hart and John Rawls.

While Derrida shares with Fish a deconstructive reading of the performative constitution of the authority of the law, they differ insofar as Derrida is asking how we can think of justice in such a way that it is not reduced to the facticity of the law and the violence that supports the law.⁷⁸ For Fish, there is no gap between justice and law; there are only laws backed by the threat of violence.⁷⁹ For Fish, the force of law is the violence that institutes and supports the law; for Derrida, too, the force of law is that violence, but the force of law is also something more because law gestures towards a justice to-come. Justice is an excess over the law, it is always more-than-law, and this is why justice is to-come as something that can never be fully institutionalized. This is how Derrida thinks the unconditionality of justice: as irreducible to the conditionality of law, and as to-come, and this is how he stakes out a distinct position for deconstruction beyond both Fish and Rawls.

Turning now to Rawls, I need to start with a caveat. Rawls’s position develops from the initial formulation of the theory of justice in *A Theory of Justice* (1971) to the later reformulations in, especially, *Political Liberalism* (1993 and 1996), and *Justice as Fairness: A Restatement* (2001).⁸⁰ Those developments are important and have been the subject of much interest in the academic literature. Some of the changes are also of interest for my purposes, but I will not go into much detail with Rawls’s texts. What follows is not a

⁷⁵ Bonnie Honig, *Political Theory and the Displacement of Politics*, 30th Anniversary Ed. (Ithaca: Cornell University Press, 2023); Mouffe, *The Democratic Paradox*; Aletta J. Norval, *Aversive Democracy: Inheritance and Originality in the Democratic Tradition* (Cambridge: Cambridge University Press, 2007); Arnold, *Across the Great Divide*; Miriam Bankovsky, *Perfecting Justice in Rawls, Habermas and Honneth: A Deconstructive Perspective* (London: Continuum, 2012); Patton, “Derrida’s Engagement with Political Philosophy.”

⁷⁶ Derrida, “Force of Law,” 14; Jacques Derrida and John D. Caputo, “The Villanova Roundtable: A Conversation with Jacques Derrida,” in *Deconstruction In a Nutshell: A Conversation with Jacques Derrida* (New York City: Fordham University Press, 1997), 19.

⁷⁷ Derrida, “Force of Law,” 14.

⁷⁸ Derrida, 6.

⁷⁹ Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Durham: Duke University Press, 1999), chap. 21.

⁸⁰ Rawls, *A Theory of Justice*; John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); John Rawls, *Political Liberalism*, 2nd ed. (New York: Columbia University Press, 1996); John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Belknap Press, 2001).

detailed deconstruction of Rawls's texts. Instead, I use Rawls to illustrate how we should understand justice as unconditional and to-come. My argument is simple: while Rawls tends to understand the unconditionality of justice in terms of a set of fixed principles, we can also find in Rawls the germs for a different understanding of justice as to-come.

The theory of justice – “justice as fairness” – in *A Theory of Justice* is a rebuttal of utilitarian approaches. That is why, for Rawls, it is so important to stress that justice is unconditional: the principles of justice apply irrespective of any particular – individual or collective – good. Justice is “uncompromising,” and trumps everything else.⁸¹ The right (justice) has priority over the good, and the principles of justice are derived independently of any particular good. This explains the architecture of Rawls's theory. The principles of justice are determined behind the veil of ignorance in the original position.⁸² As the veil is gradually lifted, and we come to know our position in society, the principles are implemented in ever more concrete ways. But the principles remain what they were when they were first determined behind the veil of ignorance. In the language of iterability, we are dealing with repetition without alteration as far as the principles are concerned. That is because Rawls thinks of the unconditionality of justice in this way: justice cannot be conditional on the contingencies of where we were born, our conception of the good life, and so on. The priority of justice over the good is written into the temporality of the original position: justice comes first, and whatever comes later does not alter the principles of justice. The original position really is original. Justice is unconditional in the face of contingency and particularity, and the unconditionality of justice is achieved by abstracting from contingency and particularity and by determining once and for all the principles of justice.

