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A CRITIQUE OF NANCY FRASER'S THEORY OF SOCIAL JUSTICE:
SELF-DETERMINATION AND THE MOHAWKS OF KAHNAWÁ:KE

Par
Will Colish

Département de philosophie
Faculté des arts et sciences

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Self-determination and the Mohawks of Kahnawá:ke

Présenté par

Will Colish

A été évalué par un jury composé des personnes suivantes :

Christian Nadeau

Président-rapporteur

Daniel Weinstock

Directeur de recherche

Ryoa Chung

Membre du jury

Abstract

The focus of this study is Nancy Fraser's work on social justice, which has gained prominence in the literature over the past few years. The two original pillars of her approach are redistribution and recognition – the injustices that individuals face as a result of economic hardship or cultural denigration. These two concepts serve to diagnose and provide moral backing to the multiple struggles that individuals undertake with the aim of a more equitable way of participating in society. But what does this approach have to say about marginalized groups who seek greater autonomy, or perhaps even separation, rather than further participation in society? Fraser's work has manifested resistance to sanctioning group difference, and silence on the issue of self-determination. I aim to build these claims into her approach, ultimately to render it more sensible to group dynamics and more capable to respond to their demands all too often neglected under the pretext of equality. The question is, equality of whom?

Keywords: *Nancy Fraser, recognition, redistribution, group rights, Kahnawá:ke, social justice*

Résumé

La présente étude se concentre sur le travail de Nancy Fraser sur la justice sociale, lequel a suscité beaucoup d'intérêt dans la littérature au cours des dernières années. La reconnaissance et la redistribution sont les deux piliers originaux de son approche: les désavantages dont souffrent les gens dus au dénigrement culturel ou à la privation économique. Ces deux concepts servent à diagnostiquer et fournir le soutien moral aux multiples luttes que les victimes d'injustice entreprennent avec l'objectif d'établir une participation plus égalitaire à la société. Cependant, que peut-elle dire cette approche des groupes qui sont marginalisés et cherchent l'autogouvernance (ou la séparation même) plutôt que l'intégration dans la société? Le travail de Fraser manifeste une résistance envers les droits du groupe, et un silence quant à l'autodétermination. Mon intervention prend comme objectif d'inclure ces formes d'injustice dans son approche, la rendant plus sensible aux dynamiques des groupes et capable de répondre à leurs revendications trop souvent négligées sous prétexte de l'égalité. La question est, l'égalité de qui?

Mots clés: *Nancy Fraser, reconnaissance, redistribution, droits du groupe, Kahnawá:ke, justice sociale*

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Contents

Introduction

The role of institutions in the politics of recognition cannot be denied. Any meaningful response to systematic or targeted discrimination that underwrites social stratification will need to address the agents of power involved. The most egregious acts of discrimination in contemporary politics pass through – if they are not initiated by – institutional bodies that act in the name of justice or fiduciary obligation. It would then seem that the most effective engine for bringing about change in social status differentials lies in reforming the institutional structure through which these differentials are most forcefully produced and consolidated. But as much as the role of such institutional reform cannot be denied, it equally ought not be exaggerated.

While institutions may carry much of the burden of rectifying social harms, they may also be so enmeshed with the spectre of oppression and domination that no genuine meeting ground can be established to work over the historical relationships which are to be overcome. Institutional reform may be so clouded with suspicion and distrust that the process is only degenerative, leading to conflict-ridden gridlock and further entrenching the resentment of the institutions as the perpetrators. What may be essential to working through such an impasse is for the victims to walk away. The terrain is not always well charted for new ways of going on together; in the interim, sometimes the only option is to go it alone.

Along this spectrum of engaged, institutional reform to isolationist practices of self-help, the struggles undertaken to overcome cultural patterns of indignation would seem expressible in the language of struggles for recognition. Moreover, they are not just captured by that language. In framing the problem thus, the motivations, practices, and objectives of those engaged in the struggle become legible in ways that may make the type of response required that much more apparent. Certain campaigns will be waged against the denial of one's common humanity, some will affirm neglected difference, and others will transform the practices of cultural codification that organize social difference/sameness. In each case, a different approach is required.

However, despite the apparent kinship various struggles share in their connection to the idea of recognition, this concept is highly mobile, lending itself

to different realizations when hitched to notions of justice, rights and moral philosophy. Nancy Fraser's work is sensitive to the different ways in which recognition campaigns are waged in today's social movements. Indeed, on the one hand, her approach begins with a social theory to render theoretically visible the claims and cleavages for which, on the other hand, a moral philosophy will be answerable. To be sure, there are pressures on either side of this equation that require a degree of finesse in order for it to remain a coherent account of social justice: not all claims of status harm are amenable to the category of injustice, likewise, the application of justice is incapable of reconciling all types of misrecognition. Compromises are struck to advance the agenda of a theory of social justice backed by the normative weight of liberal deontology. The initial kinship borne by various struggles may in turn be abandoned or undermined once we turn to moral philosophy and liberal justice. A question then arises: how does one strike the right balance?

Equally problematic for theories of social justice has been the general tendency to oversell the cultural dimension, while ignoring the distributive element in the equation. Not only does this tendency result in a potential blindspot in the theory, but it can also lead to further aggravation of situations of social despair. It is therefore imperative that the theory be responsive to the varying degrees in which these conditions manifest themselves and how they either work together or against one another. This is a Herculean task, and likely outstrips the competencies of any philosopher. Because the very object of social justice theory is to generate the conditions under which individuals can thrive and live their lives free from despair and prejudice, it is important that they have a say in how political organizations will enable their flourishing through constraints imposed on others and vice versa.

Fraser's tendency has been to work out a division of labour that is sensitive to the demands of democratic participants as engaged stakeholders in determining the contents of justice, but which also takes advantage of the moral philosopher's training in elucidating the constraints of fairness. This most likely accurate intuition has led her to develop a theory of social justice that can generally be characterized as *democracy enabling* – that is, an approach that diagnoses and treats the multifarious barriers that individuals may be subject to in the aspiration of becoming self-determining participants in political life. Democracy can also be

seen here roughly as the means by which individuals become co-authors of justice. Fraser has translated these theoretical ambitions into the concept of *participatory parity*.

However, when applied to contexts outside the United States, the appeal of this approach seems greatly reduced. Much of the political theory agenda in Canada, for example, has been driven by questions of separation (though these questions are hardly unique to the country).[1] Nancy Fraser's voluminous work on social justice seems to culminate in a politics of inclusion.[2] Does this mean that there is little for Canadians to make of her theory? I certainly hope not, for it is *a*, if not *the*, major work on social justice. It is not as though she is unaware or uninterested in the kinds of issues that preoccupy Canadian theorists. She has in fact stated respectful dissatisfaction with the works of Charles Taylor and Will Kymlicka. But if we take her critiques of their works as convincing, and she has not provided an alternative to theorizing the issues that animate their works, then there are some gaps to fill. It is unlikely that issues of separation will disappear from the political theorist's radar anytime soon, despite their cycles of waxing and waning in public discourse.

Does this serve to undermine the universality of Fraser's theory? Is hers merely applicable within the American or nationally homogenous contexts that do not seriously entertain the option of disintegration? While she makes no explicit pretences to cosmopolitanism, her theory only offers partial guidance for many of the long-standing political issues that confront diverse polities around the world. That she has recently expanded her theory to a global level (see Fraser 2009) makes this omission that much more of a striking anomaly. In this study, I propose to test the applicability of Fraser's approach by considering a contemporary example within the Canadian context: the Kahnawá:ke Mohawks' quest for self-determination. In this study, I want to make these two entities confront one another. Generally, I want to examine how Fraser's theory interacts with questions of group rights.

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[1] By questions of separation, I refer to the loose amalgamation of group politics that aims to achieve some form of independence from the state. I make no fine distinction amongst various appeals, but suggest that one important aspect of such struggles is that they explicitly question the legitimacy of imposed governance by what are perceived as foreign powers. I say more about this below.

[2] Fraser actually comes dangerously close to dismissing the viability of movements such as Quebec nationalism. See Fraser and Honneth 2003: 104, fn. 59.

1   Organization of the argument

In the first chapter, I provide a brief overview of Fraser's work on social justice, with a short discussion of her latest work on global justice. My objective there is to lay out her theory as the object of critique, while divulging some of her strategic provisions for combating social injustice. Although she maintains that these provisions can only be adopted by individuals, I argue in the second half of this chapter that groups are potential vehicles for just, social action as well; as a result, claims for group protection merit further consideration in Fraser's theory.

The general tone of the critique that I am advancing here is that of an immanent critique. Much of the criticisms levelled against Fraser derive from inconsistencies within her own work or failures to take seriously her own philosophical guidelines. One such guideline is the critical theory creed of immanence and transcendence – that the task of the philosopher is first to listen to and interpret the various grievances that are raised by social actors, then to make sense of them in a way that allows us to envision how change can occur backed by moral arguments. The two original pillars of her theory that make sense of the plethoric social movements that demand change are recognition and redistribution. (Recently Fraser has included a third pillar to her analysis: representation. My focus is on the first two, although I address the third as needed.) Through these analytical lenses, Fraser claims to view the appropriate remedy of these injustices as participatory parity: victims of maldistribution and misrecognition are really done the injustice of being denied participation as full members of society, through either economic handicaps, cultural denigration or both. In the second chapter, I argue that groups too are subject to these forms of disadvantage but, for a variety of reasons, do not seek further integration into the society that has been so hostile to their ways of life. These reflections are grounded in a close examination of the political climate on Kahnawá:ke reserve, located in close proximity to the Montreal metropolitan area, in Quebec. The nationalist movements that have grown in prominence on the political scene in Kahnawá:ke manifest a strong rejection of the Canadian state and its attempts to offer piecemeal accommodations for indigenous self-governance. As a response to struggles of misrecognition and maldistribution, then, participatory parity fails to provide a workable solution for groups aiming to stake their national identities.

This second chapter serves to illustrate the inadequacy of the framework as it stands.

In the third and final chapter, I develop three potential solutions to this inadequacy. Before doing so, however, I respond to, what I take to be, the two major objections that present themselves to the philosophical agenda I am advancing here. The first objection raised is that groups seeking self-determination necessarily fall outside of the framework considered here, and are more aptly treated under international law. In response to this, I claim that the binary division between the domestic and the international is unhelpful in conceiving of the relationship that groups seeking self-determination bear to the dominant state institutions and population as a whole. Given the long history of political interaction, cross-cultural exchange and racial mixing, it is unrealistic to expect any drastic severing to occur between the two. Rather, it is more helpful to view this relationship in light of the concept of marginalization. This response, however, opens the door to another objection: that without any significant cultural, social and/or political markers, there is no reason why self-determination should be granted. Familiarized under the theories of cultural hybridization, this approach argues for institutional apparati that allow for culturally assorted identities to be assumed and negotiated in the free flow of political claims-making, rather than portioned off into "self-governing" ghettos that are disingenuously celebrated under the banner of nationalism. While I do not disagree with this view, I suggest rather that the epistemic claim of cultural hybridity must admit varying levels of mixity, and so the political claim that mixity ought to be allowed political participation and voice will vary as well. Where fundamental clashes exist (understandably present in the colonial context), spheres of communicative action might look more like Venn diagrams than the stacked levels of deliberative spheres in a single state.

Finally, in the second half of the third chapter I propose three strategies to fill in the gap that the challenge of self-governing groups presents to Fraser's theory. The first strategy aims to reconfigure the objective of participatory parity, such that it allows for individuals to choose in which political group they wish to participate. The second strategy aims to fashion an exit strategy for groups claiming to be unjustly subjected to regimes to which they do not consent. Here participatory parity is taken as the default position, but is made to be applicable

conditionally. Lastly, I consider whether or not there is one overarching category that speaks to both those who genuinely desire further participation in society and those who favour more local forms of political governance.

2   *Research interest and objectives*

Selecting a case study, if it is not done out of pure interest in that case, must aspire to achieve some level of generality for it to garner real theoretical import. This challenge proves significant when analysing so-called "Aboriginal politics." There is a tendency in popular politics to assume that the invocation of Aboriginal politics points to a united history, and thus should produce a united political agenda to respond to that history. Whereas this kind of generalization grossly underestimates the complexities inherent in Aboriginal politics, there are certain essential features that may nonetheless be drawn out that do warrant generalizing: 1) original inhabitancy, 2) land dispossession by various European settler communities, 3) subjection to racialized state programs, which have attempted violent assimilation (e.g. residential schools) prejudicial segregation (e.g. reserves, blood quantums), and even detrimental indifference (Aboriginal health programs). The first element points to the illegitimately applied doctrine of *terra nullius* and the foundational nature of relationship for the Canadian state. The second element is an example, and the most significant one, of the nature of redistributive politics for which Aboriginals continue to fight . The last element in this general equation points to the demands for recognition that are slowly gaining traction in Canadian politics.

The combination of these elements does not produce the conclusion that all reserve Aboriginals seek self-determination; it does not produce this result in its abstract theoretical form, nor in actuality. That said, I make no claim to unveil the independent variable in this plurality of political orientations. The aim here is not to produce an explanation of why certain communities are less inclined to find their goals met within the Canadian state while others are more inclined to do so. Sometimes it is a question of sufficient institutionalization and political mobilization to give voice to an erstwhile-unexpressed anger and desire for change. Fighting for one's independence might also be rooted in the historical nature of one's community's relationship to surrounding political entities (Alfred 1995: chap. 2). No less of a consideration, one may be either motivated or

discouraged by the prospects of actually achieving independence. These reasons may operate in consort, separately and all to varying degrees, in addition to many other possible reasons that could be added to the list. While I do not aim to establish causal explanation in this analysis, the case of the Mohawks of Kahnawá:ke (also referred to as Kahnawakehró:non)[3] provides valuable insight for other struggles that bear the marks of colonial subjugation, even if they do not all stem from the same sources of motivation.

Beyond this particular yet pervasive form of discrimination, one may wonder what lessons can be gleaned for the larger ensemble of separation politics that do not bear all these same marks, such as Québécois nationalism. To this end, it may be said that insofar as many, arguably if not all, cases for self-determination involve claims over recognition and/or redistribution, the case for sovereignty in Kahnawá:ke illuminates the inadequacy of participatory parity to meet the demands of such contestations.[4]

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[3] As it seems to reflect the current terminological trends in the community, I will use the English and Mohawk names interchangeably. In this thesis, I use the terms "indigenous," "Aboriginal" and "First Nation" when referring to the larger Aboriginal community in Canada and do not Inuit or Métis. I use the term "Indian" in reference to status, land, and powers contrived by the federal government.

[4] In political parlance, the terms "self-determination" and "sovereignty" are used by members of the marginalized group because this is what they genuinely perceive they are pursuing and entitled to. "Separation" or "secession" is often used by opponents of the agenda because it casts the issue in the light of a desire to divide a people, potentially deny access to certain resources, and draw others into a possibly lengthy and heated negotiation process on the terms of separation. Theoretically speaking, I think that the two terms are required but on different registers. The "politics of separation" accurately captures the real institutional problems that these campaigns face and perhaps represents some of the resistance that theorists hold toward entertaining this possibility. Self-determination seems a little harder to deny, and is even enshrined in the UN constitution. But given that self-determination and separation need not coincide (eg. Post-WWII Germany, or the partition of the Ottoman Empire), it would seem that the normative weight rests on self-determination as the precondition for separation. That is, separation ought only be pursued in the desire for self-determination. Otherwise put, the politics of separation is an option worth consideration only when the possibility for self-determination does not reside within current political borders and institutional arrangements. It is in this sense that both terms should be received when used here. I make no attempt to justify the right to secede *simpliciter*. On this point see Daniel Weinstock, 'Constitutionalizing the Right to Secede', *The Journal of Political Philosophy,* 9/2 (2001), 21.

Thinking Beyond Participatory Parity

This chapter is the first stage in a three-part process to building group claims for self-determination into Nancy Fraser's theory of social justice.[1] The aim here in the first part is largely negative in character; that is, this chapter is meant to illustrate the inadequacy of Fraser's approach to live up to its critical objectives – to provide a comprehensive theory of justice grounded in the material reality of social and political discontent. The pinpoint of this inadequacy is her concept of participatory parity, whereas the material reality that challenges this concept is the case study under consideration here: Aboriginal self-determination. As this is the first chapter, it also serves some introductory functions. Before clearing out the space in which we can think beyond participatory parity, it is first essential to explain what it is, as well as Fraser's theory of social justice. In the next chapter I will work through the positive development conceiving alternatives to the model of participatory parity; by the end of this one, I merely hope to have put it in question, that is, to make possible *thinking beyond participatory parity*. This is achieved in four steps.

I first present the work of Nancy Fraser that is of concern here. Because the aim is not a wholesale rejection of her approach, but a more subtle – though significantly impacting – modification, it is accordingly important to see it for what it is: a rich and theoretically diverse theory of social justice. As a result, the first section operates not only as a worksite of critique but also as a blueprint for later revision, which is the larger aim of this thesis. I will begin this discussion with her social theory as a point of departure for the larger project of social justice. This section will thus aim to track her movement from the empirical to the moral aspects of her approach. The point of note there will be the role of participatory parity in tying these two elements together (s. 1).

Following this initial presentation, I remark briefly on how my aims here qualify as modifying Fraser's approach rather than rejecting it. While the success

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[1] I employ the terms self-determination, self-government and sovereignty interchangeably here, and all in a rather thin sense. Their use is merely meant to allude to group, political independence from state apparati. A more refined analysis of these terms would likely develop significant distinctions and even tensions, but I that is not my intent here. On this point, see Alfred 1999: 52 ff.

of my critique does not hang on this distinction between modification and rejection, it nonetheless serves as an opportunity to announce some of the points of agreement and dissatisfaction that I have with Fraser's theory (s. 2).

After these two preliminary discussions, I embark on the more substantial claim that there are important silences in her theory of social justice, specifically with respect to claims to self-determination. This latter is an instantiation of the social and political movements to which a critical theory of justice ought respond. That the only discernable shrift Fraser gives to these types of cases (cases over group rights) is a disengaged reticence to collective struggles manifests a significant blind spot in her theory. This second section serves as the motivating factor for a revised approach to social justice (s. 3).

Lastly, I introduce and respond to the obstacles that such a revision faces: Fraser's objections to group rights. Part of the strategy here is to demonstrate how her conclusions about group rights are pre-mature, but another part is to suggest that it is more helpful to abandon individual versus group dichotomies. Only through this binarized typology of social justice recipients does it become possible to generalize the latter as bearing repressive communitarian tendencies, while the former offers a more hopeful site for emancipation. By Fraser's own lights, I argue that the strategic means to achieving social justice is available to collective struggles as well. I leave off by suggesting that a more contextual engagement with the dynamics and objectives of "group" struggles will permit a more sensitive response to the demands of Aboriginal self-determination, rather than handcuffing the results to the theoretical strictures of simplistic group sociology (s. 4).

1   Fraser's theory of social justice

1.1   From social theory to moral philosophy

Fraser's critical theory of social justice faces the initial obstacle of reconciling the dominant trend of recognition politics with, what she perceives as, the waning demands for economic redistribution. The latter she takes to rest on fairly firm deontological grounds, whereas the former requires some theoretical tweaking. Between the two, Fraser finds an unfortunate explanatory divide amongst social theorists. On the one hand, theorists will explain social movements by an appeal to economic monism; social dissatisfaction manifest in organized movements is due

to a lack of resources, for which a distributive response is the answer. In this light, what immigrant labourers really take issue with is not racialized employment practices *per se* but the denial of a fair distribution of resources. On the other hand, these same cases can be analyzed from the perspective of their dissonance with cultural norms that privilege certain ways of living over others; what agents really press for is recognition of their hitherto undervalued cultural practices, traditions or contributions to society as a whole. Thus, remuneration for childcare and housework can be cast as a critique of the gender biased valuation of work and a demand to recognize the contribution of stay-at-home parents. However, neither of these approaches seems to be capable of capturing the full range of social harms, lest the theory be stretched so thin that it relinquishes its empirical foothold. Unless the two are somehow integrated, we are left with either a "truncated economism" or a "truncated culturalism" (Fraser and Honneth 2003: 9; Fraser 2000: 11).

