

# ‘Nothing Spells Freedom Like a Hooters Meal’\*

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## 1 Introduction

Enlightenment universalism has a long and rich history. Although often associated with Kant’s motto ‘Have courage to make use of your *own* understanding!’,<sup>1</sup> it can be seen as far more than that. Many portray the Enlightenment project as a ‘vastly ambitious program ... of secularism, humanity, cosmopolitanism and freedom.’<sup>2</sup> Described as such, it seems difficult to refute. Who doesn’t favour freedom, or the thought that all men are part of a single moral community? But Enlightenment universalism does not lack critics. Opposition to its core ideas – the counter-enlightenment – is, as Isaiah Berlin rightly remarks, ‘as old as the movement itself.’<sup>3</sup> Just think of the works of Johan Gottfried Herder, Edmund Burke, Joseph de Maistre and Giambattista Vico.

Criticism of Enlightenment universalism has not faded away. Within contemporary philosophy it is still alive and kicking. Many thinkers – from communitarian critics (like Michael Sandel and Alasdair MacIntyre) to postmodernists (such as Jean-François Lyotard and Jacques Derrida); from feminist theorists (like Iris Marion Young and Susan Moller Okin) to agonistic pluralists (such as Chantal Mouffe and Bonnie Honig) – have either rejected Enlightenment universalism altogether or rebutted some of its core metaphysical illusions. Of these illusions, there are two which are well-known: the idea of the subject as ‘disembedded and disembodied,’ and the idea of having found ‘an Archimedean standpoint, situated beyond historical and cultural contingency.’<sup>4</sup> Sandel’s description of the Kantian subject as an ‘unencumbered self’ – the self as ‘independent of its aims and attachments’<sup>5</sup> – nicely illustrates what a criticism of the first type of illusion might look like. As to criticism of the second metaphysical illusion, Seyla Benhabib’s and Iris Marion Young’s democratic ideal of public debate and deliberation between socially embedded citizens is influential.

\* The first part of this title is a quote from Fox News commentator Brian Kilmeade, quoted by Winter as an example of the ‘misidentification of consumer choice with freedom’ (Section 2). I would like to thank Carel Smith, Derk Venema and two anonymous reviewers of this journal for positive feedback on an earlier version of this paper.

- 1 Immanuel Kant, *Practical Philosophy*, ed. M.J. Gregor (Cambridge: Cambridge University Press, 1999), 17. Italics in original.
- 2 Peter Gay, *The Enlightenment: An Interpretation*, vol. 1 (New York: W.W. Norton, 1995), 3.
- 3 Isaiah Berlin, *The Proper Study of Mankind: An Anthology of Essays*, ed. H. Hardy & R. Hausheer (New York: Farrar, Straus, and Giroux, 1997), 243.
- 4 Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Cambridge: Polity Press, 1992), 4.
- 5 Michael Sandel, *Liberalism and the Limits of Justice*, (Cambridge University Press, sec. ed., 1998), xiv.

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Winter's impressive critique of the conventional account of freedom and democracy can be best understood against this background. One of his main claims, after all, is that our current misunderstanding of freedom and self-governance is primarily the result of the strict dichotomy between subject and object that we have inherited from the Enlightenment tradition. Within such a dualist schema the agent is seen as a socially disembedded self and freedom as a form of non-interference. Instead, Winter develops a civic republican account of freedom and democracy in which human beings are seen as fully socially situated and self-governance is seen as a socially constructed and situated capacity.

Whether or not Winter's critique of Enlightenment universalism is correct is a question I cannot pursue here in any great depth. This would not only require a reconstruction of the core ideas of the Enlightenment project – presupposing of course that there is a clearly identifiable set of ideas that was shared by a wide range of eighteenth-century thinkers<sup>6</sup> – but also a systematic comparison with the different points of criticism that Winter has developed throughout his other works. Considering, furthermore, that Professor Winter's criticism has many points in common with the critique put forward by the contemporary philosophers mentioned above (in addition I could have also mentioned Bellah's *Habits of the Heart* [1985] or Lasch's *The Culture of Narcissism* [1978]) posing such a question is not the most interesting or productive endeavour.<sup>7</sup>

Instead, this paper critically reconstructs Winter's civic republican take on freedom and democratic self-governance. Its main aim is to show that Winter's reconceptualized notion of freedom and self-governance – although highly relevant and thought-provoking – needs to be further clarified to form the basis of a truly persuasive and comprehensive theory of democracy. Some important questions are not adequately addressed.