Rawls's theory of justice goes hand in hand with an image of the person. Recall that, for Derrida, every other is wholly other. Therefore, while it is necessary to do justice to the other, this is also impossible. We can never do full justice to the other; hence justice is to-come. Rawls rejects utilitarianism because he believes that it does not do justice to the otherness – or “inviolability” – of the other.⁸³ However, while justice is necessary, for Rawls, it is not impossible. The other is represented in the architecture of the veil of ignorance in the original position. The original position represents the other by ensuring that every other can remain wholly other because the principles of justice do not depend on any particular otherness. Doing justice to the other is achieved by abstracting from their otherness. Note that justice does not abstract from the fact that the other is other; rather, justice abstracts from the *particular* otherness of the other in order to do justice to the otherness of *every* other. In Rawlsian terms, what matters to justice is not, and should not be, your particular conception of the good, but that you have the

⁸¹ Rawls, *A Theory of Justice*, 4.

⁸² Rawls, chap. 24.

⁸³ Rawls, 3. Whether Rawls's theory of justice actually respects the otherness of the other is a different question. See, for instance, Rawls's example of the grass counter and Bonnie Honig's discussion of it. Rawls, 432–33; Honig, *Political Theory and the Displacement of Politics*, 152–56.

freedom to pursue any reasonable conception of the good life (where reasonable refers to the respect for the otherness of the other).

Seyla Benhabib and Iris Marion Young offer parallel critical perspectives on Rawls's way of dealing with the relationship between the universal and the particular. Seyla Benhabib argues that Rawls's original position only represents the perspective of what she calls the generalized other, not the concrete other. As such, the original position cannot do justice to the other.⁸⁴ Benhabib does not reject the perspective of the generalized other, but she proposes a discourse theoretical version of this: "an actual dialogue among actual selves who are both 'generalized others,' considered as equal moral agents, and 'concrete others,' that is individuals with irreducible differences."⁸⁵ This is how Benhabib proposes to shift from a subsumptive to an interactive universality, and in her later work, she conceives of this as iterative processes.

Like Benhabib, Iris Marion Young was critical of what she called "the ideal of impartiality," which she referred to as "an idealist fiction." "It is impossible," she continued, "to adopt an unsituated moral point of view."⁸⁶ The point of view of the generalized other in Rawls's original position is a particular point of view, which is represented as universal and then imposed on everyone. Unlike Benhabib, Young did not argue for the combination of a universal points of view (the generalized other) and particular points of view (the concrete other). Instead, she argued that we must bring situated perspectives together and into conversation. That conversation takes place within the horizon of a critical ideal of ever widening inclusion of different perspectives. In some places, Young wrote as if that horizon is a fixed point that we may, at least in theory, one day reach.⁸⁷ In other places, she stressed that the conversation must also be able to put into question the existing terms of the conversation, so that we can imagine the conversation as inherently open-ended, in which case justice would be to-come.⁸⁸ As with Benhabib, everything depends on how we conceive of the unconditional – the ideal, the universal, the generalized other, the principles of justice. We can conceive of unconditionality as a fixed point – as already fixed, or as a fixed point in the future; or we can think of unconditionality as an excess over any present and, therefore, as to-come.

In response to communitarian and multiculturalist critiques that his theory of justice was conditioned by a particular liberal worldview, in his later work, Rawls no longer claimed universal status for his theory of justice and instead thought of justice as fairness as the reconstruction of the normative content of constitutional democracy.⁸⁹ As Arnold rightly points out, this

⁸⁴ Benhabib, *Situating the Self*, 168.

⁸⁵ Benhabib, 169 This is similar to Habermas's and other deliberative democrats' critique of Rawls.

⁸⁶ Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), 104.

⁸⁷ Iris Marion Young, "Communication and the Other," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton: Princeton University Press, 1996), 120–35; Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2002), chap. 2.