Fraser has two straightforward examples that go along way in troubling these simplified approaches. For the distributive theorist, "[w]itness the African American Wall Street banker who cannot get a taxi to pick him up" (Fraser 2001: 28). Clearly a distributive response is neither required nor sufficient to account for this kind of treatment. For the recognition theorist, "[w]itness the skilled, white laborer who becomes unemployed due to the factory closing resulting from a speculative corporate merger" (29). The explanatory work in this situation cannot be accomplished by an appeal to discriminatory cultural norms. Once it becomes apparent that neither theory can sufficiently process the empirical data to which a moral philosophy will be later applied, the aim is then to combine them. This proves to be no easy task, given that different cases will exhibit different features of recognition/redistribution problems; some will be only one or the other, or both, and to varying degrees. Fraser thus advances an approach that she calls, "perspectival dualism," which she distinguishes from substantive dualism and post-structuralist dualism (Fraser and Honneth 2003: 60-3), neither of which I will discuss here. Suffice it to say that the advantage of her approach is that it enables an analysis that captures the distinctiveness of economic and cultural aspects, while at the same time permitting us to view their interwoven reinforcement of one another. Neither the cultural nor the economic realm is given absolute priority,

and so the theory can account for the varying degrees to which individuals are subject to either type of injustice.

Once the nature of social discontent has been sufficiently theorized to account for the diverging examples above, Fraser's next move is to develop a normative theory that is able to respond to recognition/redistribution claims in modern democratic conditions of value pluralism. While the social reality exhibits varying relationships of cultural and economic interpenetration or relative isolation, moral philosophy is more or less divided into two camps – distributive theorists linked to a Kantian tradition, and recognition theorists indebted to the Hegelian heritage –, neither one of which being able to furnish a normative response in one unified approach. The first hurdle in this regard is to see recognition not as matter of ethical practice, but of moral obligation.

Nancy Fraser's arguments against ethics stem from a more sustained engagement with two other competing conceptions of recognition that have, in her view, forestalled its coupling with still pressing demands for distributive justice. The two targets of her critique are Charles Taylor (1994) and Axel Honneth (1995; 2003), each linking his theory with debatable notions of human flourishing and the good life (Fraser 2001: 26). This association of recognition with the good is hardly unique to Taylor and Honneth. Indeed, as Fraser notes, the trend within the nascent field of recognition theory is to align it with the Hegelian notion of *sittlichkeit*, while opposing it to the Kantian notion of *moralität*. "Norms of justice are thought to be universally binding; they hold independently of actors' commitments to specific values. Claims for recognition of difference, in contrast […] depend on historically specific horizons of value, which cannot be universalized" (22). Distributive theorists neatly organized on the one side, recognition theorists on the other, the attempt to combine the two risks "philosophical schizophrenia."

Fraser's aim is to eschew this schizophrenic worry by developing a conception of justice that is capable of accommodating both types of demand. Whereas her social theory is adaptable enough to capture the various types of harms that are contested, her moral philosophy is much less reconciliatory. Normative philosophy is, by her lights, faced with a choice between ethics or morality: It is a question either of engaging with the intersubjective practices that give rise to certain forms of discrimination, or of developing a conception of

responsibility and obligation toward instances of institutionalized deprivation. This division has been rehashed to present another choice: recognition or redistribution. Either we develop a theory that is attuned to the obstacles that individuals face in their processes of self-actualization (the conception of which will depend on certain base assumptions about the good), or we direct our efforts to rearranging the distribution of resources such that individuals are free to pursue their own life plans (which is supported by a system of rights). For Fraser, the first division holds and presents a real challenge for moral philosophy. The second, however, is a false dichotomy that can be overcome with some conceptual reworking of recognition. Playing off the first division, there is a real fork in the road – the question is how to bring both recognition and redistribution down the same path.

The strategy adopted to work around this division is, simply put, to unload all the ethical baggage associated with recognition, which will in turn permit her to refashion it as a moral concept and bring it into harmony with redistributive aims. On the one hand, this is a fairly tall task; recognition is not merely associated with Hegelian *sittlichkeit*, but is very much a product of it. Its provenance lies precisely within a critique of Kant's moral agent (see R. R. Williams 1997: 31 ff.), and may not find a comfortable home within the notion of *moralität*. On the other hand, Fraser is granted some conceptual leeway. What begins with Hegel as one step along self-consciousness' development toward absolute unity has become the rough cut key to understanding and resolving deep social divides that exist in conditions of plurality and globalization. The theoretical use of the concept has thus changed since its inception – that its meaning be realigned with different objectives should not cause great concern, other than with the normatively neutral issue of conceptual fidelity. Nevertheless, this realignment will require justification.

As much as recognition (in its explanatory or hermeneutical form)[2] is now used to reveal the ever-uncertain and precarious adventures of identity formation that exist in conditions of plurality (Taylor and Gutmann 1994; Markell 2003), Fraser's claim is that, as a normative term, it must heed those conditions as well.

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[2] This division is borrowed from and developed in Daniel Weinstock, 'Trois Concepts De La Reconnaissance', in Alain Battegay Jean-Paul Payet (ed.), *La Reconnaissance À L'épreuve* (Paris: Septentrion Presses Universitaires, 2007)..

In order for it to become a subject of social justice, it must operate within the constraints of justice, as most famously expressed in the work of John Rawls. That is, in order for it to be applicable in conditions of deeply run value pluralism, recognition must not be overburdened with ethical notions that are not commonly held by the population at large, or, in Rawlsian terms, that do not receive the approval of an overlapping consensus.[3] The choice between ethics and morality is decided in advance by a liberal victory in the debate between the good and the right.

The argument to unite recognition and redistribution under one philosophical framework is derived more so from the initial constraints of contemporary justice, rather than from any effort to render more clearly in what recognition consists. This is an important point of qualification for Fraser's approach: it is not a theory of recognition, but a theory of justice. The latter therefore serves as the philosophical framework under which the concepts of redistribution and recognition become deployable. Once the framework of justice is erected, one more step is required to make operational her moral theory: a practical-theoretical correlate of injustice.

1.2   Participatory parity

The question must be asked when linking the two terms of justice together: what is the injustice to which they are directed? That is, what is the object of justice that recognition and redistribution serve? Participatory parity is Fraser's answer to these questions. It establishes a threshold of justice and an additional diagnostic perspective to penetrate empirical analyses of maldistribution and misrecognition. The concept of participatory parity is what sets the deontological component of her theory in motion, while at the same time extending the liberal tradition on which she draws. Although she divulges very little of its conceptual roots, Fraser is clear that participatory parity is intended to serve as a means to guaranteeing equal opportunity for social esteem and practical engagement with the norms of cultural valuation. In this sense, it avoids the self-contradictory temptation of mandating *a priori* the equal worth of all cultures. Such a view derives generally from, what Fraser would see as, controversial appeals to construct positively the

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[3] One should note that Fraser's references to Rawls in this context are sparse. Her concern is rather to align recognition with liberalism more generally.

necessary components to living a good life. These efforts, more often than not, line up with a conception of recognition as a process of self-actualization (Honneth 1995), and thus prove incompatible with the basic tenets of liberalism. Parity of participation rather moves in a negative direction by removing those obstacles that would inhibit one's capacity to make good on their life plans, such as a lack of resources or being the victim of denigrating cultural norms.

This is also a great, though complex, practical advantage to the concept of participatory parity. By positing the object of justice as the means by which citizens can further negotiate the contents of justice, the philosopher is relieved of the rarely defensible position of mandating from on high these contents (Fraser and Honneth 2003: 44). Rather, participatory parity speaks to the preconditions of democratic deliberation and thus respects the self-governing engagement that subjects of justice ought to bear. On the flip side of this democratic deferral, there are trappings of circularity, but which I do not consider here (see Fraser and Olson 2008: 246-72; Fraser and Honneth 2003: 44 ff.).

One last qualifying note on the nature of participatory parity in relation to recognition: rather than treat the former as representing a form of socially embedded identity development, Fraser insists that the injustice associated with misrecognition stems from prejudicial status hierarchies. Some in society are denied a fair go in virtue of their under valued statuses; others are privileged to the disadvantage of many. The relational thread that connects the two from the perspective of justice is institutional patterns of cultural value. Participatory parity is a way of conceiving an egalitarian recalibration of these patterns without relying on theoretically risky notions of identity that court reification once placed in the institutional setting.

As the foregoing suggests, participatory parity is introduced to handle a number of theoretical tasks. In one instance, it provides a metric for the level of harm and the corrective responses for a given situation of social injustice. Further to this, it provides direction for ideal distribution of resources and expression of social esteem and respect, which institutional practice ought to enable, and this is what really binds recognition and redistribution under one conception of justice in moral philosophy. Lastly, in addition to unifying the normative components of justice, it allows them to be connected to real world instances of social suffering that result from maldistribution and misrecognition. With all these functional

roles, it serves as the lynchpin that holds the structure of Fraser's theory in place. Although it would be premature to say that we cannot modify the architecture without collapsing the entire structure, the latter half of this chapter (s. 3, 4) will aim first to expose its fragility.

1.3   Global justice

Before delving into the case of self-determination, there is one more element in Nancy Fraser's work that needs to be addressed, but which I will dismiss as not entirely pertinent to the more focused and localised type of study that concerns us here. (I come back to this aspect of Fraser's theory in the 2nd and 3rd chapters, where it pertains to the membership issue of self-determination.) Thus, in order for the present investigation to confront the full gamut of Fraser's work, we will have to add on another element that she began to introduce in 2004, while hinting at its necessity in her seminal debate with Axel Honneth (Fraser and Honneth 2003: 73). Fraser describes her approach as subscribing to the creed of responsible pluralism, where different ways of characterizing injustice are admitted to the theory as long as they do not dilute its conceptual parsimony (Fraser 2007: 314). There is a balance that must be struck between the theory's elegance and its ability to cover the full range of harms it claims to address. Before, in, and after the publication of *Redistribution or Recognition?* (2003), critiques were launched at Fraser's perspectival dualism for not being able to bring to light the types of harm suffered by those who literally fall outside a scheme of institutional patterns of cultural value, and who are also (often as a result) excluded from any kind of distributive programmes (Fraser and Honneth 2003; Feldman 2002; Bohman 2007; Fraser and Olson 2008).

At least in part as a response to these critiques, Fraser tacks on a meta-level question of justice that is most salient in global trends that outpace the Westphalian-state framework (Fraser 2009, 2005). More recently, individuals are unable to find sufficient countenance to the demands they raise within state mechanisms, since the source of the harms they seek to address is too often from *without* the state apparatus. "Faced with global warming, the spread of AIDS, international terrorism, many believe that their chances for living good lives depend at least as much on forces that trespass the borders of territorial states as those that are found within them" (Fraser 2005: 71). A comprehensive theory of

justice must address not only the *what* questions of justice – the substantive applications of recognition and redistribution from the perspective of participatory parity – but also, and more so now than ever before, the *who* questions – "who are the relevant subjects of a just distribution or reciprocal recognition in a given case?" (72). The disconnect between the source of injustice and the means of response leads to what Fraser calls a "politics of framing."

The reach of this type of analysis is far, and hard to dismiss in most, if not all, settings of redistribution and recognition.[4] It also raises an important question concerning the right level of analysis required for these settings: is it an issue of transnational or state level (in)justice? Despite the persuasiveness of this turn toward global justice, it is far from totalizing, and Fraser is aware of as much. Not all matters of injustice find their greatest expression in the "spaces of flows" (Castells cited in 2005: 81) – the Internet, highly mobile capital, border control, etc. – rather than in straightforward territorial politics. Indeed, in some cases, it is imperative that we not look past the responsibility of the domestic institutions in perpetuating certain forms of injustice, for which they primarily, if not alone, should be the respondents against the issues raised. The case that the present study examines is focused primarily on the state for these very reasons.[5]

The colonial legacy that is of concern does not rest on the impact of globalizing forces. Without doubt, these forces certainly put forth new challenges in thinking about Aboriginal self-determination and its normative implications. But the relationship considered here predates the internet age, the Bretton Woods convention, the fall of communism and all of the other factors that Fraser lists as contributing to the impotency of the Westphalian state in dealing with misframed matters of first-order justice. In fact, given the nature of the relationship itself, the Westphalian state in question here, Canada, is the primary agent to be engaged in making headway on the issue of Aboriginal self-determination. This is not only because it currently sets the terms on which negotiations proceed, but also because it is targeted in this case as the perpetrator of injustice, from the point of contact to

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[4] See Fraser's discussion of the all-affected principle (2005: 83).

[5] Fraser has expanded on the origins of the frame question to suggest that it emerged with the rise of neoliberalism and transnational injustice. By her own reasoning, then, the case I consider here predates questions of the frame. See Alfredo Gomez-Muller and Gabriel Rockhill, 'Global Justice and the Renewal of Critical Theory: A Dialogue with Nancy Fraser', *Eurozine*, /April (2009)..

the land claims disputes that continue today. From this perspective, the state functions in a double role as insulator of continued injustice and as potential partner of more promising arrangements. While the substantive forms, the *what*, this new justice would take still remain largely debated, the *who* to be engaged in the matter is well known.

What this suggests is that Aboriginal self-determination is more so a question of local concern that should focus on the authorities involved as the responsible agents. In terms of Fraser's perspectival dualism, the focus then is on the misrecognizers and the maldistributors. A more circumspect analysis may consider the transnational influences that shape the discourse of indigenous politics in Canada, but this does not appear to be necessary, given the historically prior nature of Aboriginal/settler relations.

One important consequence, however, is worth noting of Fraser's recent work on global justice. This third level of injustice, "misframing," becomes salient as the nation-state is rendered impotent against transnational forces. Rather than shore up protectionist measures against foreign finance and cultural destabilization, Fraser's concern is to level the playing field for those who are vulnerable to securitizing discourses, undiscerning application of the neoliberal paradigm and the expanse of anti-political millenarianism by creating strong transnational counter-publics. The consequence of this move is that the nation is no longer the relevant anchor point of justice. As such, the worry that national minorities movements destabilize state unity is not available. Fraser, herself, has already moved her theory in the direction of a post-Westphalian state era.

2   *Modifying the theory*

Before proceeding with the counter-arguments against participatory parity and the positive arguments in favour of Aboriginal self-determination, it is first essential to clarify the conceptual approach on which the remainder of this study will rest. I would label my intervention with Fraser's work as a modification rather than a rejection of her approach. What qualifies it as a modification? There is not likely a clearly defined answer that can be given to this question, but allow me to at least say what of her theory is conserved, if only to further illuminate the path of critique that I will be heading down. (My perception that this conservation pushes my intervention in the direction of a modification may certainly be challenged,

though this does affect the argument itself that I am advancing.) To be sure, the object of this intervention is not simply to put Aboriginal self-determination on the agenda or even to develop a framework within which such demands can be accommodated. Many other thinkers have spent much time contributing to this objective and with far more success than could be approximated here. The aim is rather to take, what is perceived here to be, a significant and persuasive contribution to contemporary debates about social justice and harmonize it with the pressing demands of Aboriginal self-determination as they represent the pervasive phenomenon of the politics of separation, which currently fall outside Fraser's theory.

As most projects begin with a research question, let us begin there to examine the points of convergence and discord between Fraser and the modifications that will be proposed in the present study. The theoretical range of Fraser's work is vast, giving rise to equally vast research questions that might be at the root of her reflections. I will focus only briefly on the more salient aspects, here, while acknowledging that they do not produce an exhaustive account. From what I take to be the highest organizing principle in her research, the first point of convergence is a shared commitment to answer the following question: How does one develop a critical theory of society that is answerable to highly pluralized and diffuse social and political movements? Naturally, certain methodological affinities derive from this commitment as well, and these also play off and give rise to other research questions. The most significant question-cum-method element in this equation is her effort to reconcile recognition and redistribution responses to social dissatisfaction.

The result of this reconciliation, in its initial form as type of social analysis, is the analytical framework of perspectival dualism. The research question that guides her reflection on this dualism is: how can recognition and redistribution be united under one conceptual framework, given their apparently divergent roots (Kantian versus Hegelian)? Fraser's success in overcoming this challenge, while at the same time avoiding the identity model of recognition, is an important development in this debate that the present study will aim to preserve. In kind, her effort to unite these two concepts is driven by the methodological approach, now common to Critical Theory, of capturing and conveying the language of self-identified victims of social injustice. To this end, recognition and

redistribution are deployed as candidates to express and cover the range of harms that fall under the original category of social injustice. Their candidacy, like any good scientific approach, is conjectural and yet valid until further reflection gives us reason to reject or modify it.

The aim here is not to challenge the validity of these conceptual devices. Indeed, Fraser's approach seems the most apt at cashing out these two sources of social discontent under one unified model. In the 2nd chapter these concepts are remodelled to accommodate group claims, although the underlying structure of redistribution and recognition is left unchanged. For the most part, the level of theoretical modification is her supplementary claim, developed in an attempt to unite these two elements, that participatory parity or the lack thereof is the threshold of justice to which recognition and redistribution politics are directed. My aim will be to reduce the authority given to this concept as holding representative power over recognition and redistribution struggles. The aim is not to do away with it entirely, but to temper its interpretative sway within Fraser's critical approach by introducing a contemporary struggle that resists being funnelled into a demand for participatory parity. And so, it is at this point that the bulk of the intervention lies. Whether or not this constitutes a rejection or a modification of Fraser's theory is a matter that I leave to the reader. In either case, the content of the argument is unchanged.

3   *Critical neglect of Aboriginal politics*

Despite the comprehensiveness of Fraser's approach, it remains silent in certain areas where it should have more to say. The question of group rights is rarely treated, and where it is, her general intuition is to move away from it, fearing it can only lead to repressive communitarianism. This objection runs hand in hand with her rejection of identitarian-based conceptions of recognition that view the injustice of misrecognition as an attack on one's opportunity for self-affirmation and –development. This way of theorizing the issue then places demands on our ability to disclose what is under attack, while at the same time forcing us to be able to preview the truer identity that one is working toward. It neglects the conditions of unpredictability and disappointment in the process of identity construction. Once it becomes apparent that identity is not something one has full control over, nor for which a result can be successfully demanded

(Markell 2003; Tully 2000a), it becomes difficult to see its potential as a distributable or deliverable object of justice. A similar critique holds true on a larger cultural level, where the integrity of a group can only be maintained through disillusioned notions of cultural purity that are upheld by repressive and dogmatic practices, which are ultimately destructive to one's personal freedom. But does this mean that we have no means to address those claims that speak of a collectively felt denigration and denial of resources other than by dividing them into individual instances of a denial of participatory parity? What if those claims stem from a reaction against efforts to integrate subjects as "full members of society"? How does the concept of participatory parity become realizable for those who reject it as a newfangled attempt to undermine their ways of life?

On the one hand, it is quite easy to discern the empirical weight of indigenous politics in Canada as a case of maldistribution and misrecognition. The sentiment of New World colonists toward native populations was overwhelming suffused with European superiority, predicated on forms of cultural and productive discrimination. The result is well known and continues to throw into question the moral legitimacy of the Canadian state. On the other hand, it is difficult to see how the case of Aboriginal self-determination fits within the framework of participatory parity. The claim is not that further means be provided for the successful integration of Aboriginals in settler society. Unlike cases, such as gay marriage, that target one particularly discriminatory aspect of social and legal codes, self-determination throws into question the very structure that those codes inhabit. The concept of participatory parity, at best, calls for a recalibration of those codes with the aim of a more substantial approach to egalitarian citizenship; at worst, it continues the colonial agenda of running roughshod over obstructive conceptions of property and racially contrived, cultural inferiority. In either case, we fall well short of satisfying the demand for self-determination. There is thus a disconnect between the critical theorist's aspiration toward emancipation and the liberal theorist's commitment to individual liberty – in this case of indigenous self-determination, the expression of the former is much a rejection of the latter.

There are perhaps a number of theoretical avenues available in light of the apparent disconnect in Fraser's theory. Her approach could be rejected outright; it could be vindicated; or it could be modified – and within each of these there are as well numerous ways of making the case. I'm opting for the last of the three

options, not only because I think her approach has had some important successes within the literature, but because it also offers a model for reconciling this disconnect that I highlight here. Before undertaking this reconciliation, allow me to first make the case as to why the need for accommodation arises; this rests on the critical theorist's commitment to emancipation and her methodological use of immanence and transcendence.

3.1   Emancipation and immanence-transcendence

As already stated, the nature of indigenous people's struggles is potentially well captured by the language of recognition and redistribution and, by extension, Fraser's perspectival dualism. The critical theorist's provocation to understand and work toward the emancipatory aims of a subordinated group is well nourished by the plight of Aboriginal peoples and the multiple ways in which their life opportunities are impeded through discriminatory state policies and land dispossession. From a pre-theoretical or unspecified view of justice, there are sufficient grounds for putting the critical theorist to work, even if we do not yet have sufficiently refined views about why this counts as an injustice.