Section 2 will argue that Winter's analysis of the idea of freedom-as-transcendence leaves two important issues 'relatively' untouched: the precise details of his anti-collectivist claim (2.1), and the necessary conditions for the possibility of a moral point of view (2.2). As a consequence it is difficult not only to determine how Winter can distinguish between freedom and lack of freedom, but also to assess how limited or radical Winter's critique of Enlightenment universalism really is.

Section 3 deals with Winter's civic republican account of democratic self-governance. Winter's account, as will be argued, leaves three issues in large measure

6 James Schmidt, 'What Enlightenment Project?', *Political Theory* 28 (6) (2000): 736.

7 There are, of course, also many interesting parallels between Winter's analysis of the modern notions of subjectivity and freedom and important philosophical 'classics,' like Marx' critique of Bruno Bauer in *On The Jewish Question* (1844), Macpherson's notion of possessive individualism in *The Political Theory of Possessive Individualism* (1962), and Marcuse's critical account of technological rationality in *One Dimensional Man* (1964). Given these parallels a relevant question arises which I shall not address in my paper: to what extent does Winter's theory differ from the other accounts already given?

unaddressed: the common symbolic space of democratic communities (3.1), the status of political participation (3.2), and the political institutions that are needed to counter political apathy (3.3). Consequently, confusion arises as to which version of civic republicanism Winter defends. Indeed, it is problematic to understand how we can 'reclaim the values of democracy and self-governance' in a world in which citizens have 'internalized a passive ethic of spectatorship and consumerism.'<sup>8</sup>

Sections 2 and 3 will not only draw on Winter's paper in this issue but also on his other papers on freedom and self-governance. Finally, section 4 contains some concluding remarks. No systematic attempt, however, will be undertaken to reduce the claims made in sections 2 and 3 to a single argument.

## 2 Freedom-as-Transcendence

A substantial part of Winter's paper consists of a systematic critique of the modern notion of freedom-as-transcendence. Freedom – according to this notion – is seen as 'the absence or overcoming of constraint.' (Section 0) Winter replaces this modern story of freedom with an account in which freedom is seen as 'a function of social context.' (Section 3) This section will argue that although Winter's critique of freedom-as-transcendence is lucid and clear, his alternative notion of freedom could gain in relevance and persuasiveness by means of a fuller contemplation of the following two issues.

### 2.1 *Freedom and Lack of Freedom*

Critics of Enlightenment universalism often follow the same argumentative pattern. They begin by describing certain negative social, political or economic practices, and proceed to attempt to trace these back to the Enlightenment vision of morality and politics.<sup>9</sup> Winter's critique of the conventional ideas of freedom and democratic self-governance is no different.<sup>10</sup> He begins his paper by pointing at several 'setbacks and breakdowns' of two trends characteristic of our current era of globalization: the spread of market economy and democracy. These setbacks – like the coexistence in China of consumerism with political repression and state-capitalism – are then linked to a 'highly false and fetishistic concept of individual freedom.'<sup>11</sup> (Section 0) Winter also mentions two other deplorable developments within contemporary Western societies: consumer culture and political

8 Steven L. Winter, 'When Self-Governance Is a Game,' *Brooklyn Law Review* 67 (4) (2002): 1204-5.

9 Schmidt, 'What Enlightenment Project?', 763.

10 Although he develops a more nuanced view in Steven L. Winter, 'What Makes Modernity Late?', *International Journal of Law in Context* 1 (1) (2005): 61-80.

11 Steven L. Winter, 'Down Freedom's Main Line,' in this issue. All further citations of this article are included directly in the main body of the text.