⁸⁸ Young, *Inclusion and Democracy*, 12; Thomassen, *Deconstructing Habermas*, 23–24.

⁸⁹ Rawls, *Political Liberalism*, 1996.

reduced justice to a particular political tradition – to the way we do things around here.⁹⁰ Rawls does so in order to avoid imposing a particular morality – based in Kantian autonomy – on the pluralism of contemporary societies. The aim is to do justice to the otherness of the other, specifically to the other who does not think of themselves along Kantian lines. The price for this is to reduce justice as fairness to the fact of a political tradition. The theory of justice was supposed to articulate justice as unconditional. In *A Theory of Justice*, that unconditionality came from a metaphysical moral theory that functioned as a critical yardstick to judge the fairness of contemporary institutions. In *Political Liberalism*, the unconditionality has been reduced to the conditionality of the tradition of constitutional democracy. The question is if in Rawls's discourse there are other options than thinking unconditionality as a fixed point or reducing it to the fact of a tradition.

Another way to think of the unconditionality of the principles of justice is unanimity: “The original position is so characterized that unanimity is possible; the deliberations of any one person are typical of all,” Rawls writes.⁹¹ Unanimity is possible because, behind the veil of ignorance, there is nothing that divides us; we are all the same kind of moral and rational persons, in which case the question of how to do justice to the other is closed as soon as it is asked. There is nothing to deliberate about if unanimity is immediate. The critique – for instance from the communitarians – is obvious: Rawls has defined the problem away through a particular definition of morality and rationality. Later, when he limits unanimity to the constitutional essentials in liberal democracy, the representatives in the original position can only choose what Rawls takes as the starting point, namely constitutional democracy.⁹² In both the earlier and the later Rawls, however, it is unclear why we need deliberation in the original position at all if the deliberations cannot add anything to the principles of justice as they have been written into the architecture of the original position.⁹³

Rawls stresses the pluralism of the political conceptions of justice that enter into deliberations about the constitutional essentials that should govern the basic structure of society. He does so in two steps, and it is worth looking carefully at how his argument may open the door to thinking justice as justice to-come. Rawls first acknowledges the pluralism of political conceptions of justice:

it is crucial that public reason is not specified by any one political conception of justice, certainly not by justice as fairness alone. Rather,

⁹⁰ Arnold, *Across the Great Divide*, chap. 6.

⁹¹ Rawls, *A Theory of Justice*, 263; more generally 140-2.

⁹² Arnold, *Across the Great Divide*, 147.

⁹³ This is one of Habermas's critiques of Rawls. From Habermas's perspective, Rawls takes the principles of justice as given to deliberations when they ought to be the result of deliberations. More generally, from the Habermasian perspective, Rawls creates a division between the representatives in the original position and the public deliberations of citizens, a division he must then overcome in order that the principles of justice will also be acceptable to actual citizens. Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory* (Cambridge: Polity, 1998), chaps. 2–3.

its content – the principles, ideals, and standards that may be appealed to – are those of a family of reasonable political conceptions of justice and this family changes over time.⁹⁴

The pluralism is limited to conceptions of justice that are political and reasonable: they must be conceptions of justice that respect the priority of the right over the good so as not to impose a particular conception of the good life onto the other. But Rawls also characterizes this pluralism as a family that changes over time. Not only does this suggest that the limits of the pluralism are blurred (just as the limits of who belongs to my family are blurred and may differ from context to context), it is also important that the “political” and “reasonable” cannot fix the limits once and for all. Rawls concludes that “[t]he content of public reason is not fixed, any more than it is defined by any one reasonable political conception.”⁹⁵

Miriam Bankovsky interprets this to mean that, although the principles defining public reason may be more or less stable, they are the result of iterative processes that are inherently open-ended, and, so, justice is to-come.⁹⁶ If that is the case, then the unconditionality of the principles does not lie in a past that can only appear as determined for the present and the future; rather, the unconditionality of the principles would lie in a future to-come. I would like to pursue this line of argument further, again with the help of Bankovsky’s reading of Rawls. Recall that, as the principles of justice have been determined in the original position, the veil of ignorance is gradually lifted, after which we start determining what goes into the constitution and, then, law and policy. There is, thus, a hierarchy of principles, constitutional norms, and laws, and this hierarchy is also temporal and sequential.