To be sure, it does not make sense to say that any claim to injustice can be made without an already developed conception of justice that serves as the evaluative benchmark. But nor does the lacking of some normative grammar seem possible, as if principled reflection on what is just or unjust is used to fill a gap, rather than work out possible contradictions among competing, already-present beliefs (Pettit 1998). One need only appeal to the witnessing of suffering, the observation of discrimination and disadvantage or the denial of fair treatment to find sufficient motivation to interrogate the moral grammar that underlies such arrangements. *Pace* Fraser, it is not with the concept of participatory parity at hand that one engages subjects of domination to reveal the moral language of their demands, but this concept arises from reflection on the felt injustices through a comparative lens with others (Fraser and Honneth 2003: 208); only then does it become a depersonalized question of morality. From the perspective of the critical theorist's commitment to the emancipation of subaltern subjects, which is shared by Fraser, there is a demand placed on the theory to respond to the claim of Aboriginal self-determination. In order to respond, this will require some detachment from the already theorized notion of participatory parity; the latter

appearing now to be more a product of philosophical reflection than a conclusion drawn from complete engagement with the reality of social discontent. The case of Aboriginal self-determination as a demand for some form of political and social exemption easily demonstrates as much.

Fraser's work finds much of its theoretical roots in the critical theory dialectic of immanence and transcendence, the notion that practical engagement with the material conditions of the former will reveal the strategic means of the latter. The way out of social discontent is not to be delivered by philosophical fiat, but is found nascent in the expression of that discontent, in what may be called a "normative surplus"[6] (Fraser and Honneth 2003). The aim is to gain "a foothold in the social world that simultaneously points beyond it" (202). Part of the social world that is considered here (Aboriginal self-determination) does not point in the direction of participatory parity. Its transcendence does not find expression in the social conditions of equal member status *within* the deliberative norms of cultural valuation, but to gain that equality as member apart or from without. Moving beyond this foothold requires a different source of transcendence; for now, the dialectic is halted. In the second chapter, we will begin to see how it can be restarted. The point of note here is that the case under consideration is at least admitted to the pre-theoretical framework, from which an alternative to participatory parity will be derived.

Opening the door to group rights may raise the concern for some that we end up protecting the privileged position of some (say, Aboriginal elites or men) over others (say, Aboriginal women or the biologically impure members of the community) through a blanket protection of the group's right to self-determination. This objection directs us to replay an ongoing and increasingly hackneyed debate about group versus individual rights. The upshot of it is to suggest that, given that inequality remains through group protection, the point of application must reside at the individual level. Even if the existence of inequality is purely conjectural, it is sufficient to adopt pre-emptive measures to guard against its eventuality. And so, despite the expressed desire amongst Aboriginal

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[6] This term obviously lends itself to various interpretations as to where that surplus lies and how it is revealed. Much of the debate between Fraser and Honneth (2003) rests on this point. I use the term here in an unspecified way only to gesture toward its framing of the immanence-transcendence dialectic.

communities for greater political autonomy, the strictures of our theoretical worries short-circuit the realization of these aims. The result is to turn the claim to self-determination into an obstacle, rather than a means, to social justice.

In the next section, I offer a partial answer to this challenge by dismissing the fears of repressive communitarianism with respect to indigenous struggles for greater control over their own destiny.

4   *Against and for group rights*

So far, I have provided a brief outline of Nancy Fraser's approach and made the case for the consideration of Aboriginal self-determination within the broader scheme of her theory as one of social justice. This second discussion was merely aimed at putting it on the agenda, while resting it on Fraser's own justifications for a *critical theory* of social justice. I have yet to show how this case stands in opposition to participatory parity, or rather, how it is that the latter excludes the possibility of the former. In this section I recapture Fraser's arguments against collective rights while working through my own rebuttal that opens the door to further engagement with the issue, rather than leaving it forestalled at the theoretical level. Part of the aim of this discussion is precisely to move away from what has now become a quite politically charged opposition – group versus individual rights – and move toward a practically connected discourse that reveals important nuances unnoticed by this dichotomization. More specifically, I hope to demonstrate that the fragility of participatory parity as the normative pinnacle of Fraser's theory actually derives from the fragility of her distinction between affirmative and transformative strategies to achieve social justice. Moreover, this latter fragility is developed by Fraser herself, ultimately undercutting the validity of her own conclusions. My own conclusion from this discussion is that we do not have sufficient reason to endorse fully participatory parity, and as a result, we *do* have good reason to begin considering alternatives.

4.1   *Against*

Fraser initially distinguishes two strategies that may be adopted by victims of social injustice, each loosely corresponding to the type of harm experienced. On the one hand, the means to a more egalitarian distribution of social esteem and resources may come about through tactics of affirmation. This approach centres

generally on misapplication of a given social norm or misapprehension of cultural difference, which leads to perverse and unfairly privileging outcomes. For example, the campaign for gay marriage is often waged on grounds for the universal respect of two consenting adults to love whomever, and that this should not be decided by the state, certain influential churches, or other social pressures that claim exclusive interpretation over the meaning of marriage. This specific form of discrimination is, in part, remedied by an affirmation of one's admissibility to the erstwhile unfairly exclusive practice and benefit of two individuals' public avowal of mutual love. This formulation is commonly referred to as the politics of universalism (Taylor and Gutmann 1994: 38-9; Thompson 2006: 45-7). Conversely, this strategy of affirmation also applies to those that seek recognition for their distinct cultural existence. For example, the marginalization of South Asian communities in Montreal leads them to establish their own local communications industry, including radio, television and print media, thus embarking on not always evident investigations of what is Vietnamese and what counts as Vietnamese news in Montreal. In both cases, the approach favoured is waged on a declaration of who one is and what is denied (or to be gained) in virtue of this identity.

On the other hand, the strategy of transformation seeks to undo the structural forms that enable and reproduce forms of discrimination and/or economic privation. Remaining with the example above, Fraser distinguishes gay politics as an affirmative practice from queer politics as transformative (elsewhere referred to as deconstructive, which I use interchangeably with transformative[7]). Where the former advances their struggles within the logic of familial integrity and partner fidelity, the latter seeks to destabilize binary divisions of gay/straight, thus allowing for new subjectivities to emerge that were previously constrained by limiting discourses, not to mention political and social attitudes.

Fraser's own preference is for the latter strategy, but notes that its application is rare and unlikely present among the list of demands for more popular political struggles. While affirmation is more inline with the nature of large scale campaigns for social justice, it tends only to effect surface-level change

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[7] Although transformation and deconstruction are not exactly synonymous in common parlance, the shared quality that I take Fraser to attribute to them is their targeting and overhauling of the structure on unjust relationships. See Fraser and Honneth 2003: 106, fn. 81.

and may end up engendering repressive attitudes over membership and inclusion, rather than provide a clearing for new subjectivities to be lived, which is more successfully addressed by transformation. Noting the drawbacks that each presents, she opts for a *via media* through, what she calls, "non-reformist reform" (Fraser and Honneth 2003: 78-82). Leaving her solution aside for now, let us consider how her hostility toward collective rights is generated through a perceptive standoff between the individual and the group in recognition politics.

Her resistance to group rights is a product of this division she lays out between affirmative and transformative strategies. While neither is necessarily wedded to a particular type of misrecognition/maldistribution claim, group demands most often, if not always, adopt the logic of affirmation, and it is with this coupling that she takes issue. Because collective demands require some enunciation of in what that collective consists, they take this affirmative form, which, for Fraser, leads to conformism and repressive control over the criteria of membership. This structure of group claims entails static notions of culture and opens up the possibility of – if not contributes to – reifying subjectivity. "Valorising group identity along a single axis, they [affirmative remedies] drastically oversimplify people's self-understanding – denying the complexity of their lives, the multiplicity of their identifications, and the cross-pulls of their various affiliations" (Fraser and Honneth 2003: 76; see also 2000: 110, 12).

In light of this, her treatment of recognition shirks all allusions to identity-based politics, which not only lead to unrealistically reductive self-images, but also fail to provide a coherent recognition logic of identity formation – now a redress against the distortion of one's authentic self, now an enablement of the process of dialogical, intersubjective creation (Fraser 2000: 112; see also Markell 2003: 19-20 and especially chapter 2). The status model emerges in the wake of her opposition to misguided and unhelpful attempts to affirm one's identity within the contestatory and unpredictable realm of politics. Since group claims cannot avoid the logic of identification in advancing their campaigns, they fall prey to her objections; thus the status model is intended to apply to individuals of the collective *qua* individuals.

However, the initial division between affirmative and transformative strategies that fuels her objection is one that quickly collapses under closer scrutiny. The central claim that Fraser advances here is that affirmative strategies

for group rights are too vulnerable to the logic of repressive communitarianism, and thus impinge on the freedom of the group's members. As the model of cultural group affirmation bears this propensity to reproduce the social injustice that it claims to overcome, Fraser's tendency has been to side with the deconstructive strategy.

4.2   For

Fraser's division between affirmative and transformative strategies is actually blurred by her own reflections on the matter. *Contra* her claim that group struggles entail repression through affirmation, she claims that strategies of affirmation can in fact lead to transformative consequences. What she fails to see is how this these consequences can operate on the group level. By way of introduction to this kind of effect, consider Fraser's own reading of *l'affaire foulard* – the case of French Muslim girls being prevented from wearing headscarves on school property. Whereas relativistic multiculturalists will claim that it is only a matter of respecting one's religious freedom, and less accommodating French republicans will say that it is a sign of Muslim women's oppression, Fraser intervenes to suggest that the remedy may be found in allowing headscarves through religious freedom and also seeing the meaning of them as a site of contestation within the Muslim community (Fraser and Honneth 2003: 41-2). The very object of affirmation, one's distinct religious attire, is also the rallying point of Muslim feminists who seek to challenge the exclusive interpretation of the *hijab*. This may have the additional consequence of challenging liberal feminists' exclusive claim to understanding women's freedom. Thus, on a deeper level if the distinction between affirmative and transformative strategies is held too tightly, then it risks belying the contestability and transformative impact that accompany affirmative struggles anyways. This example, to be sure, operates on the individual level and does nothing yet to trouble Fraser's analysis. What it does show is how she herself grants, even favours, this form of strategic compromise between the directness yet superficiality of affirmation and the efficacy yet unpopularity of deconstruction. Now, we must ask if this is possible on the group level.

Before answering this question, we can further drive the wedge between these strategies to better appreciate their reconciliation by considering two of the prominent interlocutors that factor in this standoff (though they are rarely given

explicit shrift from Fraser): Will Kymlicka and Judith Butler. Kymlicka's liberal theory of multiculturalism is a multileveled approach to differentiating and according minority status rights. It recognizes the prior ontological status of group identification and seeks to attribute rights in accordance with their vulnerability to certain types of majoritarian domination (see Kymlicka 1995). This view has come under attack, however, for depending on – and advancing – an essentializing view of culture, with which Fraser takes issue as being both ontologically false and normatively dangerous (Fraser 2007; see also Markell 2003: 152 ff.; Benhabib 2002). To combat this deficiency in multicultural politics of recognition, Butler highlights their superficiality while advocating a more penetrating structural critique of the ways in which cultural politics are imbricated in the economic ordering of capitalist society. The plight of disparaged groups is not allayed by simply staking more firmly their place in society, but by interrogating the economic sphere as including "both the reproduction of goods as well as the social reproduction of persons" (Butler 1997).

There is good reason for Fraser to find Butler's view attractive. Arguably since Foucault, the productive forces of state institutions in creating and sustaining normal subjectivities are non-negligible factors in the critical theorist's research agenda. But the sociology of power rarely offers much guidance to the need and hope for politically viable solutions to seemingly intractable issues like Aboriginal self-determination. Kymlicka's view sets out to accomplish precisely this task. But if we heed the objections against his liberal multiculturalism, and yet take the objective of his work as worthy, then there is a gap. The pressure put to the theory now would seem that it combine the strategic advantages of Butler's deconstructivism in a way that does not completely erase the respect for difference that groups claim in the politics of multiculturalism. Call this the problem of combination.

This is in fact the conclusion that Fraser herself comes to. Nonreformist reform is the *via media*, which I alluded to earlier, that Fraser advocates to achieve the combinatory advantages of affirmation and transformation – what she also refers to as "policies with a double face: on the one hand, they engage people's identities and satisfy some their needs as interpreted within existing frameworks of recognition and distribution; on the other hand, they set in motion a trajectory of change in which radical reforms become practicable over time" (Fraser and

Honneth 2003: 79). She cites the *affaire foulard* and the Unconditional Basic Income (with some revisions to account for perceived gendered undertones in Van Parijs' formulation) as potential examples of nonreformist reform (78-9). Ultimately when deciding whether or not this strategy is to be adopted one must consider the contextual pressures and avenues for transformation to occur. Thus, in what she calls "neotraditional" cultures where, for example, gender differences are seen as natural (even backed by religious creed), affirming these differences in the hopes of equalizing gender relations seems vain. In order for this strategy to gain traction, there needs to be an opening in which we can see that the practice in question – say, wearing a veil – can be decoupled from the oppression of Muslim women. Only then does it become possible to conserve the deconstructive aspects of the strategy that Fraser sees as so important to achieving social justice.

This conditional requirement amounts to the following strategic provisions: 1) deconstruction is the most effective and preferred means of combating oppression; 2) affirmation is pursuable only where there is the opportunity for deconstruction to follow. The question that follows from this then is not, as Fraser erroneously assumes, whether or not group struggles take the form of affirmation, but whether or not they permit deconstruction to occur. Posing the question in this second way will in turn force us to interrogate the validity of Fraser's typology differently. We can accept her claim that groups do adopt measures of affirmation – the case she originally made against granting group rights – without concluding against the validity of their claims. Let us consider now two examples of group rights that diverge on this question, which also demonstrate how her solution to the problem of combination discords with her resistance to the question of group rights. The first example fails to meet Fraser's strategic provisions, the second, which is the central case of concern for this study, does.[8]

Consider the typified (and often sensationalized) cases of polygamist religious sects. Fearing the erosion of the religious values from licentious modern influences, these groups aim to shore up protectionist measures of their ways of living, including the practice of polygamy. Can this practice be decoupled from

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[8] The question may be asked here if Fraser's provisions end up doing enough work to save Kymlicka's liberal multiculturalism. In other words, are these provisions just the "liberal" qualifier that Kymlicka adds to prevent his theory from permitting oppression within groups? It is indeed a question that would make for an interesting comparison between the two, but one that I cannot take up here.

oppression? In other words, can we affirm the practice while deconstructing the relations around it that infuse it with oppression? Unlikely so, precisely because an unequal distribution of marital partners is perceived as foreclosing the possibility of equality, whereas a monogamous relationship admits this possibility (although it does not guarantee the realization of equality). With Fraser, we would have good reason to object to this kind of practice, but for the reason that there is no convincing evidence that the opportunity for deconstruction of the oppressive relationships exists, and not merely because it is a group that seeks to affirm itself.

Contrast this with the case that I am advancing here, Aboriginal self-determination, where nothing prevents affirmative strategies from being accompanied by transformative ones, or being undertaken alongside deconstructive attitudes that acknowledge the fleeting and ephemeral nature of staking publicly one's identity. Just as Native communities fight to gain greater control over their land by invoking a bounded and definitive notion of who "they" are, this may run hand in hand with deeply reflective and critical attitudes over Aboriginal identity in art, music or political expression. The act of making a land claim itself may be regarded as an act of creation, of developing a sense of community involvement while provoking reflective feelings about what it means to be Native, or even what it means to be Canadian or a part of a settler society.

Indeed, I find it difficult even to imagine what is the particular practice or relationship in question that would strike us as oppressive in this case. No doubt, Fraser's response would be that the very instance of group affirmation engenders such consequences – the membership issue. As is now clear, such a conclusion belies Fraser's own strategic provisions on when affirmation is appropriate. Taking the division here between affirmation and transformation to extend beyond conceptual expediency as a fully existent reality, it misses the possibility that affirmation for some groups is inextricably linked to a tactic of collective and discourse-level transformation. It denies the possibility that affirmation is a means of staking one's ground in the face of other depreciatory affirmations that leave one with the "crippling self-hatred" of which Taylor most alarmingly wrote – the upshot of this competition of reaffirmation can send transformative reverberations through shared and disputed understandings. Efforts to make one's case in the declarative do not simply follow from a demand for disclosure, as in identifying oneself to the authorities or in a public forum. They can equally result from a need

to make those identities publicly and personally liveable. The results and strategies of collective action can have transformative outcomes, even if motivated by a need for affirmation.

But now to all of this, one might object with Fraser that such efforts at the group level direct us toward constitutionalising difference, which has the undesirable side-effect of forcing groups to cling to those identities for which they have been granted a social benefit or form of political representation. This alternative argument against group rights rests on the moral hazards that successfully compensated, collective struggles can generate. While these are consequences to be avoided, they are not necessarily connected to outcomes of group strategies; for example, some may be waged in the pursuit of temporary measures to establish a greater equilibrium between advantaged and disadvantaged groups.[9] In this sense, they may be considered as game-enabling strategies that are just the same open to critique and revision. Affirmation then functions as a means to accessing the democratic deliberative structures within which such claims are open to debate and identities are negotiated, but it offers this access with a sensitivity to how one wishes to enter on one's own terms, rather than being admitted through a pre-determined status that may be seen as foreign or in some cases colonial.

In the case of groups seeking separation, it may even be argued that it is precisely the fear of deconstruction, or the unknown, that prevents members of the group in question from signing up for the campaign. For example, witness the sovereignty referenda in Quebec where uncertainty of the prospects that separation from Canada would bring drew some Quebeckers to side with federalists or simply assume a neutral position. Far from naïvely fixing the cultural identity of the group, the case for self-determination may even require the courage to face the deconstructive consequences that a radically different political arrangement may bring. One may in fact have to combat the facility of status quo identifications that can operate as political and/or cultural anchors – anchors in the sense that they can weigh down transformation, and in the sense that they serve as the hardpoints upon which one can make claims about the political future. Consider those who saw the "yes" vote for separation as a vote against federal transfer payments; or

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[9] See Thompson's discussion of Maori voting rights in New Zealand (2006: 150-1).

Native leaders who insist that abandoning the *Indian Act* means foregoing government support or dissolving established practices of local governance (Alfred 1995: 132; 2009). In this way, against the claim that group struggles aim to constitutionalize difference, we can say that in some cases such a result is far more transformative than Fraser would lead us to believe.[10] Moreover, the converse arrangement leaves us with an equally harmful constitutionalized sameness. It is important not to fall into either of these traps; avoiding them will depend on the extent to which identifications and membership are freely adopted. I come back to this issue in the third chapter (s. 2.3).

This analysis can be deepened when considering the power imbalance that can endure between groups by way of their history of interaction and the psychological internalization of such relationships. Glen Coulthard (2007) has questioned persuasively whether or not a just relationship can be established between the Canadian government and Aboriginal communities, so long as the negotiation of which proceeds from a logic of seeking recognition from the "master," to put it in Hegelian terms. Since this relationship is so deeply charged with the "psycho-affective" indulgences that secure the superiority of the master – indeed the one to which the plea for recognition is made – there can be little headway gained in the quest for equality (453). The result from Coulthard's analysis is that efforts that aim to secure accommodation of oppressed groups within the state apparatus – whether this be through participatory parity or a differentiated system of group rights – actually foreclose the possibility of transformation; that is, they fail to meet Fraser's strategic provisions. Conversely, "those struggling against colonialism" may find greater success "in their own *transformative praxis* [as] the source of their liberation" (456). Just like Fraser's non-reformist reform, the public face of this transformation turns on a "personal and collective *self*-affirmation" (453).

One may question this rehabilitation of Fanon's psycho-affective thesis of colonial dependency – much seems to rely on the level of faith we can put in the

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[10] For an interesting parallel discussion of the how the *Declaration of Independence* had similarly deconstructive effects regarding colonies' relationship to Britain, see Jacques Derrida, 'Déclarations De L'indépendence', *Otobiographies, L'enseignement De Nietzsche Et La Politique Du Noms Propre* (Paris, 1985). and Bonnie Honig, 'Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic', *American Political Science Review*, 85/1 (1992), 16.

existence and pervasiveness of such psycho-dependency. What remains consistent, and plausible, beyond the psychology of colonial subjects is that relations can be by definition unbalanced – master/slave, teacher/student, etc. Another way of cashing out Coulthard's lack of faith in recognition politics is that, in the colonial setting, the terms of reconciliation cannot be extricated from the injustice that makes reconciliation necessary, viz., the relational structure is by definition unbalanced. When this definition comprises injustice, then an exit from it may be the only hope for justice. This involves, as the American case felicitously demonstrates, a declaration of independence, which is by no means strictly referential to a prior ontological status, but brings with it the creative forces of self-empowerment that the old relationship would not permit.