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apathy. Both developments are seen as the result of a specific conception of the individual – the individual as rational and self-directing.<sup>12</sup>

The effects of this conception are pervasive, penetrating a broad range of spheres of life: from economics and politics, to science and religion.<sup>13</sup> The modern concept of the individual ‘organizes and distorts’ these spheres. Within economics, for example, this conception translates into the idea that human beings will try to rationally maximize their self-interest while avoiding unnecessary short-term risks. The financial crisis of 2008, however, has shown that this model of rational agents did not lead to efficient and reliable markets. Banks were more than willing to provide risky loans and future homeowners to take out these questionable mortgages. Within politics, the notion of self-directing agents takes the form of self-governance. Citizens want to determine the fate of their society and the way in which it is organized. As a result of the underlying concept of the individual, however, the political sphere has become increasingly passive and is being undercut by a growing dichotomy between the ideas of state and individual. Citizens behave like passive consumers and see policies and laws as a violation of their right to choose their own way of life.

The driving force behind this modern conception of the individual is the ‘dualist schema of subject and object’ that we inherited from the Enlightenment. Although this schema has made modern science and economic progress possible, it comes with a clear downside. The subject, according to Winter, is not only isolated from ‘the objects of its inquiry,’ but also from its own history and other subjects. Subject and social context are forced apart, the latter being reduced to an ‘external condition’ and a mere ‘source of constraint.’ (Section 2)

Thomas Hobbes’ view of freedom in *Leviathan* (1651) is often mentioned in this regard. ‘A free-man,’ according to Hobbes, is ‘he, that in those things, which by his strength and wit he is able to do, is not hindred to doe what he has a will to do.’<sup>14</sup> The core of this definition is the idea of non-interference, of not being hindered by others or the state.<sup>15</sup> Freedom, as a consequence, is seen as self-dependence and will result in ‘atomism, alienation, and social fragmentation.’ (Section 0)

Winter strongly opposes this idea of freedom as non-interference. Instead he opts, as already mentioned above, for ‘freedom as a function of social context.’ According to this notion, freedom ‘requires others.’ In this sense, freedom is a

12 The effects of these processes are, of course, more complex than I sketch here. As one of the anonymous reviewers of this journal rightly remarked, political apathy and the consumer culture can also be explained in terms of the *internalization* of the idea of the individual as rational and self-directing. Not only has this idea had a tremendous effect on the way in which liberal society has been organized in the past, but it has also been internalized and consequently vehemently ‘supported’ by individuals themselves.

13 Below we will follow Steven L. Winter, ‘Reimagining Democracy for Social Individuals,’ *Zygon: International Journal of Religion and Science* 46 (1) (2011): 225-26.

14 Thomas Hobbes, *Leviathan*, ed. R. Tuck (Cambridge: Cambridge University Press, 1996 [1651]), 146.

15 Quentin Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998), 7.

'necessarily shared, socially situated capacity.' (Section 0) Although I agree with Winter in this regard, his paper does not adequately explain how such a notion of freedom can help us to distinguish between freedom and lack of freedom or between 'free and unfree actions.' (Section 0) Let us go back to Hobbes' work to further clarify this claim.

'Let us consider men,' Hobbes writes in *Philosophical Rudiments Concerning Government and Society* (1651), 'as if but even now spring out of the earth, and suddenly, like mushrooms, come to full maturity, without all kind of engagement to each other.'<sup>16</sup> Although this quote should primarily be seen against the background of Hobbes' reflection on the hypothetical state of nature, it nonetheless exemplifies the first metaphysical illusion that I mentioned above. The modern individual is seen as a 'disembedded and disembodied' self. This metaphysical illusion of Enlightenment universalism is the main object of Winter's analysis when he deals with the conventional notion of freedom.