In *A Theory of Justice*, Rawls writes that “it is important that the original position be interpreted so that one can at any time adopt its perspective.”⁹⁷ However, this makes no difference to the meaning of justice, as Rawls immediately adds: “It must make no difference when one takes up this viewpoint, or who does so: the restrictions [of the original position] must be such that the same principles are always chosen.”⁹⁸ Bonnie Honig interprets this – quite rightly, I think – to mean that Rawls conceives of the unconditionality of justice as a fixed point in the past (the principles of justice are “settled”⁹⁹). He does so in a way that means that everything that comes afterwards is repetition without alteration, and so that this repetition without alteration helps shore up the original position as an absolute origin.¹⁰⁰

But Rawls qualifies this in his later work. There, he suggests that we may always engage in a “present-time-of-entry interpretation of the original

⁹⁴ Rawls, *Political Liberalism*, 1996, lii–liii.

⁹⁵ Rawls, liii.

⁹⁶ Bankovsky, *Perfecting Justice in Rawls, Habermas and Honneth*, 67.

⁹⁷ Rawls, *A Theory of Justice*, 139.

⁹⁸ Rawls, 139.

⁹⁹ Rawls, 4.

¹⁰⁰ Honig, *Political Theory and the Displacement of Politics*, 132–36.

position” revisiting the principles of justice.¹⁰¹ As Miriam Bankovsky suggest, this means that the original position is not something we can be done with once and for all. Consequently, the principles of justice cannot be taken simply as part of a past that we cannot change; they are also part of a future that is open-ended. In Rawls’s own words, justice “is a project to be carried out,” and “[t]he ideal of a just constitution is always something to be worked toward.”¹⁰² There is always more work to do because there is always a gap between law and justice.¹⁰³ Note that, in this case, justice is not exhausted by any determination of the principles of justice; justice is an excess over any norm, including the principles of justice. The latter may be determined in the past or in the present, but those determinations are always exceeded by the possibility that they may be revised in the future. This would also explain why deliberating about justice makes sense: there is no point deliberating the principles of justice if they have already been settled.

All this does not mean that the law, the constitution, and the principles of justice are up for grabs at every corner. We can think of the hierarchy of principles, constitutional norms, and laws as a hierarchy of more or less sedimented norms, where the meaning of the norms and their relative universality are results of iterative processes in the Derridean sense. Principles are principles because they have become recognized as principles and have become accepted over time, not because they have some core that makes them principles. Justice is not justice because of some essence it has independently of claims to, and about, justice. Justice “is” justice because it has become established as such through iterative processes, and the ideality of the ideal and the conceptuality of the concept of justice are established through iterability. Naturally, this means that we are not dealing with justice in the singular but with different, and competing, articulations of justice. And so there is no justice without political struggle over the meaning of justice. If we take justice as a set of determined principles, we take the politics out of justice; once we think of justice as to-come, justice cannot be disentangled from political struggle. Conceiving justice as to-come does not mean abstracting from the history of justice and injustice. Charles Mills is right to note that Rawls’s methodological focus on ideal theory makes him ignore the history of injustice that has shaped contemporary American society.¹⁰⁴ By conceiving of justice as never present – neither in a past original position nor in a future ideal society – deconstruction forces us to think of justice as a history of contingent articulations of justice that are necessarily also exclusive.

¹⁰¹ Rawls, *Justice as Fairness*, 160; Bankovsky, *Perfecting Justice in Rawls, Habermas and Honneth*, 91.