5   *Conclusion*

Let me conclude by mentioning how the foregoing puts the normative status of Fraser's participatory parity into question. This is the result from teasing apart the above discussion into two conclusions. 1) On the one hand, given that groups can adopt the same strategies as individuals, the subject of justice is no longer uniquely the latter. However, participatory parity applies only to individuals. Therefore, some means of conceptualization the integration of group rights into a theory of social justice is required. It is perhaps an open question at this point whether or not some group-level equivalent of participatory parity can be developed, but Fraser has not provided one, nor would one seem able to capture the phenomenon of separation politics. 2) Relatedly, because participatory parity is an integrative approach, it offers virtually nothing to a politics of separation. We have little reason to endorse it as the unique object of social justice, because we have little reason to place high normative value on the distinction between groups and individuals. This is not to say that there is no conceptual value gained from such a distinction, but that there is nothing decisive about it when it comes to specifying what or who are the *subjects* of justice .

The problem that this discussion has been hinting toward is that once we have set up our division thus – between group versus individual rights –, based on sociological generalizations of undesirable consequences found in the former, there remains little room to interrogate and expose nuances in practices that do not

bear such consequences, or that attenuate them through other accompanying strategies. The point may be summarized as a theoretical rejection: the division between groups and individuals, and their relationships to affirmative and transformative strategies, is theoretically ill-equipped to address the variety of demands pressed and equally multifarious incarnations of such struggles. This redirects our focus back to the original pragmatic engagement with social demands as they are voiced, and not only as our theoretical frameworks will let them be voiced. Viewed in this light, the aim is to overcome the obstacle that parity of participation presents in taking at full value the self-determination aims of Aboriginal communities. The result is a loosening of our theoretical grips in order to refine their connection to the social reality, while keeping an eye toward more elegant models of understanding. Before this latter step can enter the offing, we must first attempt this reconnection of the former, to which I turn in the next chapter.

Fraser's Theory in Context

The aim of the first chapter was negative: to reject Fraser's arguments against group rights and thus clear out the space in which we can further engage cases that fall outside her theory of participatory parity. Leaving off from the analysis of the first chapter, it is an open question as to whether or not group claims actually respect Fraser's strategic provisions for combating social injustice. The aim of chapter two is positive: to start with a case that does not aspire to participatory parity but does suffer from maldistribution and misrecognition. This case provides part of the means of conceiving these alternative aspirations to self-determination into Fraser's model of social justice. The open question we begin with will be answered by the end of this chapter.

The case study I have in mind is exemplary of this rejection of participatory parity: the Mohawks of Kahnawá:ke. The members of this First Nation community are the bearers of a long history of political independence, which in the last half of the 20th century took on more aggressive aspirations to self-determination as they increasingly became victims of state encroachment on their traditional lands and practices. Not willing to go quietly, Mohawks have not just a long history of conflict with the Canadian state but a proud one too of making their voices heard and defending their rights in spite of hostile public opinion and imperious governmental tactics. In response to these challenges, it is not surprising that their counter-tactics would occasionally flout Fraser's strategic provisions. Recent political trends in Kahnawá:ke, however, suggest that something akin to Fraser's provisions are guiding their actions and bearing fruits by advancing previously stagnant dossiers. I make note of how the actions of Mohawks have aligned with and diverged from Fraser's strategic provisions in the discussion below.

As is readily apparent, however, this case does come with certain methodological and theoretical problems. Is there a unified front against federal government involvement in Kahnawá:ke? If not, absent the appropriate democratic institutions to express a unified front against the Canadian government, how much stock can be put into this perception of rejection? No less a theoretical hurdle, how

do cases of separation call into question participatory parity without presenting themselves as obvious cases where participatory parity would not apply, such as interstate relations? In other words, the objection that is raised with the case study must be similar enough to what Fraser has in mind with her social theory, and yet resist it for some other compelling reason that she has neglected or failed to appreciate by her own reasoning.

In the next chapter I address these issues, which certainly pose formidable challenges to the objection I want to raise here. For now, I will tread lightly on this delicate theoretical balance while illustrating how this case is analysable from Fraser's perspectival dualism, and yet pushes us to look for a response beyond participatory parity. This will proceed by considering the grievances of Kahnawakehró:non through the lenses of redistribution (s. 2) and recognition (s. 3). Before proceeding with this analysis, it is helpful to sketch some background information about the community (s. 1). While the portrait I offer here is cursory at best, my aim is only to situate the discussion of recognition and redistribution struggles that follows.

1   *Kahnawá:ke: A brief overview*

Kahnawá:ke is an Indian reserve located geographically within the metropolitan region of Montreal, though falls outside its municipal authority. Despite its geographic proximity, the community maintains a healthy political distance from the municipality and even from the provincial government. English is the prominent language within the community, while Mohawk is actively promoted and taught in schools. Notwithstanding the political and linguistic divides between Kahnawá:ke and the surrounding Francophone community, there is a long history of interaction between the two, making for a complex social, religious and political culture on the reserve. For one thing, there is a dominant force within the community that has been developing over some fifty years to move towards a traditional government; but this is complicated by the presence of Catholic Mohawks (among other things), many of whom are descendents of converts lured to Christianity by an active Jesuit community in the Montreal area during the 17th century. The traditionalist movement does not benefit from a clearly defined ancestral lineage as their point of return. Traditionalism in this sense is viewed not solely as a movement to recover what was lost, but in part also

as a reaction to powerful surrounding influences that could potentially extinguish any distinct semblance of Mohawk or Iroquois life. While this preservation reaction is also heavily linked to the community's interactions with the federal government, the pressure to maintain a distinct Mohawk identity is heightened in the Quebec setting due to this latter's own preoccupation with national and linguistic preservation.

In part as a result of this precarious position within an oft times assertive Quebecois nationalism, Kahnawá:ke generally deals with the federal rather than provincial government as a matter of principle. As a matter of colonial history, however, Kahnawá:ke is constrained to deal with the federal government through the strictures of the *Indian Act* – the federal statute which regulates, among other things, Indian status, self-governing capacities and bodies, and the use and occupancy of Indian lands. Whereas much rhetoric surrounding Indian affairs and even the *Indian Act* is delivered in the flowery tone of protecting Aboriginal rights, traditions and lands, in Kahnawá:ke there is little faith placed in the Crown to uphold such rhetoric or even depart, if momentarily, from self-interested negotiations or the systemic commodification of natural resources. Like other Aboriginal nations and communities, the Mohawks were subject to the unilateral declaration of Crown responsibility over Indian affairs, and to the various travesties such as the residential school system, with the signing of the Constitution Act in 1867. Beyond this, there have also been particular stand-offs between the federal government and Kahnawá:ke and neighbouring Mohawk communities that have either began with or ended in violent confrontation.

With respect to governmental relations, the Mohawks of Kahnawá:ke maintain a streak of independence, seeking to work outside and move beyond the *Indian Act* wherever it conflicts with their self-governing agenda, while avoiding relations with the Quebec government. These conditions – what one could characterise as "absentee federalism" – have contributed to a strong sense of local development and political independence (Papillon 2007). To be sure, there are other significant factors to this political relationship that are rooted in Iroquois history and political philosophy rather than settler relations and Canadian federalism. For the present discussion of misrecognition and maldistribution, however, I focus only on the latter elements to more concisely identify the *relations* involved and the agents of them. The political independence of

Kahnawá:ke is significant in this light, as it captures an evolving trajectory in which other elements of community life are proposed, negotiated, revised and/or abandoned. This independence represents, then, from an external perspective, a wary relationship with outside governing authorities. From an internal perspective, it provides the basin within which the complex social imaginaries of this multilingual, multi-faith and culturally diverse community are brokered and reconciled. While this self-governing project is far from complete and certain members still see security and greater prosperity available through more developed relationships with outside authorities, the ascendancy of Mohawk nationalism over the last few decades has developed with strong political inertia that does not appear to suffer the same kind of oscillations between sovereignty and accommodation as Quebec nationalism does.

Despite this aspiring independence there are major obstacles (and not only through Canadian law) to affording and sustaining total sovereignty, were that even the primary objective. Seeking redress alone for previous injustices means that dealings between Kahnawá:ke and the federal and provincial governments will continue to exist. To this extent it is worth considering how these grievances are analysable from the perspective of Fraser's dual-track theory of justice: redistribution and recognition.

The first step in raising this immanent critique of Nancy Fraser's theory of social justice is to demonstrate how the maldistribution and misrecognition can occur without pointing to participatory parity as a normative response. This serves as a necessary though insufficient condition to raise the objection. It might well be the case that other groups claim to be the victims of maldistribution or misrecognition, but for these people we find their appeals either poorly grounded or in violation of some other principle of justice. Doctors, for instance, might grovel over low wages and long hours, but this does not seem to rank well among other cases of maldistribution that are found to be more compelling, and thus in more urgent need of redress. It might be true that doctors' wages have not kept pace with inflation, and medical staff, in general, are increasingly stretched thin to compensate for reduced funding and personnel. However, an intra-profession analysis of doctors' distributive claims is a poor method from the perspective of social justice because there is no comparative grounding and the claims are advanced by members of a privileged, social and labour class. Likewise for

skinheads claiming to be misrecognized, as a result of being politically silenced and marginalized, few will be persuaded to rally behind them because they advance agendas that promote hate and violence, which breach the thresholds of free speech and tolerance. So, it cannot only be the case that a claim of misrecognition or maldistribution (or both) is raised for an accommodating response to be delivered. Other tests or considerations may be applied, which will temper, if not defeat, an initial and potentially perplexing pressure to build these claims into our theory of social justice.

While the raising of claims is not sufficient, it is necessary for the purposes of the critique put forth here. In the two following sections I demonstrate how Kanawakerhó:non have been the objects of misrecognition and maldistribution, and yet show no aspiration to participatory parity. This discussion will delve into parts of the history of this reserve community that continue to nourish its nationalist ambitions, while making note of the challenges to a unified interpretation of this history.

2   *Redistribution*

The major resource-based grievance in Kahnawá:ke, and most Aboriginal communities for that matter, is land. At first blush, redistribution as a principle of egalitarian justice does not seem to be an immediately relevant concept, in which case we are currently treading outside the waters of Fraser's theory. At the root of land claims is often either a treaty violation or reference to non-consensual or unlawful dispossession of land. These claims seem to find their clearest expression in restorative justice, which aims to reinstate, so far as practicable, the prior state of affairs that was perceived as just. In this sense, its purpose is to turn back the clock on the years of injustice that stemmed from the first violation. While this historical view of land claims is certainly at the root of the chain of resource-based injustices, it does not exhaustively cover it. I lay out here some ways of conceiving the relationship of land claims and the appropriate justice response, each with certain problems of its own. In the end, I argue that distribution is often, though not always, the best way to conceive of and remedy the injustice of land dispossession. In this way, I am arguing in favour of the comprehensiveness of Fraser's social theory to tell us something about these grievances; though, this will come with some modifications in the way we think about distribution. Building on

this comprehensiveness, I argue that her conception of distribution should be a pluralistic one that can accommodate titles respecting indigenous practices, rather than a monistic, market/resource theory of distribution. By way of a backdrop for this argument, let me first offer an overview of two major historical land-based grievances in Kahnawá:ke.

2.1   Distribution in context

The first incident, the development of the St. Lawrence Seaway, represents a transparent, governmental agenda of subordinating the interests of the community to that of larger economic development. The effect of this overt subordination served to catalyze the assertion of self-determination aspirations in Kahnawá:ke, through clear violation of land titles and traditional conceptions of Aboriginal territorial integrity (rather than property rights). The second incident is the partitioning of Seigneurie de Sault St. Louis – the traditional settlement territory of the Mohawks in the region that was promised to them, and for some time protected, by the French colonial governors of the 17th century. Today, the Mohawks hold recognized title to only one-third of these original settlement grounds, the other two-thirds having been either illegally sold off or expropriated by provincial and federal authorities (Mohawk Council of Kahnawake 2004). The Seigneurie de Sault St. Louis is currently the object of Kahnawá:ke's most concentrated land claims efforts.

Let us begin by considering the history and illegal partitioning of the Seigneurie, an issue that was later reignited through the nearly unilateral imposition of the Seaway project. The historical path toward nationalism in Kahnawá:ke contains many detours and exchanges along the way that have reshaped the vision of what that destination entails and the route to attaining it. This is particularly evident in the settlement of the Seigneurie de Sault St. Louis. The ancestral homelands of Mohawks (which comprise those of Kanehsatake and Akwasasne Mohawk reserves) prior to contact with European settlers include a far vaster territory than their current, separated reserves. These homelands of the Mohawk Valley stretch hundreds of miles south of the St. Lawrence into New York State and as far west as Lake Ontario, in which mostly Iroquois nations maintained nomadic lifestyles. It was not until the arrival of New World settlers that Kahnawá:ke would become a permanent residence for Mohawks.

Near the end of the 17th century, the Mohawk nation was courted by both the Dutch/English[1] colonies to the south of the Valley and the French settlers in the north to either maintain or establish trading and military alliances. The Mohawks were by this time longstanding allies of the Dutch/English, whereas the French were longstanding enemies of the Mohawks. However, the colonial governors of New France had successfully drawn the rest of the Iroquois nations into its sphere of influence and now sought to isolate the imperial powers to the south by retaining the pledged allegiance of the entire Iroquois confederacy, of which Mohawks are a part. To this end, the Mohawks were lured north through vast land offerings (which would later be disaggregated into various reserves) and promised military protection (Alfred 1995: 29 ff.; Mohawk Council of Kahnawake 2004: 5).

The land promised to the Mohawks settling on the south shore of the St. Lawrence is the 36, 000-acre territory known as the Seigneurie de Sault St. Louis, of which only 12, 000 acres have been successfully retained by Mohawks (Mohawk Council of Kahnawake 2004). This coaxed migration north is a significant point of departure for redistributive claims advanced by Kahnawakehró:non, for it has little to do with recovering the traditional, pre-contact lands that include a much larger territory. The root of these claims is the agreement reached by a community already strongly enmeshed with enterprising Jesuits and French traders. This represents a major concession to hybridization theorists that aim to debunk notions of cultural purity (an issue I take up in the next chapter). Against such a view, this concession is best understood as part of a thread that is woven into the resilience of self-determination aspirations in Kahnawá:ke, rather than presented as a defeating condition of it. The Seigneurie has indeed been reactivated as a central political issue in Kahnawá:ke, serving as the platforms of recent MCK election campaigns (K103.7 2009). However, this issue remained dormant for years after confederation, even as federal government decisions continued to affirm its near unchecked interest in Indian lands.

In the early 1950s the Federal Government began expanding the St. Lawrence Seaway to accommodate larger vessels and develop a viable import

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[1] I put the two together because the New State area was originally conquered by the Dutch and then later by the English. The Mohawks initially maintained trading relations with both.

route to penetrate the north-eastern interior of the continent and serve as an alternative to US rail transport hegemony. This included the development of the Côte Ste. Catherine Lock, now running along the south shore of the Seaway and Kahnawá:ke territory. The lock coordinates and channels the large, commercial vessel traffic of the Seaway. It includes concrete walls on either side, isolating the members of Kahnawá:ke from historical fishing areas, and by the function of lock it naturally concentrates vessels discharging high levels of pollutants, while requiring them to travel at low speeds.[2] The project was met with swift and vehement denunciation by the Band Council, but to no avail (Ghobashy 1961: 77; Mohawk Council of Kahnawake 2004; Alfred 1995: 158). The development of the Côte Ste. Catherine Lock displaced a small minority of community members, but also denied fishing access to the whole community, resulting in a total loss of 1260 acres (Ghobashy 1961: 77). Those who were solicited by the federal government to move elsewhere for the project development were made into community rats, literally selling everyone else down the river to fish elsewhere. Rather than come to a consensus with the community through democratic procedures that would at least maintain the prospect of peaceful relations between the Crown and Kahnawá:ke, the unilateral decision by the federal government to proceed with the Seaway construction established with enduring clarity its contingent interest in protecting reserve territory, which led to what Taiaiake Alfred terms "a crisis of faith" in Kahnawá:ke (1995).

The Seaway affair served to activate an otherwise latent nationalism, which was still experimental and unsure of its involvement in the Canadian confederacy and its submission to the *Indian Act*. As one former MCK Grand Chief remarked on the Seaway affair, "It was a manipulation, in the sense that everybody opposed it and they played families [off against each other]… I learned something of how the government considers you to be a collective group when the collective is in agreement with them, but when the collective disagreed with them, then they would consider you an individual" (Alfred 1995: 110). Moreover, the legacy of this incident witnesses the consequences of poorly conducted compensation negotiations, pointing to the necessity of proceeding through or

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[2] By discharge I mean regular engine pollutants. Gray and black water discharge is not permitted while operating in Seaway locks.

erecting appropriate democratic channels to discuss the terms of settlement. The nature of the project has also inflicted likely irreparable harm due to the magnitude and importance of the Seaway Corporation to the Canadian and American economies, if not due to the environmental impact on the area.

2.2   Three Approaches to Land Claims

The Seaway affair and the partitioning of the Seigneurie provide much emotional fodder for nationalistic assertions, but do not themselves point to clear and demonstrable resolutions. The Seigneurie is backed by land title and the 1982 Constitution recognizing it, though much of the land has been settled by non-Mohawks, making for a difficult reversion to the original title holdings. The Seaway likewise is a doubtfully reversible incident of land expropriation, given the economic importance of the vessel route and the environmental damage to the area. As a result of these practical considerations, certain conceptual hurdles present themselves as well. Do these incidents of expropriation demand restorative or distributive responses, or a mixture of both? In response to these challenges, the following analytical framework might offer some clearer guidelines to navigate through the resolution of these issues. There are at least three ways of conceiving the nature of land claims, moving along a spectrum from the historical wrongs on one side to the ahistorical nature of egalitarian or distributive justice.

1) As just mentioned, the claim to correct the arrangement of current land holdings may be waged on purely historical grounds as a claim to *restorative justice*. On this view, lands acquired by settler communities from indigenous ones were done so through a violation of entitlement. The illegitimate and continued use of these lands is to be corrected by returning them to their rightful owner. This conception of justice is historical only insofar as a comparative point of corrective justice is in the past. To be sure, the injustice continues into the present. To borrow an example from Jeremy Waldron (1992), if you steal my car, a restorative response would be to return that same car. The injustice begins at time-x when the car was stolen, but continues for as long as I am deprived of the vehicle.[3] There are a number of problems with this view, however, when applied to land claims. For one, it is counterfactual to assume that the land taken would have continued to

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[3] I leave aside here any discussion of whether or not I can claim compensation for injury or personal hardship suffered as a result of this theft. See Meisels 2003.

belong to the lineage of the original owners. While I may rightfully claim the return of *my* stolen car, it would be more difficult to establish that I be returned my deceased grandfather's car that was stolen twenty years ago. Such a claim assumes that the car would have been given to me, among other things, leading us down a long list of problematic counterfactuals. Waldron suggests a plausible way around this in the case of Aboriginal land ownership. Since most lands were possessed in common by Aboriginal tradition, it is not unreasonable to assume that they would remain with the nation, clan or tribe (1992: 15). The reasonableness of this response is in large part dependent on the circumstances and the evidentiary support available. While it is a promising path to follow, it does not yet guarantee a positive response for land-claimants.

Another, more difficult problem looms, however. Say we are just concerned with my own stolen car and we presume that it is recovered in short delay; it is materially possible to return the exact (insofar as it is physically close enough) same car. Most land title violations derive from a state interest in resource extraction. What were once pristine territories maintained by practices of stewardship and ecological harmony are now populated or destroyed by hydroelectric damns, urban industrialization, settlement, etc., in short, through unbridled economic development.[4] Let alone the mere passage of time, the very reason and subsequent actions of unjust appropriation of land make a purely restorative approach for the most part impossible (Meisels 2003: 70). The Seaway certainly suffers from this constraint and the Seigneurie does to varying degrees as well (where certain sections have been contaminated and/or developed with non-Mohawk infrastructure). This suggests that some compensatory reasoning will factor in.