Winter defends an *anti-atomist* position in this regard. It is anti-atomist because it insists that 'the notion of the solitary individual is essential bogus.'<sup>17</sup> People fundamentally depend on each other and are social creatures:

'We are each of us the products of particular forms of life and possessed of and by particular perspectives. When, as a citizen, I adopt a policy position on some important issue of the day, I come to that decision already constituted by the social practices and conditions, historical traditions, and cultural understandings that make me who I am.' (Section 1)

Atomism stands opposed to holism. Unlike atomists, holists argue that distinctive human capacities (like the ability to reason) cannot be developed by solitary individuals. Social relations are necessary to properly enjoy those capacities. Winter's anti-atomist critique seems rather straightforward. The social is not something that the self can simply 'choose to reject or affirm as her own.'<sup>18</sup>

If the self is *thoroughly* socially constructed, however, an important problem appears on the horizon. To what extent can Winter adequately solve the *individualist difficulty* that he mentions in his paper? Is Winter's socially situated self really capable of self-governance? His anti-atomist claim merely explains that the agent of self-governance cannot be the 'autonomous self of pure will'<sup>19</sup> or the Kantian transcendental subject. But it does not show the socially constructed self to be really capable of self-governance.

16 Thomas Hobbes, 'Philosophical Rudiments Concerning Government and Society,' in *The English Works of Hobbes*, ed. W. Molesworth (London: John Bohn, 1839), 109.

17 Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), vii. For the distinction between anti-atomism and anti-collectivism we draw on Pettit's work.

18 Winter, 'Reimagining Democracy,' 237.

19 Ibid., 234.

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At this point the distinction between individualism and collectivism comes into play. Theories are anti-collectivist when they reject ‘the idea that individuals are the playthings of aggregate social forces.’<sup>20</sup> Contrary to the atomism-holism distinction, the individualism-collectivism distinction does not deal with the horizontal relation between people but with the vertical one. It focuses on the question of whether individual autonomy is compromised by social forces.<sup>21</sup>

From his paper it is clear that Winter defends an anti-collectivist claim. He never argues that ‘personal self-governance is illusory’ (Section 4), nor does he deny that we can ‘distinguish between more or less autonomous modes of being.’<sup>22</sup> The main difficulty with his analysis, however, is that it insufficiently clarifies how such a distinction between freedom and lack of freedom can be made. What makes socially constituted selves autonomous? And in what precise way are ‘personal and collective self-governance ... mutually constitutive and reinforcing’? (Section 4) The examples of the torture chamber and the demonstrations on Tahrir Square are not very helpful in this regard.

Due to this lack of clarification, his theory constructs a fragile balance between embracing and dismissing a form of post-Enlightenment universalism: sometimes swinging to the left, sometimes to the right. The following remark illustrates this ambiguity:

‘the conceptual vocabulary of democracy depends on concepts of the self, agency, and autonomy made problematic – *if not, indeed, obsolete* – by disciplines ranging from psychoanalysis through post-structuralism and contemporary cognitive science.’<sup>23</sup>

Less ambiguous, but also illustrative of the difficulty of retaining a meaningful form of agency and autonomy, is what Winter says about sexual autonomy in particular and autonomy generally: ‘Sexual autonomy ... can only be exercised within an interdependent, *highly constrained*, and already constructed world.’<sup>24</sup>

I am not claiming that the notion of a situated self is incompatible with ideas such as agency and autonomy. Theorists such as Seyla Benhabib and Charles Taylor, for example, have clearly shown that this need not be the case. I am merely arguing that more needs to be said regarding the specifics of individual autonomy and the anti-collectivist claim.

Arguing that autonomy can only be nourished by ‘attending to the interactions between a situated individual and some larger, interdependent set of social rela-

20 Pettit, *Republicanism*, vii.

21 Philip Pettit, ‘Analytical Philosophy,’ in *A Companion to Contemporary Political Philosophy*, vol. 2. Second edition, ed. R.E. Goodin, P. Pettit, & T. Pogge (Malden, MA: Blackwell Publishing, 2012), 26.

22 Winter, ‘Reimagining Democracy,’ 231.

23 *Ibid.*, 230. Italics are not in the original.