¹⁰² Rawls, *Political Liberalism*, 1996, 398, 401; see also p. 402 As Bankovsky rightly points out, this puts into question Rawls’ distinction between ideal and non-ideal theory. If the ideal of a just society cannot be fixed once and for all and, thus, cannot act as a horizon towards which we proceed, then the status of non-ideal theory as midwife for the ideal is also put into question. Bankovsky, *Perfecting Justice in Rawls, Habermas and Honneth*, 78–79.

¹⁰³ Bankovsky, *Perfecting Justice in Rawls, Habermas and Honneth*, 96–98.

¹⁰⁴ Charles Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism* (Oxford: Oxford University Press, 2017), chap. 8.

It is iterability all the way down, but iterability is also a way to account for how some norms come to be principles that are taken as given. Earlier, I appealed to Judith Butler and Ernesto Laclau for the way they have reconceived universality. Butler did so drawing on the notion of iterability from Derrida; Laclau did so drawing on the theory of hegemony developed by Chantal Mouffe and himself. In both cases, universals are articulated as universals so that universality is a contingent, historical achievement, and in both cases, universals are to-come in the Derridean sense.¹⁰⁵ In both cases, universals are the sites of political struggle.

Conclusion: Deconstruction and Political Theory

I started this chapter with a reading of Seyla Benhabib's work as an example of how one might practice deconstruction. My aim was to tease out the differences between Benhabib's use of iteration and Derrida's use of iterability. Benhabib develops her notion of iterations of rights in response to the subsumptive approach to rights and to universality that one finds in Rawls among others. Yet, at various points she seeks to protect a universal core of rights from the contingencies of iterability and, thereby, from political struggle. With Derrida, I argued that it's iterability all the way down. I then turned to the concept and ideal of justice. I first laid out Derrida's approach to justice, stressing how justice is unconditional in the sense of to-come. All we have are particular, conditional articulations of justice, but there is an unconditionality that exceeds any of these particular articulations. Turning to Rawls's theory of justice, some might see this as a step back after having moved beyond Rawls with, first, Benhabib and, then, Derrida. However, apart from the fact that there *might* be a way to argue for a justice to-come from a Rawlsian starting point, examining Rawls helped me accentuate the difference between two distinct approaches to the concept and ideal of justice. The deconstructive approach treats justice as a matter of political struggle.

Deconstruction is often associated with relativism, and it is often said that deconstruction prioritizes difference and particularity at the expense of universality. As we have seen, deconstruction treats political concepts and ideals as relative to particular contexts; a concept or an ideal is articulated in a particular context – this is the conditionality of concepts and ideals. At the same time, political concepts and ideals are relative to an unconditionality that exceeds any particular context. No concept or ideal can be reduced to how we do things around here, because it is always possible to take the concept and the ideal out of context and insert it into a new context. In the terms of the liberalism-communitarianism debate, deconstruction cannot be placed on a continuum between particularity and universality. This is so because, for deconstruction, the two mutually imply one another: even as there is a tension between them, one is articulated through the other. This also means that the critique of post-structuralist approaches from liberal and Critical Theory quarters does not apply to deconstruction. Deconstruction does not reduce rights, justice, universality, and emancipation to power as Fish tends to do.

¹⁰⁵ Butler, "Restaging the Universal"; Butler and Laclau, "Laclau."

Instead of taken these ideals as critical ideals to be approximated – which would require that they can be determined – deconstruction insists that they are to-come. There is an unconditionality to these ideals, but it is an unconditionality that we should understand as an excess that lays bare the particularity and conditionality of every particular instantiation of, for example, justice. In this way, it is an unconditionality that can be used to shine a critical light on any particular instantiation of justice and on any particular law.

How then might we approach political concepts and ideals? Paul Patton has proposed genealogies and redescrptions as ways to describe what Derrida is doing in his writings devoted to more explicitly political concepts.¹⁰⁶ I think this is right, and we can use this to describe more generally what would be a deconstructive approach to political concepts and ideals.