2) Thus the second way of conceiving the nature of the claims is through compensation, viz., to argue for *some* land as a means of recompensing the loss of a *particular* piece of land. Tamar Meisels (2003) develops Waldron's example in this direction by imagining that not only have you stolen my car, but crashed it in the process – an appropriate analogy to reflect the current state of many ancestral territories of First Nations communities. While this view abandons the aim of

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[4] This is certainly not true in the case of all land claims. Special fishing rights, for example, do provide a strong example of how traditional territories can be returned in similar condition to pre-contact eras. I owe this important qualification to Jim Tully.

turning back the clock, it still maintains an historical element by keeping some semblance of the past as its comparative reference for corrective justice. It is clearly acknowledged in this approach that this is a second-best answer. Although, beyond this concession, there are certain theoretical and practical limitations that might turn this second-best answer into no good at all.

First, while this approach avoids the impossibility of returning the lands to their original state (since it supplies a substitute instead), it still suffers from the counterfactual objection. It injects an historical determinism into the argument for compensation, by estimating the actual value that would have been derived from the land were its original possession not nullified. Additionally, it could be the case that the only lands available for compensation bear no environmental similarity to the original lands on which traditional practices developed, thus imposing high, potentially unbearable, transaction costs on the community. The lands offered might also be agreed to by only part of the community, making it a divisive issue that can fracture the group and/or paralyze the process of seeking a collective response to the injustice. As seen above, a similar story occurred along this line in the development of the St. Lawrence Seaway – an incident of state intrusion and compensation that continues to haunt the relationship between Kahnawá:ke and the Crown. It might also be the case that the community suffered only partial land loss. It might not be possible to restore the original size of the community because portions of it have now been settled by other communities. Indeed, the original land consigned to the Mohawks by the King of France in 1680 is now 1/3 its size at the time of the agreement. The remaining 2/3 were sold off and have now been settled as the communities of Delson, Candillac, Ste. Catherine, St. Constain and Châteauguay. The response to this situation might result in a land offering that is not contiguous with the community's current location. The land offering might then be just as divisive as a complete relocation of the community, if it is not seen as entirely useless. Moreover, both this argument and the restorative justice view rely on treaties to evidence the area of entitlement.[5] Where these do not exist or were signed without full knowledge of the contents of the agreement, the force of the claim is undercut in consequence. In

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[5] Recently, however, the Supreme Court has admitted oral history as evidentiary support for land title. See *Delgamuukw v. British Columbia* [1997] 3 S.C.R.

other words, the distribution available is only as good as the treaties (Macklem 1995: 195). This suggests that the wrong is best conceived otherwise and might need to be corrected through other means.

3) At the farthest end of this spectrum then is egalitarian, distributive justice. Imagine now that you have stolen my car and crashed it, but in an unrelated incident I have lost my ability to drive. It is of no use to me to receive another vehicle, though I am still suffering a significant loss, since the stolen vehicle could have been sold to fund my alternative transportation costs – and it was a nice car! Is this claim not still historically grounded, and thus an issue of compensatory, if not restorative, justice? After all, were the car not stolen in the first place, there would be no need for retribution. This reasoning is mistaken. Any state of injustice will have at least one antecedent cause, but that does not mean that it is historical. The relevant question in determining what nature of justice is involved here is not what caused the harm, but what is the comparative point of justice used. It is clearly not the point at which the car was stolen (and when I could drive), since this offers no rectification for my current disadvantage. The point of comparison is rather the hypothetical situation of my still having a car to sell and cover some of the costs of my current transportation needs. Indeed, as we will see below, the situation in Kahnawá:ke is similar to this. However, this approach bears problems of its own. First, it suffers from the same divisiveness issue as compensation. As was the case with the Seaway Project, the federal government literally bought out individual members of the community to cede their lots, making them the scapegoats for a lifestyle-altering cession of what others perceived of as *communal* land. The ripple effects of such government intervention have been disastrous. Second, this claim to redistribution is actually detachable from any particular injustice (Meisels 2003: 71). Distributive justice is meant to begin from time-0, where some, just by human nature and social and economic organization are better off than others. Rawls' veil of ignorance is intended to elicit precisely this kind of ahistorical intuition about a fair partitioning of wealth and opportunity (1971), as is the case in Dworkin's hypothetical auction (1999). The worry here is that the issue of land claims is turned into a matter of interpersonal comparison, while effacing the historical roots of maldistribution in the process. It tells us nothing of what is to be distributed. What's worse, such an approach, if not properly finessed, might undermine the attempt at collective

distribution. Why should the financially secure band council chief have a distributive claim over the homeless or unemployed in Montreal?

These objections are surmountable and I argue for this last view of the three ways of conceiving land claims and remedial justice. I do so not only because I believe it best represents the nature of the claims that are raised, but also because it coheres best with the existing architecture of justice that is under consideration here. To this end, allow me first to summarize the spectrum I have just laid out before responding to this last set of objections to the egalitarian approach.

In the first case of restorative justice, there are two elements to the equation: an historical reference point of the just state of affairs that is being reclaimed, and the particular object that was lost. This is probably the best option when available as it grounds the nature of the remedial justice: I have a right to reclaim my stolen car, not an airplane. The two major problems with this equation are: the historical reference point induces counterfactuals, and recovery of the particular object is sometimes impossible. In response to this second problem, compensatory justice provides a similar object in lieu of that which is irrecoverable: my stolen car was crashed, so now I have a right to a car of similar quality. This second approach also carries with it two elements: an historical reference point, and some object of similar quality to the original as compensation. While this view overcomes the problem of permanent loss found in the first view, it just the same succumbs to counterfactual reasoning.[6] To avoid this issue, the third approach of distributive justice takes as its reference point the actual state of affairs. The major problem with this issue is that it erases the historical component of the claim and thus turns the open question of what kind of distribution can be demanded into a closed one: at this point, we have no reason to depart from typical distributive schemes, and good reason to maintain them for the sake of equality. It additionally runs the risk of defeating any collective demand raised and instead disaggregating the community into individual welfare recipients. What is needed then is a way of conserving the historical nature of the claim, which maintains the

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[6] It may be asked here why cannot these elements be separated. The reason is because without the historical reference point, the object delivered is not *in lieu* of anything, in which case it would be an unspecified object (which is the egalitarian view I advance below). Furthermore, without the reference point, we simply have no reason to deliver anything.

view of a collectively felt injustice and alludes to alternative distribution schemes, without making it the reference point.

I argue for a pluralistic distributive scheme to overcome these difficulties. Through its plural nature, this distributive scheme will necessarily rely on historically informed difference to identify the appropriate type of distribution. The reasons for doing so will not depend, however, on restorative or compensatory justice. Rather, I will make this case on three fronts: 1) this is how Kahnawá:ke Mohawks themselves make their claim; 2) there is principled reason to treat distributive justice with respect to Aboriginal peoples as *sui generis*; 3) The consequences of continuing to advance a monistic distributive scheme have already proven to be disastrous and unwelcome.

2.3   Three reasons for pluralistic distribution

While the banks of the St. Lawrence around Kahnawá:ke were likely perceived to be irrecoverable, this expropriation hardly faded from view as move towards a more strident nationalism took hold shortly thereafter. Rather, it continued to serve as a reminder of the constraints imposed on the community through Crown tutelage and the *Indian Act*. Efforts of resistance were met with little success when they passed through official governmental channels. In contrast to this strategy, local assertion of territorial integrity became increasingly important as a means of protecting Mohawk lands, which sometimes gave way to contentious evictions of non-Indian residents of the community (Papillon 2007: 226 ff.). As nationalist movements grew in strength and the Band Council, while a creation of the *Indian Act*, saw its mandates drawn into these political trends, historical issues such as the Seigneurie lands re-appeared on the self-governance radar of Kahnawá:ke. Recently, this has led to the signing of a "Statement of Understanding and Mutual Respect" between the MCK and the Government of Québec to negotiate the recouping of lost lands and/or compensation (Mohawk Council of Kahnkawake/Gouvernement du Québec 2009). The MCK additionally struck an executive council to deliberate and engage the public over the recovery of Seigneurie lands and the type of compensation that would be offered where recovery was not possible (Ratirhiwaro:roks - Seigneury Community Group 2009). This public consultation process led to two conclusions that are worth considering in light of the discussion above regarding the three methods of

remedial justice. These two conclusions make the first case for a pluralistic distribution scheme, i.e., that this is how Kahnawakehró:non raise their claims.

1) First, recall the objection raised earlier against compensatory schemes, namely, that there is a worry that the type of compensation offered might prove to be divisive within the community, as was the case in the Seaway affair. This objection does not obtain in the case of standard distributive schemes that target individuals as the relevant point of comparison. However, since I will be defending a pluralistic distributive scheme that targets groups as well as individual, the objection is valid here. The objection is not a matter of principle, since it should not prevent us from distributing anything at all, but it means that redistribution will have to be done in a way that is sensitive to the dynamics of group cohesion/fractionalisation. The implementation of the consultation process with the Executive Committee of Kahnawá:ke has the primary objective of assuaging this concern (Ratirhiwaro:roks - Seigneury Community Group 2009). Not only did the MCK seek input from the community to establish a democratically approved agreement on outstanding land issues, but the executive committee has recommended expanding the consultation process to neighbouring communities to develop a friendly transition to greater Mohawk ownership of the surrounding territories. That the MCK has also sought the cooperation of the Quebec government suggests a strong interest in avoiding the pitfalls of the abortive Seaway negotiations. While it is premature at this point to speculate on the success of these initiatives, as no agreement has been made, the express concern on the part of the MCK to reach a democratically grounded decision witnesses the awareness of the problems with compensatory schemes in a collective setting.

Second, the conclusions of the consultation process point strongly in the direction of distributive justice. A small minority (25 of 462) of participants consulted sought monetary compensation for the lost lands in the form of a one-time payment. Although, this opinion seemed to express more a desire to put the dispute to rest than to seek a proper and just resolution. The majority of participants believed that land was the most important objective of the settlement, though the reasoning had little to do with compensation in the way that it was worded: "*land* […] *is more important* than money because we must have a land base to sustain ourselves" (Ratirhiwaro:roks - Seigneury Community Group 2009).

There is no reference made to the fact that Kahnawá:ke is the rightful owner of the lands in question (though, surely this idea is at the root of and continues to nourish the claims process). Rather, the heart of the issue presented here is necessity of local sustainability. Taiaiake Alfred (2009) has noted elsewhere the need for Aboriginal communities to return to traditional diets, the source for which would be a sufficient land base. The claim here rests on a denial of the opportunity to re-establish traditional relations with the land and develop local, autonomous production. Through the exclusive interpretation of Crown interest and prior, illegal sales of the Seigneurie, this opportunity has dwindled, if not been completely wiped out. The consequence of these actions has been a denial of self-governing resources – the means of traditional Longhouse governance that have been at the core of Iroquois political philosophy and the Great Law.[7] Over the past three decades, the MCK has received increasing pressure from the population to return to a traditional style of governance; the claim over Seigneurie lands is part of the push in this direction. However, neither the move toward that direction nor the nature of land claim to sustain it can be comprehended without reference to the historical relationship of the Mohawks to their land. Thus, the nature of the claim, as it is made in the language of the claimants, is primarily a distributive issue over the denial of self-governing opportunities. Yet it is not one that leaves entirely open the question of what is to be distributed. Certain goods will be necessary (sufficient land mass) while others will be less useful or even hostile to the project of self-governance (e.g., individual welfare). This suggests a historical view of distribution rather than falsely universal, ahistorical distribution.

2) This view finds additional support from the expanding sympathy amongst legal scholars, courts and international governing bodies to treat issues of Aboriginal self-governance as *sui generis*, giving rise to special rights and obligations. Patrick Macklem takes up this view with respect to the Canadian constitution, resting the special nature of the constitutional status of indigenous peoples on four conditions:

> First, Aboriginal people belong to distinctive cultures that were and continue to be threatened by non-Aboriginal beliefs, philosophies, and

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[7] See Alfred 1995 and Papillon 2007 for an extended discussion of the concepts and importance of Longhouse governance, Iroquois tradition and the Great Law.

ways of life. Second, prior to European contact, Aboriginal people lived in and occupied vast portions of North America. Third, before European contact, Aboriginal people not only occupied North America, they exercised sovereign authority over persons and territory. Fourth, Aboriginal participated and continue to participate in a treaty process with the Crown. (2001: 7)

The combination of these conditions constitutes what Macklem terms "indigenous difference." Each one of the conditions corresponds to a special principle; in the case of prior occupancy, this leads to certain territorial rights, which Macklem sees as necessary to an equitable distribution of power between the Crown and First Nations (21). The *sui generis* view as a principle of distributive justice gains further credence from article 25 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and

development are entitled to just and fair redress. (2007)

Famously, Will Kymlicka has also argued that special rights with respect to national minorities are justified to protect their vulnerability to the decisions of the majority (1995), such as the exproprietory Orders-in-Council that Parliament passed to develop the Seaway. The extent of the vulnerability in question determines the level of protection justified, within certain limits.

Part of the intuition that resists the *sui generis* thesis is reflected in Fraser's aim to develop a comprehensive framework against which all moral claims can be evaluated. Special status claims challenge this ambition. But, as is demonstrated in the works of Kymlicka and Macklem, and as is present at the core of the UNDRIP, special status actually derives from abuses of a common morality, for instance, the abuse of respecting self-governance, prior occupation, and cultural expression, most of which is captured under the primary abuse of consent, which is at the foundation of any liberal approach, including Fraser's. No deviation from common standards results in granting special status; it rather forces us to a more sincere application of them.

3) However, special status alone does not constitute any specific form of protection. Special status can be interpreted as weakening the level of protection or rights, as was customary practice by the Crown and the judiciary prior to *Calder v. A.G.B.C.* [1973]. Alternatively, special status may be seen as different but equivalent, where, say, Aboriginal title is afforded the same protection as property rights at common or civil law. Lastly, it may be afforded greater protection in light of its special nature, elevating it to constitutional protection over statutory law (Macklem 2001: 87). The first option relies on the now debunked notion of *terra nullius* and exclusive Crown interest. The second serves as an affront to traditional conceptions of collective, territorial holding, and even the more minimal respect of usufructuary rights.[8] It additionally undermines the constitutional status of Aboriginals as a whole within the Canadian federation. The development of and compensation for the Seaway project proceeded through an indiscriminate use of statutory law to expropriate the land (therefore treating Indian occupation on par with ordinary citizens) and individual compensation schemes under the auspices of the *Indian Act* and the Department of Indian Affairs (Ghobashy 1961: 81). Canadian jurisprudence has developed from the Calder case in the direction of the third option, and it has done so with an eye towards the historical relationship that Aboriginal peoples have held with respect to their land. The reasons for this rest primarily on the *sui generis* argument for Aboriginal title, but the reasons not to pursue the first two options – subordinated or equivalent but different protection – receive strong consequential backing.

2.4 Conclusion

The distributive nature of Aboriginal title is not apparent from the outset. The fact is that indigenous peoples were first inhabitants of what is now North America. They were subject to various strategies of dispossession, largely for the purposes of economic development. It is no coincidence that the rise of Canada as an economic power concurred with the flagrant subordination of Aboriginal title to Crown interest, as the Seaway affair and the settlement of the Seigneurie de Sault St. Louis bear witness. The courts have only in the last quarter of the 20th century begun to recognize the injustice of this history. The intuitive justification for this

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[8] Usufructuary rights grant land use and benefit thereof to Aboriginals, while the Crown retains possession of the land.

recognition is to right the historical wrongs of colonialism, i.e., through restorative justice. Where this is available, it is likely the most preferred avenue to pursue. The reinstatement of treaties has the advantage of evincing a consensual arrangement, giving it democratic expression. It also coheres with the principle of Two-Row Wampum that many Aboriginal communities, including Kahnawá:ke Mohawks, cite as the historical and preferred way of conceiving the relationship between the federal government and First Nations. However, certain practical issues plague an absolute dependence on this view, and this points in the direction of a distributive response.

To the extent that this direction is taken up, it falls under Fraser's social theory of injustice, and should thus be addressed by her theory. Her negligence of it might have been previously explained by her arguments against group rights. In light of the arguments I made in the first chapter, this negligence is no longer justified. Maldistribution of the sort that I advance here ought to be placed squarely on the agenda of Fraser's theory of social justice. It may be said in last instance that this discussion could have treated other distributive claims that are more easily defended and which do not necessarily lead to historical distribution, such as health, or financial welfare. The facility with which one might parcel out various distributive claims in this manner comes at the cost of reproducing the assimilationalist programmes. Land is not simply one distributional issue among many; it is the fundamental issue. Beyond having access to healthcare or equal protection under the law, it tells us where a hospital is to be built and the boundaries of jurisdictional authority. It is the arche-category of distribution with respect to the survival of indigenous peoples. The discussion therefore had to deal with this issue.

Although the final form of the distributive model departs somewhat from Fraser's monistic distribution model, the model advanced here dovetails with her status view of recognition. Recall that this view evaluates different recognition claims based on the denial of participatory parity through status differences and not on a violation of one's 'true' identity. Likewise, distribution claims here are evaluated (though not exclusively) on the denial of self-determination through the weighty, colonial legacy of treating Aboriginals as peoples of a lower status. Upon this treatment, an entire legal apparatus was erected that was to the near exclusive benefit of settlers and continues to rear its hostility towards Aboriginal ways of

relating to the land and maintaining historical record. This trend is losing steam. It is part of a long process of revaluing the status of Aboriginal peoples as nations with certain rights and freedoms not germane to other citizens. This begins with acknowledging the foundational significance of land claims, though it does not stop there. Other difficulties arise. In the next section I address the issue of membership under Fraser's second category of injustice: misrecognition.

3   *Recognition*

Over the past two decades, recognition has ascended to the status of a master concept in political philosophy, capable of explaining and resolving conflicts ranging from individual self-discovery (Benjamin 1988; Honneth 1995) to the development of multinational federation (Taylor and Gutmann 1994). Others, though, have expressed scepticism over its explanatory power (Fraser 1997) and its normative vitality (Markell 2003; Coulthard 2007). The waning enthusiasm for this theoretical trend is reflected in indigenous politics as well, notably in Kahnawá:ke. To a certain extent, the vibrant nationalism that infuses the politically multi-striped identity of Kahnawakehró:non developed in the vacuum of ant hope to acquire some semblance of recognition of self-governance aspirations from the federal government. The generation of local autonomy served to fill this void; if their projects could not be achieved within the constraints of the *Indian Act*, they would simply circumvent it (see Papillon 2007). This strategy is no more clearly stated than the MCK's own website:

> In the 21st century, we are shedding the last remnants of the *Indian Act*. We have directed our attention to our internal affairs and are in the process of strengthening our links to our proud heritage and rebuilding on the philosophies and principles contained within the Great Law, the Two Row Wampum Treaty, our Creation Story and the Seventh Generation, with Honor, Trust and Respect. (Mohawk Council of Kahnawake 2009)

This strategy has been effective. Kahnawá:ke maintains one of the highest standards of living of all Canadian reserves, thanks primarily to local efforts. Shifting its attention from wishful engagement of the offending authorities, political leaders in Kahnawá:ke have resisted the deceptive trap of recognition as a catchall category that can solve the ills of a community that is the subject of colonialism. This logic of local development resists more importantly the

reproduction of colonial roles – community survival by sending the Band Council Chiefs cap in hand to the governing authorities, leaving the power relations intact.

Recognition is certainly a problematic frame of analysis in the colonial setting. To this extent, Fraser has perhaps targeted the right level of conceptual utility, restricting the analysis to individuals in more or less democratically closed societies, where the emergence of multinationalism does not risk exploding governmental authority. However, the shortcomings of recognition's normative or explanatory viability should not yet leave us with the impression that it is a complete write-off. Complete isolation from the federal government is not possible, even while local development is the preferred method of consolidating political efforts. Interaction will occur with various other levels of government of the Canadian state, and to this extent, (mis)recognition might do us well to help make sense of the relations in place. The process of reclaiming the Seigneurie lands is proceeding with this sensitivity in plain view. Additionally, while the reaction to turn one's back on the prospects of recognition-rooted negotiations is understandable in light of a long history of misrecognition, it relieves the misrecognizers of the burden to take part in atoning for their errors (Colish 2009). Where collaborative efforts cannot be avoided, the analytic of recognition might be of service. In this section, I first provide an overview of the central recognition issue in Kahnawá:ke, membership (s. 1.3.1). Next I recap Fraser's model of recognition with the aim of conserving the successes of this model while pushing it beyond its current apparatus to accommodate group demands such as membership issues. There is a certain way in which membership issues suggest a debate over misrepresentation rather than misrecognition. I address this issue by laying out the directional relationship that misrecognition and misrepresentation bear when framed in the context of struggles for self-determination, which points to a modified model, inspired by Taylor's treatment of Québécois nationalism (s.1.3.2).

3.1   Contextual membership

Membership in the Mohawk nation typically rested on a philosophy of inclusiveness and tolerance, as contact with Europeans evolved in the 17th century. With still primitive knowledge of the continent, New World settlers were dependent on alliances with indigenous communities and sought to forge stronger

inter-communal ties: intermarrying was frequent – what John Ralston Saul (2008) has reminded us of as "marrying up" for Europeans – and Christianity was introduced to the Mohawks by the Jesuits of New France; its newly converted adherents came to constitute a significant segment of the population. As is by now a common refrain in this song, while the developing Dominion of Canada became less reliant on indigenous knowledge and more interested in overcoming the obstacle they presented to resource extraction and European-style citizenship, the continued existence of communities such as Kahnawá:ke became more vulnerable as a result of membership disputes. For many indigenous peoples, nationhood, as it is constrained by the reserve system, depends on how membership is defined.

There are two analytically distinct issues that are recurrently raised within Kahnawá:ke, though often in a combined fashion that makes for a confusing articulation of a political vision outlining just membership criteria. The first issue centres on the *control* over membership criteria, the second on the *contents* of those criteria. We may gain a glimpse of how the first issue has ignited the community by considering the evictions of non-Mohawks in 1973. Shortly after the Seaway affair brought about a more militant assertion of nationalism, other issues came to the fore of the political agenda with increased willingness and means to deal with them. But this agenda was always constrained by the nature and structure of the governing council. The MCK proved slow to act in dealing with the issue of non-Mohawk residents, and instead a group of Mohawk Warriors, backed by the militant American Indian Movement, took matters into its own hands (Alfred 1995: 134). The objective of evicting the non-desirable residents was well supported by the community; what was now thrown into question was the means by which such objectives were pursued, particularly when they might clash with the mandate of the *Indian Act*-created Band Council. This incident proved to be a serious blow to the MCK's legitimacy and a strong entrenchment of the idea that such matters require local control and thus the abandonment of federally regulated membership schemes.

In 1985, the federal government did in fact become sensitive to such a demand, though the passing of Bill C-31. However, this initiative could only do so much before confronting its own contradictions. The initiative aimed to devolve the control over membership criteria to reserve communities, so long as they were registered with the Department of Indian Affairs and Northern Development and

corresponded to certain basic principles. The previous arrangement was the universally applied blood quantum system, a membership order that placed the European concept of race as the central determining factor. Today, Kahnawá:ke still uses a 50% blood quantum to determine membership, and has yet claimed unilateral control over its membership (as opposed to the bilateral devolution that Bill C-31 aimed to create). Certain modifications have been made to the federally imposed system, but the underlying principle of racial classification remains in place. The significance of not registering with DIAND and proclaiming control over membership is what matters here. In other words, real control means that membership is determined in Kahnawá:ke and does not require the approval of the federal government.

While the blood quantum remains in place, most acknowledge it is a less than ideal arrangement. In addition to control over membership criteria, Mohawks in Kahnawá:ke naturally hope to make use of this power to refashion the contents in harmony with tradition Iroquois values. The difficultly of transition from a racialized European system to tradition Iroquois criteria is represented in this excerpt from a survey that was conducted in the community in the early 90s: "On the issue of whether blood quantum was a proper means of determining eligibility for membership—The consensus is that blood quantum was an effective, though not ideal, means of determining eligibility" (Alfred 1995: 170). At present, the blood quantum still functions as the primary means of determining membership eligibility. However, a 2007 review committee noted that reliance on this method and others foreign to the Iroquois values and tradition serve to stifle the implementation of a membership system that upholds the culture that is being protected through a system in the first place (Membership Department of Kahnawake: 19).

The report reflects and opens up a debate over the contents of membership laws. While no significant departure from the blood quantum is recommended, the report urges the incorporation of traditional concepts of national membership as part of a larger struggle and negotiation over Mohawk identity in a modern context. The authors of the report are cautious to note the lack of consensus on this issue and that no ready-made solutions offer themselves. The devolution of control over membership did not entail a membership programme that could settle the competing claims to entitlement and successfully extricate itself from the

Canadian status Indian and citizenship regimes. In this sense the contents of membership rules are still up for grabs as Mohawks seek to find a way of staking their distinctive political community amongst a swarm of external legal controls. The disputatious exchanges over membership criteria should not, however, detract from their significance with respect to Mohawk cultural and national survival. That this issue remains so highly contended on the agenda at least points to some agreement on its importance.

3.2   *Membership: misrecognition or misrepresentation?*

The membership issue might first strike readers familiar with Fraser's recent work as a case of misrepresentation, if the issue is at all amenable to her analytical framework. Misrepresentation characterizes those injustices that stem from exclusionary practices that deny those who are subject to a regime of governance the democratic voice to raise their concerns over it. Much of the membership issue seems to turn on the proper frame within which misrecognition and maldistribution claims are vetted. In this section I argue that the primacy of misrepresentation is not always as evident as Fraser sees it to be (her tendency has been to treat it as a meta-category of injustice that precedes maldistribution and misrecognition). Rather, there is a two-way relationship between misrepresentation and misrecognition in the colonial setting, which depends on the level of self-governing capacities already in place and their intertwinement with the colonial regime. I elaborate on this below. For now, let me first sketch out how Fraser's theory of misrecognition moves beyond the problem of identity construction that weighed down the success of other approaches to the concept. This point is important to keep in mind as I make use of the concept below.

Fraser's theory of recognition is more plausibly articulated within moral philosophy than either Honneth's or Taylor's. Recall that her theory is explicitly shorn of the identity baggage that is at the heart of the latter two's. Rather than perceive of recognition-type movements as aiming to establish once and for all who they are and how they should be acknowledged, Fraser urges us to consider how disadvantaged groups are subjected to status differences within society. For instance, a gay school board candidate in most places would be granted less moral authority than a moderately religious and heterosexual candidate. In this sense the former suffers not from a denial to be gay (although certainly this is a consequence

in extreme cases), but a denial to participate on par with other members of the society in ordinary civil functions and practices by virtue of being gay. To that extent that such prejudice encourages people to hide their discriminated practices or beliefs, there is an identity-related denial and one might be tempted to conclude that object of discrimination (e.g. homosexuality) is what needs to be affirmed and positively revalued. Fraser's objection to this seems decisive, as we saw in the first chapter: what it means to be gay – that is, the identity in virtue of which one should receive positive revaluation – is not simply an object for moral philosophers or democratic representatives or administrators to define. Identity is not an object that is easily amenable to public policy as a means of correcting injustice; it is dynamic, evolving and likely inhibited, if not *harmed*, by naïve and overt declarations of in what a given identity consists. For this reason, it is important not to use recognition as a concept that leads down the risky metaphysical paths of identity formation and maintenance.

Fraser's alternative to this is to view this concept as referring to the subordinate statuses in which denigrated peoples are placed. The corrective to this type of injustice then is to enable further participation without making uncertain declarations about vindicating one's true self. Viewed in this light, Fraser's concern is more about misrecognition than with filling in the contents of what full recognition would mean. Her aim is to identify those patterned injustices that stem from exclusive norms of cultural valuation and to test them against mettle of democratic participation. The positive correlate of misrecognition is then enabling democratic participation and will formation of the norms of cultural value (e.g. who has the moral authority/character to sit on a school board) and norms of redistribution (e.g. who has a worthy claim of economic compensation).

Misrecognition, as it is described here, is particularly illuminative when applied internally (i.e., amongst Mohawks) to the healthy debate that surrounds membership issues in Kahnawá:ke. One of the central concerns raised in this debate pertains to who precisely is entitled to full political participation in the community. Access to basic social services, such as health and education, is guaranteed by the national Indian registry; and if they are not made available in Kahnawá:ke, registered Indians can seek them elsewhere. But running for office and voting in Kahnawá:ke cannot be done elsewhere and the denial of these

activities represents a crucial form of exclusion, since it, if only partially, forecloses the possibility of demanding and implementing greater inclusion.

This reasoning has faced resistance, however. Bill C-31 registrants are sometimes viewed as second-class, literally discriminated against because of their status reinstatement. However, the major resistance to Bill C-31 registrants was not these newly admitted members were less Mohawk than those registered under the previous membership regime (although, this was said), but that the inclusion of women who married out would strain the community's resources. This argument then rejoins a distributive claim to participatory parity, rather than defeats the claim to misrecognition.

Misrecognition, however, is far less illuminative when attached to the notion of participatory parity and when no significant distinction is made between Kahnawá:ke and the Canadian state as political entities. It can be and is argued that Aboriginals suffer from unequal participation in Canadian society, generally conceived. This intuition has driven affirmative action programmes, judicial pluralism enshrined in the Canadian constitution and the repeal of discriminating enfranchisement laws. The result of such efforts has benefited Aboriginal communities in general, even if Kahnawá:ke in particular has more often pursued and independent line of political development. But these efforts also clash with the self-determination aspirations of the community, particularly when delivered by governmental fiat as opposed to worked out through inter-governmental negotiations. Participatory parity then, when not properly framed, can run into serious conflict with self-government projects. The parties involved will invoke whatever legal regime best serves their interests and jurisdictional mêlées ensue over who is a part of what.

The next move to sort out among these competing claims might be to turn to Fraser's third, meta-level category of injustice: misrepresentation. From the vantage point of this third category, the issue of membership points to the difficult construction of political voice, national identity, and even the subsequent terms of recognition and redistribution. In this sense, it functions as the primordial category of injustice, akin to Arendt's political death – loosing the "right to have rights" (cf. Fraser 2009: 19). In the way that Fraser currently applies the term "misrepresentation" I agree with her. However, in the context that I am urging her to take up, internal development of self-determination, I see this relationship as

backwards. Allow me to summarise this relationship with respect to the control and contents of membership criteria.

The development of misrepresentation as a central category of political injustice in Fraser's work occurred alongside the fall of communism and the increasingly transnational character of financial exchange and cultural affiliation. As Fraser sees it, the Westphalian state can no longer be taken for granted as the appropriate container within which claims of injustice are advanced and adjudicated. With finance and culture, injustice has taken on a transnational face. This situation leaves some excluded from control over the regimes to which they are haplessly subjected. Forget about claims to misrecognition and maldistribution, the excluded must first be accorded representation to bring the injustices they suffer to light. What is argued here is that the methods to determine membership or political voice do not properly take into account all those who are subjected to the governance regime in place (Fraser 2009), viz., the contents of membership (loosely defined) need to be revisited before any further claims can be advanced. In this sense, misrepresentation is the first form of injustice, and potentially the most damaging.

But the context that I am investigating here does not quite work in the same way. The claimants are not subjected to effacing exclusion, but are rather subjected to the injustice of forced governance regime (which no doubt has effacing qualities of its own paradoxically assimilation and exclusionary agenda – I come back to this issue in the third chapter). In this type of situation it usually seems premature to jump immediately to the question of representation and carve out space for self-governing entities to emerge. (Although, this is not always the case. The disintegration might well result from an enduring and even violent division that has made for clear sides and political objectives, even if they conflict with one another. The Israeli-Palestinian conflict likely bears these characteristics, in which case the framing question, as it has been foregrounded in talks since the founding of Israel, seems paramount.) Certain preconditions will need to exist in order for the framing question to seem like an appropriate solution – among them, a sufficient level of self-governing capacities, the political will to separate, and other specific qualifying conditions that prevent separation from being turned into a precedent and incentive for other communities to threaten to jump ship when faced with a decision that they disagree with. These preconditions are what make

up the debates that occur between the federal government and First Nations communities that aim to extract themselves from the colonial trappings they continually confront. But navigating through these issues comes with costly and difficult explorations of how to achieve independence from a governance regime that has for good or bad invested itself in the lives of First Nations for over almost two centuries. As these preconditions are negotiated, it seems appropriate that recognition serve as the backdrop against which claims can be advanced and measured.

What I mean by recognition as a backdrop is in fact how Fraser employs the term within her analytical framework. As discussions proceed over how membership is to be established, both federal and local parties must take account of the ways in which certain constructions will create status differentials that can be disruptive even cancerous to project of community building. The development of a local membership programme in Kahnawá:ke has benefited from lively debate over the issue, but still continues to be dogged by a number of jurisdictional pulls that trouble the coherency of the system. While I believe misrecognition to be a helpful means of characterizing much of the rancour that surrounds the debate, this is not so when it is limited to individual cases. In order for this concept to be of any service to the concern at hand, it needs to apply to collective enterprises as well. I do not embark on this reconstruction here, which could very well be a thesis topic of its own. I note, however, the primary objections that are raised against Taylor's collectivist recognition approach, most remarkably the authenticity thesis (cf. Benhabib 2002; Markell 2003), have received indirect response from my discussion in chapter 1 (s. 4). In the next chapter, I tackle this issue from another angle: the hybridization thesis, which undermines collective claims through a challenge to the stability of their identity.

4   *Conclusion*

This chapter has served a necessary function in the overall project, but it is nevertheless insufficient to mount a full challenge to Fraser's theory. I have argued that the case under consideration here does suffer from Fraser's first two categories of injustice, but clearly does not aspire to the type of participatory parity in the Canadian state that has often been the (if disingenuous) celebrated objective of many controversial federal government policies and programmes. In

this sense, I have been making the case that misrecognition and maldistribution can occur without pointing to participatory parity as the proper response. Indeed, in the current case campaigns for further participation have only proven to fan the flames of an oft-times acrimonious relationship between the parties involved – rehashing the techniques of colonialism, even in the face of violent opposition.

This chapter opened with the question, do the struggles for recognition and redistribution that Mohawks lead adhere to Fraser's strategic provisions of: 1) preferring deconstruction over affirmation, and 2) only pursuing affirmation where it can lead to deconstruction of oppressive structures. With respect to the redistributive claims advanced by members of Kahnawá:ke, the answer is a resounding yes, as has been picked up be legal scholars, political philosophers and most of all, Mohawk and other indigenous activists and leaders. The developing litany of case law, political accords (both successful and failed) and the turning tide of public opinion all point in the direction of fundamental changes to the way that communities such as Kahnawá:ke relate to federal and provincial authorities. But with all these developments, the push toward self-governance and the restoration of land titles is still fraught with undiscerning applications of pan-Canadian citizenship and market-driven developmentalism, both serving to undermine the realization of self-determination movements.

One focal point of attack on these efforts has been controversial membership regulations that exclude those who were re-enfranchised by the Canadian state. As was shown above, this criticism often fails to take into account the problematic addition of a large group to a population whose resources are already stretched thin. This aspect aside, the controversy that surrounded Bill C-31 and the resistance to reinstate newly enfranchised women who had married out do not adhere to Fraser's strategic provisions. The actions taken by the MCK to exclude B-31 registrants is a clear practice of affirmation with little to no evidence of deconstructive promise. If anything, it serves to bolster the endurance of a racialized membership regime that was first forced upon First Nations by the federal government, therefore supporting rather than challenging the dominant structures of distributing political power and voice. But this does not mean that the current practices of membership are inviolable and necessary. Kahnawá:ke does not benefit from the opportunity to have a public government (Dupuis 2001) and perhaps not a societal culture (Kymlicka 1995). But the techniques of resistance

and the power relations to which they respond suggest that there is something more to make of the membership issue than simply writing it off as exclusive and controversial racism. The developing trend in Kahnawá:ke and the recommendations of the Membership Review Community suggest an interest in moving toward a more traditional conception of membership, which is self-ascriptive and more reliant on one's doings than one's being.

This returns us to the question posed in the first chapter: can the practice in question (the development of membership rules) be separated from the instance of oppression or discrimination (the exclusion of Bill C-31 registrants). The answer to this question is yes and is the one that needs to be affirmation against those who insist that group rights rest on a logic of individual oppression. This objection claims that the semantic-theoretical structure of group rights necessarily creates the holding cells within which individual rights are trampled for the sake of group survival. As we saw in the first chapter, this logic is not at all inherent to group claims. While this objection may be cast aside on the theoretical level, it increasingly gains resurgence on a sociological level. There, advocates of strict egalitarian citizenship claim that the heightened migration flows of modernity have destabilized the anthropological romance of cultural purity and created people that are radically hybrid. Any attempt to draw solid lines in the multicultural mosaic will do great harm to the majority of people who now identify with more than one culture. The first task of the next chapter is to take on this challenge.

Marginalization, Hybridization, and 3 Potential Solutions

The first half of this chapter responds to two objections that my argument has not yet faced. In the second half, I work through three proposals to overcome the inadequacy of participatory parity with which I have been challenging Fraser's analysis.

In the last chapter, I aimed to show how national minority movements can suffer from misrecognition and maldistribution, and therefore should be on the critical theorists emancipatory radar. However, there is at least one way in which this plot is not picked up. Fraser might simply respond that, like in the case of Palestine-Israel, there is a long history of unfortunate political entwinement between two otherwise separate political entities. The normative response, in which case, is a process of untangling. This would relieve her of the charge that she underestimates the developing national character in Kahnawá:ke and furthers colonial politics. On the other hand, too quick to jump at this solution and she overestimates the extent to which this is an issue of border-drawing. Dismissing the Palestine-Israel analogue, I suggest that the more appropriate way of characterising the present issue is an entwinement of a different political variety: colonial marginalization (s. 1). This characterisation lends itself to another objection, however, that I call the hybridization thesis. If the current situation is so beset by a history of interaction and mixity, then on what (distinct) grounds does the argument for greater autonomy in Kahnawake rest? This argument often draws inspiration from Rawls' now famous expression – "political, not metaphysical" – to undercut the force of political movements that rely on essentialist (viz., metaphysical) claims. Oddly, however, the hybridization thesis does very little to move past the metaphysical dispute, too often revelling in the métissage of global culture and accelerated migration trends to be aware of the movements afoot in the globalization scrum over political control. In response to this, I argue that a genuine engagement with the political character of minority national movements will tame the threats posed by hybridization theory (s. 1. 2).

I conclude in the second half of this chapter by discussing three proposals to overcoming the obstacle that participatory parity poses to collectivist claims

within Fraser's approach. The first approach sees tackling the matter of participatory parity as one of properly finessing the balance between procedure and substance in democratic contexts (s. 2. 1). The second approach rests the issue on sufficient levels of democratic will and public adherence to the constitutional essentials in place; this is cast in both subjective (personal affection) and objective (institutional manifestation) forms (s. 2. 2). Lastly I consider a wholly new alternative to participatory parity as a means of conceptualizing the objective of social justice (s. 2. 3). It is this final approach that I advocate. These proposals are merely intended to suggest how the goalposts might be aligned for further normative thinking about this issue. I do not pretend to resolve the dilemmas that have been raised, but to contribute to the discussion they are intended to provoke.

1   Two objections: on exclusion and hybridization

1.1   Marginal Oversight: Rethinking the Inclusion/Exclusion Debate.

As briefly seen in the previous chapter (s. 1), the political scene in Kahnawake is the product of a long history bearing moments of cooperation and suspicion with respect to neighbouring peoples and governments. This history makes it difficult to identify clear obstacles to local development, let alone the political means to overcome them. Despite the particular history and politics that cloud the presence of a unified will of the people, the politics of Kahnawake helps to push Fraser's theory to its conceptual limits, while at the same time it reconnects us to the dynamics in play in the movement towards a postcolonial relationship between the Mohawks and the Canadian government.