Since there is no transcendental core of a concept, such as justice, independent of its history – a contingent history of political struggles – the proper response is to engage in genealogies of the way we have come to think of justice. Those genealogies would not just be a way to look back at the past in order to understand how we came to think of justice in a particular way. They would also be a way to open the present and the future to redescrptions of, in this case, the concept of justice. Laclau and Mouffe’s deconstructive genealogy of the concept of hegemony in *Hegemony and Socialist Strategy* is a good example. With their deconstructive genealogy of hegemony, they sought to redescrbe the concept of hegemony so that we can approach political struggles in ways otherwise precluded by the Marxist tradition.¹⁰⁷ Laclau and Mouffe’s deconstructive genealogy of hegemony went through the canon of the Marxist tradition from the Second International to the early 1980s, but they also sought to disrupt that tradition by redescrbing hegemony in (post-)Gramscian terms. Derrida’s writings on political concepts provide another example of deconstructive genealogies. In some cases, they are genealogies of canonical concepts such as sovereignty;¹⁰⁸ in other cases, this is not so, as in the case of friendship.¹⁰⁹ In the case of both sovereignty and friendship, Derrida engages with a mixture of canonical and non-canonical authors and texts, and this serves to disrupt the way we have come to think of the concepts as well as the canon. It can also serve as a starting point for an analysis of how we came to think that certain concepts are political, and that certain concepts are central to political theory. Today, most political theorists would argue that justice is central to political theory, as are democracy and sovereignty; but what would political theory look like if other concepts were central to the discipline?

Genealogies and redescrptions are not just important when dealing with individual concepts and ideals; they are also important for reflecting on

¹⁰⁶ Patton, “Derrida’s Engagement with Political Philosophy,” 155.

¹⁰⁷ Laclau and Mouffe, *Hegemony and Socialist Strategy*.

¹⁰⁸ Jacques Derrida, *Rogues: Two Essays on Reason* (Stanford: Stanford University Press, 2005); Jacques Derrida, *The Beast & the Sovereign: Volume I* (Chicago: University of Chicago Press, 2009); Jacques Derrida, *The Beast & the Sovereign: Volume II* (Chicago: University of Chicago Press, 2011). I examine the concept of sovereignty in Chapter 2.

¹⁰⁹ Derrida, *Politics of Friendship*.

how we came to practice political theory in the ways we do. What have we come to understand as political theory? What do we understand ourselves to be doing when we do – research, write, teach – political theory? And so on. It is important to note that, while analytic, normative political theory is dominant in many places, and while this makes it particularly important to engage deconstructively, genealogically, and redescriptively with this kind of theory, it is by no means the only kind of political theory practiced today. We therefore also need to trace how different distinctions have acquired significance and authority within political theory, for instance the distinction between analytic and Continental theory.¹¹⁰

Finally, these questions extend to the authors and texts that we take to be canonical and central to political theory. They are the authors and texts that come to mind when we research an area, and they are the authors and texts that we teach to students. For example, Rawls seems inevitable if we are to write about justice or teach a course on contemporary political theory. Here I have used Rawls as a foil, and I have done so because his theory of justice is recognizable for others as a theorist of justice and as an authority, especially for others for whom Derrida may not be recognizable as a theorist of justice. This also relates to current debates about decolonising the canon and the curriculum. These debates challenge dominant images of who we are as political theorists, of what is proper, “real” political theory. By examining concepts and ideals through the tension between conditionality and unconditionality, deconstruction can help show their contingency, that they are the result of political struggles and are open to rearticulation.

¹¹⁰ Arnold, *Across the Great Divide*; Lasse Thomassen and Clayton Chin, “Introduction: Analytic, Continental and the Question of a Bridge,” *European Journal of Political Theory* 15, no. 2 (2016): 133–37.