Against the claim to self-determination, potentially drawing inspiration from more divided analogues such as the Israel-Palestine conflict, Fraser might say that this is more a matter of inter-state conflict and bartering than a domestic issue of power sharing. In other words, her response may be that the pressure that I am trying to put on her theory steps beyond the boundaries of the theoretical terrain on which she is working. Participatory parity is not troubled by this case since it was never seriously entertained by the group in question. There is a straightforward way in which this response is not available. Too dependent on the democratic circumscription of political claims-making and Fraser risks falling into the circular argument that her response, participatory parity, is only applicable

where appellants seek participatory parity. This risk is significant for Fraser as her approach currently stands, and this is not affected by her new work on global justice, which does not take the nation-state as given. Participatory parity is supposed to be developed as the philosopher's task of providing conceptual clarity to the multiple and apparently irreconcilable justice claims that are advanced today. In this sense, it is not political. It is not an idiom of liberal democracy, but a theorem to make sense of the injustices found within it. The case of Kahnawá:ke displays the inadequacy of the theorem to account for all reasonable claims raised. Were Fraser to ardently cling to its adequacy by insisting that her approach is only interested in claims that further the objective of integration and participation in the dominant institutions of society, then participatory parity ends up functioning as an idiom rather than a theorem. This means that we'll need new means of reconciling the plurality of political struggles that dog ordinary theorizing. Whether or not Fraser entertains this circularity, we are still left with an impasse: if this is reasonable pressure to put on her theory, then how are we to make sense of it? How is this case applicable within the reasonable expectations about what her theory should do, without exploding the framework?

The force of the objection raised here is revealed through the locality and relationship between the Mohawks of Kahnawake and the federal government of Canada. By this I mean to conjure two familiar ways of conceiving the relationship, and each with a double face. Exclusion can describe the state of affairs referred to as injustice; it can also represent the desired end (though it is rarely expressed in such terms) in the form of extra-state self-government. The converse of each relationship is where inclusion is either the end result, to overcome barriers to full social and political participation; or, it is the state of affairs that represents the injustice done to the difference of groups seeking autonomous governance. I argue in this section that this binary frame of conceiving the relationship is unhelpful and that the concept of marginalization is more appropriate. This is significant not only for understanding the nature of the injustice targeted, but also the form that remedial justice will take in this regard.

So, to answer the question, "does this count as case for Fraser's theory?", we will need to ask where to locate the plight of the Mohawks of Kahnawake. Is it inside or out? Is this something for international law and international relations theory? In certain instances, this may be so, and Mohawk leaders do invoke

international law to redress the actions of the Canadian government. Additionally, while dominant theories of international relations hardly acknowledge the oppression suffered by indigenous peoples aspiring to self-determination, this may reveal important silences of the paradigms in international relations theory, suggesting that it is in this intellectual field that an answer might to be found.

On the other hand, appeals to international law can be costly and difficult without representative power in the major institutions of international design. Despite efforts to enshrine the right of indigenous peoples to self-determination within the framework of international law, it still remains an unaccommodating forum for such demands (Macklem 1995). This is not to deny that this is not a channel worth pursuing, but there are significant constraints in place when it comes to appealing to the international community on these issues. Moreover, whereas blurring the boundaries of international relations theory might develop some insights into the violent practices of inclusion that states adopt, it is unclear that this is uniquely an object for IR theory. The nature of the relationship between Aboriginal communities and the Canadian state is varied, and few seek to assert themselves as fully autonomous political entities, such as states.

This seems to suggest that the framework of analysis would be domestic political theory. A move in this direction might first conjure up the conditions upon which a sufficiently stable polity can be established in pluralistic settings (Rawls 1993). However, for reasons well known in theory and in practice, these conditions rarely live up to the neutrality promised. Dominant ideologies parade under universalist banners, but quite often these are principles that few Mohawks are willing to march for. Consider only Canada's commitment to free market economics. Whereas this doctrine does indeed promise equal opportunity to all, the commodification of natural resources stands in direct contrast to traditional Iroquois values, not to mention those of nearly all First Nations (Alfred 1999: 60). In this sense there is a fundamental rupture with the state practices, making a strong case for political autonomy. Here again we seem drawn in to replay this ping-pong debate over inclusion/exclusion tactics. Certainly each set of tactics offers a compelling, if incomplete, strategy to the project of Mohawk self-determination, but it is not clear that they can be freed of contradicting one another—each bears residual elements of the other. Caught in this political abyss, the next move is to try and conceive the relationship in such a way that can

combine the two strategies and better represent how and why Kahnawake politics straddles this line in frequent repudiation of the Canadian state's political legitimacy.

Nancy Fraser develops her theory of social justice using substantiated correlate terms: recognition is the response to misrecognition, redistribution to maldistribution, and representation to misrepresentation. Here I want to develop the first side of a correlation that treats the nature of the injustice and captures this delicate relationship between Kahnawake and the Canadian state: marginalization. I do not mean to develop this concept alongside Fraser's triadic theory as a fourth category of injustice. The concept of marginalization functions here rather to conceptualize the response to the objection that self-determination is simply outside Fraser's concern. It is not enough that it be shown how the Mohawks of Kahnawake have been subjected to misrecognition and maldistribution in order to challenge Fraser's theory. As discussed in the last chapter (s. 1), skinheads who feel publicly silenced and inequitably employed in the labour market might just as well claim to be the objects of misrecognition and maldistribution. Fraser is capable of responding to this latter challenge with the concept of participatory parity; that is, the promotion and inclusion of skinhead culture into mainstream politics is parity-inhibiting for those who are discriminated against by neo-Nazi ideology. In the case of the Kahnawake, this response is not available, since it is the concept of participatory parity that is being challenged. This might in turn suggest that this type of concern naturally falls off Fraser's radar, since it appears to recoup its sovereign virtue rather than press for greater inclusion. I think this dismissal is too hasty and fails to appreciate the dynamic of the colonial legacy in Canada, and perhaps other multinational states for that matter. In order to appreciate this dynamic, viz., in order to understand how this issue belongs on the radar, I propose considering it in light of marginalization. Allow me to elaborate.

This community finds itself at the borderlines of genuine political survival; excluded from mainstream participation, but prevented from autonomous political control. Colonists encountered First Nations as developed societies with advanced local knowledge and vital military services. They engaged diplomatic nation-to-nation relations, as represented by the principle of Two-Row Wampum. This relationship acknowledged and maintained, through various treaties, the equal status of First Nations communities. As settlement increased and the economic

development of Canada accelerated, these treaties and the land holdings they protected became obstacles for the Canadian state. This has resulted in years of politics that culminate in a situation of neglect, despite numerous overtures of sincere engagement with Aboriginal communities generally. It is neither strict exclusion nor inclusion that the Mohawks suffer, but marginalization. The political landscape of Kahnawake is continually redrawn with a bifocal perspective on the survival of this indigenous community. As Audra Simpson notes, "Mohawk nationalism, as it is expressed in Kahnawake, is replete […] with colonial ironies" (2000: 118). Recall that the blood quantum, formerly used to determine Indian Status by the federal government, was officially repealed from the Indian Act in 1985. First Nations communities were given a grace period of three years for each to establish locally a new mechanism for determining membership. After the repeal of the blood quantum, the MCK decided to continue to use it, though refused to report its decision to the Department of Indian Affairs. Here we have a political body refusing to report to the very authorities that created it on the continued use of those authorities' racially contrived, membership system. Such colonial ironies trouble any simple categorization of this nationalism along international/domestic lines.

Melissa Williams (2000) has taken up the category of marginalization as a supplement to conceive of the appropriate representative response to ordinary economic deprivation and cultural subordination. While our aims diverge on the final objective, her characterization of the term is a useful starting point. In her analysis she provides four features that marginalized groups share: "1) patterns of social and economic inequality are structured along lines of group membership; 2) membership in these groups is not experienced as voluntary; 3) membership […] is not experienced as mutable; 4) generally negative meanings are assigned to group identity by the broader society or dominant culture" (14-15). In the present context 2) would probably require some qualification, but generally this stands as an appropriate structural characterization of marginalization. I now want to turn to a strategic characterization that will help further crystallize my response to the inside/outside debate. By way of example, consider the following case.

The "soft siege" at Kahnesatake/Oka in 1990 offers an episodic glimpse of this governmental posturing. As Mohawk Warriors from Kahnesatake, Kahnawake and other First Nations occupied sacred, Mohawk burial lands to prevent the

expansion of a golf course, they received their foodstuffs and other basic goods from the Canadian military – the same group responsible for the razor wire that immobilized them and prevented others from coming to their aid. Not surprisingly, little could be expected of the military to deliver these goods in tact while their mission's objective was to put a peaceful end to the stand off. The attainment of a peaceful end – that is an end without overt and visible aggression – is more likely if, among other considerations, the occupation becomes difficult to continue, for lack of food or other items. While the Warriors were not starved to submission, as is the objective of a real siege, their goods routinely arrived damaged and incomplete. Thus, as has been the case with Canadian policy towards Aboriginals in general, the appearance of compassion and generosity masks the underlying privileging of government interests at the cost of the well-being of indigenous peoples. Isolated, malnourished and oftentimes discredited by prejudicial or unsympathetic observers, the experience of the Warriors at Oka was archetypal of the marginalization suffered by so many Aboriginals. And yet, despite this result and its similar, antecedent causes, the Warriors persevered in staking their claims and refusing to surrender to the will of the local mayor and surrounding authorities.

Marginalization in the strategic sense comprises two elements from the perspective of government agencies. On the one hand, there is a clear objective to suppress the interests of group engaged. In the case of the 1990 stand-off, the Warriors were portrayed as the illegitimate occupiers, whereas the golf course developers faced no such "official" opposition to their actions. In similar fashion, the historical exchanges between Kahnawá:ke and the federal government discussed in the last chapter (s. 2; s. 3) bear the marks of overt subordination rather than interest-based negotiation. This is generally more baldly apparent where no third party is involved, such as a golf course developer, and the government is advocate and arbiter in Indian disputes. On the other hand, marginalization is not just plain oppression. It distinguishes itself from the latter by a second element that is introduced to tame the portrayal of the first. However much past governments have had an interest in procuring Indian lands and managing Indian affairs generally, they have also had, if only an electoral, interest in not appearing draconian, oppressive or in violation of human rights. This second aspect of marginalization then usually includes apparent concessions that

rarely are sufficient or necessary to the objectives of the group in question. These two elements are strategically reinforcing from the perspective of the government officials, while politically polarizing from the perspective of Kahnawá:ke Mohawks; the first element pushes in the direction of exclusion through direct subordination, the second goads an interest in inclusion through baiting with piecemeal concessions. The result is a confused political arrangement that bestrides both greater interaction and strong separation between the two parties. Even as a matter of theoretical prudence, this is not a case that Fraser can simply write-off as obstinate separatism.

Whether or not the strategic characterization is backed by actual or perceived intent is of little consequence. The political reverberations of this approach seem present enough within the community as different visions for harmonious but proud coexistence trade arguments over cooperation with the federal government and self-reliance. In response to the impasse, "is self-determination inside or outside the political boundaries of the Canadian state?", marginalization permits us to move beyond this inadequate way of framing matters.

1.2   *The hybridization challenge to political legitimacy*

The previous discussion questioned the binary characterization of political manoeuvring in Kahnawake in simple inclusion/exclusion terms. This in turn suggests that neither the separatist claim to complete independence nor the universalist claim to enlarging the civic circle is fully available, but rather some more developed federative arrangement is to be pursued. This high level of interaction on a political level is also historically true on a cultural and ethnic level, the two conditions likely reinforcing one another. Recently, political theorists have picked up on this sociological groundwork that disrupts claims to cultural unity and ethnic homogeneity, and have exposed the diminished representative character of national storylines. This revelation has been bolstered by accelerated migration flows and the emergence of global culture. Naturally, this has opened the door to cosmopolitans funnelling through in droves who no longer have to put up with stubborn cultural relativists. If cultures are fluid and dynamic, then rights to protect them merely prop up ethnographic lies at the cost, most often, of the rights of women and children. In this recently revealed secret about

cultural evolution, you are what you are becoming, and since the state of becoming is only stunted, if not erased, by cultural protections, then what matters is permitting the individual to flourish and her cultural identities to be self-ascriptive (Benhabib 2002).

Seyla Benahbib pursues just this line of attack, but she does so with the aim of encouraging intercultural communication and moral reasoning. As she sees it, the world is already and increasingly hybrid, but this result is not always derived from the peaceful encounters of curious backpackers or intermarrying; such mélange can also be a product of conquest, media bombardment or "internal colonization" (Tully 2000b). The interaction may increase in such cases and take on violent forms; alternatively the participants recede to their respective corners, closely surveying the possibility of another encounter. In either case, Benhabib insists, the pragmatic and moral imperative is to develop the appropriate communicative structure to permit peaceful engagements with one another. This approach not only does justice to the epistemological premise of heightened hybridity, but is also morally supported by the equality of practical authority it attributes to communicative participants.

To a certain extent, Benhabib's thesis has a lot to say to the present case. The evolving character of political autonomy in Kahnawá:ke hardly points to a radical break with modern political institutions, economic organization or social and cultural practices. The Mohawk Council of Kahnawá:ke is the governing body that was initially imposed on the community via the *Indian Act* but has now come to operate as a vehicle for communal self-assertion (Alfred 1995: 131-40)[1]; internet gambling sites hosted in Kahnawá:ke are major sources of local revenue; and English still dominates this multi-confessional community (despite enduring efforts to recover the Mohawk language and restore traditional, Iroquois spiritual values and practices), while the local radio broadcasts nondescript sports reports of all the major leagues and 'North American' music. In one way, this mélange of what is generally divided and categorized under the headings of indigenous and European cultures may be perceived as rendering self-determination in

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[1] This general attitude toward this governing body within the community obviously changes over time. A recent report released by an executive community on the negotiation of land claims in Kahnawá:ke remarked on a widespread distrust in MCK to handle compensation funds received. See Kahnawá:ke Executive Council 2009.

Kahnawá:ke problematic. If there is little to no distinctiveness about political, social and cultural life in Kahnawake, then why grant further measures to protect it? Perhaps a properly calibrated public sphere could offer Mohawks the kind of political authority desired without having to rely on debunked notions of cultural integrity.

First, this reasoning underestimates the unique political relationship that Mohawks have had with surrounding governments and authorities, not to mention the practices of self-identification and -affirmation that flow from this relationship and challenge any attempt to impose a homogenizing Aboriginal or Canadian identity. Second, this reasoning also rests claims for self-determination on a rather narrow conception of entitlement to political autonomy. This conception sees autonomy granted only where strong cultural and social differences are manifest. Inline with this reasoning, federalist Anglophones, for instance, are sometimes baffled by the idea of Quebec sovereignty, citing language as the only societal difference, and an eroding and insufficient one at that, given the increasing presence and even embrace of American/global media culture. Self-determination or sovereignty on this view requires robust societal and/or cultural differences. I make no attempt to offer such a robust reading of Kahnawá:ke, but nor do I think one is required. Indeed, the syncretic and certainly pluralistic social imaginary of Kahnawake provides a good test case for hybridization theorists that see no distinctive grounds on which self-determination ought to be granted.

Benhabib's thesis finds inspiration from the Kantian edict to know before to act (precisely in the sense that we must know what we cannot know or prove first). In the case of democratic multiculturalism[2], to know is to understand the constructed nature of cultures and identity. To act then is to establish a political framework that can allow these constructions to be exchanged freely, that is, without placing them beyond the scrutiny of others through invocations of "tradition" and the like. Initially, this claim seems to generate momentum towards the "political" and away from the "metaphysical" (to put it in Rawls' terms). Multiculturalism is not about stating who one is, but about the proper deliberative

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[2] I use multiculturalism here somewhat out of context. Sympathetic followers of asymmetrical federalism in Canada will talk of multinationalism when referring to Quebec and First Nations. To speak of multiculturalism in those cases would be to demote the status of these movements, and thus weaken the claims that are advanced in their names. I merely follow Benhabib's terminology here, which some might pick up as a non-negligible rhetorical shift.

practices that allow one to *become*. This momentum begins to fade, however, as soon as it becomes apparent how the political and epistemic sides of Benhabib's thesis are wedded together. Her social constructivism is certainly a convincing intervention to correct for the excesses of arguments that are vulnerable to essentialism (e.g. Taylor's and Kymlicka's). However, Benhabib's claim is not immune from metaphysical indulgence itself.

Absolute hybridity is just as untenable as essentialism. Moreover, the political correlate to this epistemic claim would be much more hostile to the multicultural deliberative democracy than Benhabib is advocating. Indeed, if all are in a state of radical transformation and becoming, then there isn't much "culture" left to talk about. Rather, the more plausible claim is that social constructivism admits varying degrees of hybridity, which would in turn require variance across the types of deliberative structures and their delineation. The epistemic claim cannot be dissociated from the political, and in this sense, Benhabib's thesis remains at close distance to metaphysical claims about culture and the self. This is not a full-blooded objection to her thesis, but merely a remark that a one-size-fits-all approach to multiculturalism and deliberative democracy will not do. This means that national minority claims are still available.

But even if we grant her epistemic claims to the hybridity of culture and the self, it does not follow that deliberative democracy can offer a helpful political response to deeply run "cultural" clashes. In discussing essentialist politics, Benhabib in fact references the response of many Native leaders reacting to Bill C-31 enfranchisement who invoked cultural arguments to backstop their refusal to extend membership to new status women. This would seem like a clear-cut case of essentialist politics at its worst: depriving women of their rights via cultural protectionism. However, as Glen Coulthard points out, her criticism and proposed solutions to this situation "assumes that the oppressive relations of power being deconstructed operate in a precise manner" (forthcoming) – in other words, that it is clearly the stubborn views of the Native leaders that oppress the rightful claimants of Indian status, in this case, the enfranchised women under Bill C-31. Coulthard continues with this line of enquiry to suggest that simply decrying the exclusive practices of communities reacting to the imposition of inclusion illustrates the superficial analysis that hybridity theses tend to offer. They fail to take account of the power relations that structure the exchanges between

communities like Kahnawá:ke and the Canadian state. What's missed in this analysis is the accompanying redistribution claim that the resources required to accommodate a dramatic influx of members are not available. In this sense, "social constructivist critiques of the politics of recognition not only tend to overestimate the emancipatory potential of anti-essentialist political projects, but fail to address the asymmetrical relations of power that often serve to proliferate exclusionary and authoritarian community practices to begin with" (Coulthard forthcoming).

What does this objection to deliberative democracy have to do with participatory parity and the present concern? While Fraser does not treat directly the problem of hybridity, she indirectly endorses it through her rejection of essentialism. Like Benhabib, she too advocates deliberative politics as a way of getting past the philosopher's or the movement leader's metaphysical posturing. Removing the burden of declaration – identifying once and for all who one is and how they are to be recognized –, Benhabib and Fraser open the door to a politics that can be reconciled with the heterogeneity of modern liberal democracies. This is welcome, but, as the foregoing suggests, the development of a deliberative response to this situation will have to take stock of other political determinants. The constructivist claim to hybridity is, in Coulthard's words, "necessary yet insufficient for cultivating what most deliberative democrats posit as a just democratic order." While social constructivism does give us a moment's pause to consider and revise the strategies of minority nationalism, it does not give us reason to abandon them altogether – neither from its epistemic claims nor political arguments.

At this stage in the analysis not only do we have good reason to expand the scope of analysis to make sense of the particular recognition-redistribution claims that are raised in Kahnawake (chap. 2), but we also have no reason to dismiss the case. This last discussion of hybridity in fact urges us to take it up, given the flexibility that will be required of deliberative models, which includes Fraser's participatory parity. In the next section I consider three possible solutions to the problem this thesis has been urging Fraser to take up.

2   *Three potential solutions*

Let us first recap the problem to which these solutions are supposed to respond. How can Fraser's theory respond to groups that suffer from

misrecognition and maldistribution when they do not aspire to participatory parity? Against making this accommodation, I considered three objections over the course of the first and third chapters. In the first, I rejected the claim that group practices of affirmation are necessarily oppressive (chapter 1, s. 4), arguing that what matters is whether or not the practice affirmed is dissociable from oppression. The second objection aimed to put minority nationalism outside the scope of Fraser's analysis, suggesting that it is possibly an issue more akin to international affairs (this chapter, s. 1). In response to this I claimed that neither inclusion nor exclusion is a helpful way to characterize the present condition, but marginalization. Finally, against the view that there are no solid ontological grounds upon which to base national assertion (given that Kahnawá:ke like most other communities does not benefit from cultural or ethnic unity), I suggested that this claim admits variants and that empirically it does not generate an absolute claim to completely open-ended deliberative democracy. Moving past these three objections, I return to the original problem of how to accommodate group claims that do not find countenance in participatory parity. Here, I consider three philosophical strategies of building such claims into Fraser's framework.

The relationship that each of these strategies bears to one another can be cast in at least two lights that are worth mentioning. 1) On the one hand, much of this discussion will centre on the debate over the procedures and contents of justice. Fraser's current support for participatory parity represents a leaning toward procedural justice (at least insofar as it is compared with the other approaches I consider). Participatory parity functions to advocate for citizen control over the contents of justice by providing them with the appropriate procedural constraints: individuals should not be prejudiced by discriminatory cultural values or economic circumstances. In relation to Fraser's theory, then, the three options I consider to accommodate group demands can be seen as reworking the procedure, making the procedure conditionally applicable, and altering the contents of the procedure. 2) These three options in turn carry three different philosophical strategies. In the first instance, reworking or properly calibrating participatory parity is the most conservative approach. It has the advantage of retaining the successes that Fraser's theory has earned thus far. The second approach, making the application of participatory parity conditional, is less conservative but more likely to be able to accommodate the demand in question

here by specifying the criteria under which self-determination is valid. Lastly, altering the contents of the procedure makes the most significant modification to the theory, which bears the risk of sacrificing more than is wished for, but also the potential to develop a more elegant inclusion of group demands. I provide some preliminary arguments in favour of this last approach.

2.1   Properly calibrating participatory parity

It is not certain from the previous discussions that participatory parity has no place in accommodating these claims. The objection that Mohawks would likely raise to its application turns rather on its use as a justification for further assimilating inclusion into the Canadian state while it ignores their desire for disintegration from it and its colonial offshoots, such as the *Indian Act*. If this worry can be put to rest, then the vitality of participatory parity as the central concept of the theory is much more promising.

Fraser's most recent work on global justice (2009) touches on this point. As the political power of the traditional nation-state erodes through the influence of transnational forces, individuals become increasingly the victims of actions for which there is no recourse in normal state mechanisms. Countering these trends, activists, citizens and non-citizens alike scramble to keep pace with the various injustices that such structures inflict with near impunity. What the new paradigm demands is that these transnational regimes are subject to a common measure of justice. Currently, the scales tip in favour of the financial speculators, private security corporations and those who bask under the umbrella of excessive patent laws and copyright protections. Balancing the scales requires expanding democratic control of these run-away regimes. This in turn means that the emerging counter-politics be considered as significant actors in this new global era. Fraser conceives of this relationship by redeveloping Habermas' public sphere theory to suite these new dynamics (2009: chapter 5). This redevelopment, like her previous work, is still driven by participatory parity to illuminate the disparities in power between the perpetrators of transnational injustice and their victims.

While this new work takes its aim at the global, political dynamics that have arisen since the 90s, she makes passing reference to indigenous struggles (14; 25; 88) that have gained greater visibility over these years as well. It is thus conceivable that this response be available to further the objectives of Kahnawá:ke

Mohawks by rethinking their relationship with the federal government as one between a counter-politics and the hegemon. In fact this does not require much rethinking at all. This way of viewing the relationship captures to a large extent how interactions have proceeded between the two. However, it overlooks one important detail, and this is directly attributable, once again, to the blinders that plague her theory because of participatory parity. A counter-politics is conceived in relation to a dominating political entity in order to establish a more balanced, that is, more democratic, form of political organization between the two. The detail that this way of presenting things misses is the objective of obtaining independence from the dominating political entity. Fraser's counter-politics do not work toward independence, as in advocating extra-state measures, but work intra-paradigmatically, aiming to remain as an adversarial voice that is granted greater legitimacy and power. Moreover, Fraser's new approach still says nothing of group rights along the lines that I am pursuing here.

Much of this objection turns on what kind of relationship Mohawks seek with the federal and provincial governments. It is possible that power-sharing agreements could satisfy the political objectives of Kahnawakehró:non and be captured under an analytical framework, such as participatory parity, that accepts group rights. While such a properly calibrated approach is potentially viable, it is nonetheless still hostile to other political movements that do seek full independence; in which case, the proceduralism of participatory parity ends up soft-pedalling the substantive claims for greater self-governance. Part of the reason why procedures are given priority is because we don't have sufficient knowledge to do otherwise; the default position is to strive for fairness amongst competing viewpoints. Taking the equality of individuals as the point of departure, the political desirability of proceduralism dovetails with the objectives of democracy generally: government for, by and of the people, rather than some select elites. Procedures, however, lay claim to a certain kind of knowledge of their own. They are not self-authorizing and the Canadian institutions that would be extended to Mohawk participation are unlikely to persuade many from Kahnawá:ke. For Fraser, if she doesn't commit herself to the circular reasoning that we need participatory parity for the sake of participatory parity, and if she doesn't want to merely extol the virtues of democratic participation, then, absent any other source of justification, it is worth exploring beyond the domain of her

deliberative conclusion and developing other ways of conceiving procedures of justice.

2.2 Exit strategy

The second possible answer to this question would make participatory parity a conditional response. As Fraser currently has it, participatory parity is how we are to make sense of the multiple and seemingly irreconcilable claims that are raised within a pluralistic setting. We cannot respond conditions of maldistribution and misrecognition in isolation, since they can run up against one another. Although beyond this diagnostic advantage that participatory parity brings, it is also supported morally; through the comparison of various claims against this one response, Fraser's normative monism is able to regroup various movements under one measure of validity. However, in cases where this measure clashes strongly with the particular aims of a movement, e.g., national minority movements, then we might be tempted to think that this can be accommodated by adding in certain conditional measures to the application of participatory parity. This philosophical strategy is best expressed as a conditional exit and it can take on a variety of forms. Or, another way of understanding the strategy is to consider this as a conditionally procedural approach.

One way of constructing such an exit strategy is to include the subjective requirement that members of a political community feel as though they are self-determining agents within that community. This approach would have the advantage of 1) placing strong *democratic* pressure on the institutional organization of political activity (in line with Fraser's general tendency), 2) while also giving clear indications of where groups should be granted an exit. The problem with this approach, however, is that it is likely so strong that it takes in a large number of the population who don't imagine themselves actively pursuing separation. It is perhaps a bit ambitious to ask of citizens that they see themselves as self-determining agents when a ruling class, for example, is still in place. These people would simply wish to abolish the ruling class, not to separate.

In response to this, and on a more minimal level, the conditional requirement might state that justice includes the absence of the sentiment that one is unduly subject to a political arrangement. This base requirement would provide reason to allow groups who claim to be the subjects of oppressive regimes an exit

to develop their own political community. While the simplicity of this approach is attractive, it does entail its own set of problems. For one thing, this condition still rests on a subjective level of satisfaction with the current regime, in which case we will not only need reliable measures to determine that level of satisfaction, but also a strong balance of incentives to prevent groups from threatening separation on a whim. It also engenders head-counting problems. An example of this problem occurred in the 1995 referendum in Quebec, when the federal government fast-tracked immigrant applications to bolster the yes vote. A similar feud is not unimaginable in Kahnawá:ke, where there could be differing views on whether or not those enfranchised through Bill C-31 have a legitimate say over local affairs.

The problems that beset both approaches just discussed point in the direction of objective criteria for an exit option. We could design models in which the opportunity for self-determination within various demographics would be objectively measured through their activity in the institutions of governance, levels of education and participation in positions of social esteem and economic worth. Were they not met, then we might consider whether or not an exit from the dominant mode of governance is a potential solution. Such a model might well track the levels of participation in activity characterised as self-governing, but it does little to demonstrate levels of alienation or desire to seek alternative forms of governance. It is in fact these usual sets of indicators (which track participation levels) that are used to bolster programmes that advance greater integration of disadvantaged segments of the population. It is in fact doubtful that objective measures can be established to determine the extent of a people's self-determination. The concept of self-determination is so intimately linked with the idea of the "will" of the people that some subjective element will have to factor into the equation. The next option would be to consider how the subjective and objective aspects can be combined.

Participatory parity does in fact carry this kind of balance between objective and subjective criteria. On the one hand, we can objectively measure one's level of participation in different sectors of society. On the other, participatory parity is subjectively geared as well, in the sense that its end is to enable members of the society to become active and have an impact on the distribution of resources and the norms of cultural value. This subjective end is what makes it ripe for democratic theory, whereas the objective indicators above –

economic prestige, activity in governance – need not coincide with a democratic regime at all. The problem, however, is that participatory parity is too tightly connected to involvement in *a* democratic regime that we cannot imagine how colonized groups can eventually develop their own democratic practices.

In either its subjective or objective variant, the exit strategy does not seem available. However, the combination of them, as in the case of participatory parity, does not lead to an exit at all. It merely points to further democratic control without specifying which democracy, that is, without specifying who is to be in control.

2.3   *Distribution of political sovereignty*

Perhaps participation in society does not give us sufficient indication of how to do justice to marginalized national minorities. While it seems applicable to the claimants who do not question the political frame of distributive and recognition issues, for those who find significant clashes between their ways of political organization and those of the Canadian state, then it is worth considering whether or not there is an overarching category that can capture both of these types of phenomena. Rather than participation in the main social and political institutions, an equitable distribution of political sovereignty might avoid the consequences of advancing a philosophical agenda that can be seen as supporting colonialism. To determine the efficacy of this approach, it is best to analyse it from the two sides that we are trying to accommodate: those who seek justice from the state, and those who seek it from without.

Beginning with groups who would seek separation or special governing powers, the distribution of political sovereignty speaks directly to the objective that is being pursued. It grounds the claims of recognition and redistribution in the language of political framing and points in the direction of how they can be remedied through local will formation and political activity. Moreover, political sovereignty is the cornerstone of consensual relations with others, both internally and externally. By generating a sense of belonging and authority, it can set forth those relationships in such a way that the parties involved can develop a civic sense of engagement with one another, without fear of sacrificing their remaining semblance of political and cultural identity. In this sense, it can setup up the

framework within which justice becomes regularly attainable, rather then held at a distance through interaction that is clouded by suspicion and animosity.

From the perspective of discriminated and disadvantaged groups who genuinely seek further participation in society, the distribution of political sovereignty does not seem immediately compelling in capturing the nature of their objectives. Political sovereignty is usually associated with legal powers and the recognition thereof. What I mean by this term here is the means by which agents come to see themselves as part of a political project that weighs their interests against others on an even scale. Built into the current architecture of Fraser's theory, this concept would include the ways in which the denial of political sovereignty can be inhibited by maldistribution and misrecognition. Additionally, in line with participatory parity, this approach would draw our attention to the objective of enabling further democratic opportunity of disadvantaged members. Distinct from Fraser's approach, it also places an accent on the examination of the scale used to weigh these different claims. It allows us to consider whether or not the background assumptions of political organization offer an opportunity for political sovereignty or deny it. Background assumptions such as the free market, individual autonomy and European notions of citizenship and political merit – these generally run in contrast to indigenous beliefs and practices, making their opportunity for political sovereignty reduced in consequence.

The objection raised against this approach is that, at best, it potentially grants separation to groups that only disagree with the state, such as anarchists. At worst, it grants political sovereignty to groups who commit egregious offences to human rights. Such arguments about "different ways of doing things" were traded in the lead-up to the American Civil War to justify slavery. This kind of theorizing bears the worry of supporting reckless relativism, reducing the force of human rights to a matter of cultural interpretation. The danger quickly recedes from view, however, once we take into account the theoretical prescriptions that were advanced in the previous chapters. Against this objection, recall the discussion in chapter 1 about Fraser's strategic provision (s. 4. 2). There I argued that what matters is determining whether or not the practice in question can be dissociated from the relations of oppression that surround it, if not define it. Slavery is quite easily discarded under this view, as would many other practices that proponents of human rights interventionism work to eradicate. This qualification allows us to

dismiss cases of oppression, but more is needed to limit the receptivity of this approach to only those who hold *strong* reasons for sovereignty, and not just any reasons at all.

What would this modified view have to say, for example, to religious sects that seek exemption from basic civil obligations that are seen to clash with their values? Does my approach support the protection, and even the secession, of groups seeking these demands? There are three more questions to ask before a response can be given to this one. Is the group an object of maldistribution and/or misrecognition? In the case of religious autonomy, the claim advanced typically takes the form of misrecognition. Secondly, does the group seek independence in the advancement of their political sovereignty? In other words, is it the case that political sovereignty is not available to them in the larger society? Thirdly, does the remedy to misrecognition adhere to Fraser's strategic provisions? If the answer is yes to all three, then it does support this view, as this has been practiced in Canada with groups like Hutterites who for years were exempted from military service during the years of conscription. Now, for recognition claims, groups would likely not be exempted from the development state infrastructure projects or resource extraction on their lands. In other words, environmentalists would not carry a veto over state lands because of their commitments to protecting nature. Historically sensitive distributive claims would carry more weight in this regard, as discussed in the second chapter (s. 2.3).

More responsive to the dynamics and legitimacy of group separation than the exit strategy, the objective of political sovereignty is able to give conceptual clarity to a postcolonial relationship in Canada without sacrificing the usefulness of participatory parity. It also does so better than a properly calibrated participatory parity by permitting the more aggressive campaigns for self-determination to be waged on the same footing as those that seek greater autonomy within the federal framework. Lastly, by attaching political sovereignty to the diagnostic lenses of recognition and redistribution that I presented in the second chapter, it maintains a theoretical openness to alternative forms of political organization while being rigorous enough to avoid Pollyannaish embrace of all claims made against the state.

I qualify this recommendation that I have been discussing here as plausible yet only conjectural. I do not pretend to have solved the puzzles of Fraser's theory

in merely a few paragraphs. This last section of the chapter is more an effort to provoke and free up some new ways of thinking about how to respond to and render legitimate the full array of claims that are pressed within plural societies, rather than limit our interest to those cases that do not call for group protection.

3   Conclusion

This chapter opened with the two remaining objections that my critique of Fraser had yet to confront. Like successive rhetorical traps, the first objection played off the relatively hermetic division between the domestic and the international, whereas the second aimed to dismiss distinctive cultural claims by blurring the lines of national narrative and belonging. Accepting the first division, we are either committed to saying that Mohawks are subjects of the Canadian state seeking further participation in society or that their campaigns for self-determination place them on the same playing field as other sovereign states, in which case their claims do not concern Fraser's theoretical objectives. Rejecting this division – while illustrating the storied interaction with the Canadian state that besets Mohawk identity and action – and we risk undercutting the base of their claims. Navigation through these objections required a nuanced treatment of not only the history of interaction and the reigning strategies of both sides, but also of the normative claims that Benhabib and Fraser can support. Deliberative democracy is workable where the participants are willing and welcomed. When this is not the case, it is not unreasonable to interrogate the foundations of accommodation, rather than concentrate uniquely on what appears to be dated expressions of cultural unity and survival.

In the second half I considered three ways in which we can interrogate these foundations from the perspective of the theoretical framework under consideration here. The first sought to recalibrate the participatory spheres by propping up the counter-politics that hold legitimate challenges to the Canadian state. This view, however, failed to hold on to the prospect of challenges to gain independence from it. Counter-politics are perceived here as adversaries of an overarching project, not as negotiators of a settlement to separate. Aiming to build this option into the framework, the second option dealt with two ways of conceiving an exit strategy: one relying on subjective levels of satisfaction with the current regime, the second relying on objective measures. The first failed to

provide reliability and the second did nothing to point in the direction of self-determination. Combining the two also failed to capture this objective. Lastly, I suggested that political sovereignty could provide the appropriate insight into these struggles, without indulging in reckless moral theory. The task all along has been to work out a theoretical relationship that can make sense of and do justice to claims for and against further involvement with the dominant economic and cultural levers of society. The balance thus far has tipped heavily in favour of those who do not pose great trouble the legitimacy of state structures. Ultimate success here would restore the equilibrium of these moral objectives; a more modest success that I would hope for this chapter is to at least generate some momentum toward that end.

Conclusion

Two positions have been driving this project. On the one hand, there is the political conviction that the current relationship between Mohawks and the federal government should not continue to be hampered by an insistence on further integration or unjustified fears of repressive communitarianism. As Jim Tully puts it:

> This colonial regime has gone through several phases. Aboriginal peoples have been treated as obstacles to Canadian settlement and expansion who could be removed from their territories, relocated on Crown reserves and governed by the Indian Act; as primitive wards incapable of consent, whose religions, languages, cultures and governments could be eliminated, and who could be coerced into the superior Canadian ways by their civilised guardians; as disappearing races who could be marginalised and left to die out; and as burdens on the Crown who could be off-loaded and assimilated to Canadian citizenship by extinguishing or superceding their Aboriginal and treaty rights. More recently, they have been treated as minorities with a degree of legal autonomy, self-government and claims to land within the Canadian political system. What has remained constant through these phases is the colonial assumption that Aboriginal peoples are subordinate and subject to the Canadian government, rather than equal, self-governing nations… (2008)

At a minimum, the objective of self-determination should be made available and in plain view, rather than obscured by such fears mentioned above and failed political agendas that many now see as simply colonial. The assumption that Tully refers to must be overturned. From this minimal commitment, a further one would be to think and act seriously with respect to the inhibiting effects that state agencies and regulations can have on the prospects of communities such as Kahnawá:ke to exist as free peoples. This political conviction receives strong moral backing from Fraser's own theoretical commitment, namely, her commitment to a critical theory of justice, which is capable of analysing and

clarifying the conditions of emancipation for those who are subjected to conditions of inequality, unfairness and political exclusion.

The second position, developed from the first, is a philosophical openness to determine whether or not this political conviction could be built into the architecture of Nancy Fraser's theory of social justice. Her theory was a good candidate for this project because it is an otherwise convincing and comprehensive theory of justice. If the objective of this political conviction could be accommodated, then the explanatory power of her approach would in turn be increased and its moral standing likewise improved. This position is what characterizes this thesis is an immanent critique.

The major obstacle to realizing this accommodation was not some peripheral aspect of her theory, but the conceptual high ground atop which genuine political equality and democratic vitality become available, and toward which all instances of injustice point: participatory parity. Leaving the groundwork intact – the perspectival dualism of redistribution and recognition –, the first two chapters focused on unsettling the concept of participatory parity from its perch. The first angle of attack in this unsettling was to illustrate that Fraser's attempts to dismiss group rights are unfounded. As was shown, there is no necessary connection between group struggles and oppressive practices. In other words, there is no reason to think that struggles for individual freedom and group protection inevitably run up against each other, leaving the philosopher with the dilemma of deciding which is the appropriate subject of justice.

At this stage of the analysis the challenge only lurked in the wings; it was not until it was shown how groups can be not only the subjects of injustice but also the agents of change that this challenge would fully test the integrity of Fraser's theoretical structure.

To root this challenge in a contemporary example, I considered the struggle for self-determination in which Kahnawá:ke Mohawks have been engaged for the better part of modern Canada's existence. Their objection to Canadian practices of integration is certainly evident; what required demonstration was how their struggles were analysable from the perspective of recognition and redistribution and how those struggles respected or transgressed Fraser's strategic provisions. Not surprisingly for any marginalised group struggling against the powers of a modern state, the actions of certain Mohawks did occasionally breach

the limits of defensible political conduct. But the point was not to laud the otherwise noble efforts of Kahnawakehró:non. Their struggles provide an incisive critique because they afford a view of the failures of programmes that are, either directly or indirectly, inspired by participatory parity. At the same time, these struggles allow us to see how it is possible to move past such dated arrangements.

While their political actions provide much guiding light, their objectives still had to wrestle with other elements of Fraser's theory. In the third chapter, I argued that Fraser cannot claim ignorance of these issues because she is more concerned with bounded democracies that are not challenged by the assertions of national minorities. By the same token, it was shown that the unbounded nature of cultural and political exchange between Kahnawá:ke and the federal government does not mean that a one-size-fits-all approach to deliberative democracy follows; some variance must be admitted. Overcoming this final round of objections brought us to the point where we had good reason to think that the self-determination claims of national minorities should be included in Fraser's approach. The question was, how to do it? Three potential solutions were considered, and the one recommended suggested that participatory parity be replaced with concept of political sovereignty, in order to comprehend both the demands for integration and for self-determination under one over-arching principle.

I did not intend to offer a strong defence for the viability of this solution. It served rather to provide a possible avenue, among the others considered, to pursue in rendering Fraser's approach more comprehensive. Her work over the past two decades has advanced thinking about justice at an unmet pace. Most recently, she has insisted that the new proximities of social responsibility and political organization mean that we can no longer rely on models of societies into which we are born and in which we die. There are certainly new dynamics of the present conjuncture that theorists must take into account. At the same time, one must be cautious not to succumb to the amnesia that coming to terms with a new paradigm can entail. At a minimum, this thesis served as a reminder of the endurance of Canada's colonial legacy, as a warding off of this amnesia. Beyond this, it is hoped that I have shed some light on how the theorist might envision this legacy's demise.

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