24 *Ibid.*, 238.

tions,'<sup>25</sup> doesn't yet explain how autonomy can be exercised or how we can 'distinguish between more or less autonomous modes of being.' Or put differently, claiming that freedom-as-transcendence is 'unattainable' (Section 1) still leaves open the question whether reason can have transcending elements. Some form of transcendence, as Marcuse rightly claimed, is necessary to counteract the consumer culture in advanced industrial civilization.<sup>26</sup>

## 2.2 Post-Enlightenment Universalism?

Our main argument in the last section was that Winter's analysis needs further clarification in order to be properly capable of distinguishing between different degrees of freedom. In this section we will focus on the question whether Winter embraces or dismisses any form of post-Enlightenment universalism. Does Winter completely abandon the *universalist* presuppositions of the Enlightenment project, or does he still stick to a stripped down version of Enlightenment universalism?

Of these two alternatives, only the first seems difficult to square with Winter's defence of political agency and deliberative discourse. Although Winter strongly relies on the postmodern critique of subjectivity, he is neither a postmodernist nor a relativist. Democratic self-governance, according to Winter, requires 'a reflective, inclusive public discourse'<sup>27</sup> that is based 'on communicative relations of equality, solidarity, and mutual recognition.' (Section 0) What is more, Winter does not argue that 'modern subjectivity lacks moral value.' (Section 2)

But if Winter really opts for a post-Enlightenment form of universalism an important question immediately arises that is not adequately dealt with in his paper: whether some form of a 'universalistic' moral point of view is still possible. Let us return to the second metaphysical illusion that was mentioned in the introduction to further clarify this claim. This illusion refers to the fact that many Enlightenment universalists claim to have found an Archimedean moral standpoint that is situated beyond the historical and cultural contingencies of contemporary society (a 'view from nowhere' to use Nagel's expression). Examples that are often mentioned in this regard – rightly or wrongly – are Rawls' original position and Habermas' ideal speech situation.

Where does Winter's civic republican theory stand regarding this second illusion? Given his scepticism of the 'Enlightenment's dualist schema of subject and object' and his anti-atomist claim, we can infer that he is critical of the idea of an Archimedean standpoint. This is also confirmed by Winter's view on self-reflection:

'Just as I eye myself in the mirror with all the subjectivity of my already extant self-image – which depending on who I am may be unrealistically self-

25 Ibid., 235.

26 Herbert Marcuse, *One-Dimensional Man: Studies in the Ideology of Advanced Industrial Society*, Second edition (Boston, MA: Beacon Press, 1991 [1964]), 13.

27 Steven L. Winter, 'Citizens Disunited,' *Georgia State University Law Review* 27 (4) (2010): 1140.

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flattering or witheringly self-critical – the process of self-reflection cannot be innocent, untainted, or (in the Kantian sense) autonomous.’ (Section 1)

Both self and reason are socially situated and socially constructed. The fact, however, that reason cannot be fully self-transparent or self-grounding, doesn’t imply that we need to drop the possibility of developing a universalist moral theory that specifies an impartial or moral point of view. There is no need to abandon, in other words, the epistemological perspective of Enlightenment universalism.<sup>28</sup> Moral discourses can still lead to some form of universalizable content.

Seyla Benhabib, for example, effectively distinguishes two important steps in the formulation of a post-metaphysical universalist position – i.e., an Enlightenment universalist position freed from its metaphysical illusions. The first step is the shift from a substitutionalist to an interactive and communicative form of universalism. The second step is recognizing the fact that the subjects of reason are socially situated and socially dependent selves. They are ‘finite, embodied and fragile creatures, and not disembodied cogitos or abstract unities of transcendental apperception.’<sup>29</sup>

Interactive universalist moral theories defend the importance of discursive legitimation but take ‘difference as a starting point for reflection and action.’<sup>30</sup> As a consequence universality is seen as

‘a regulative ideal that does not deny our embodied and embedded identity, but aims at developing moral attitudes and encouraging political transformations that can yield a point of view acceptable to all. Universality is not the ideal consensus of fictitiously defined selves, but the concrete process in politics and morals of the struggle of concrete, embodied selves, striving for autonomy.’<sup>31</sup>

Interactive universalism, in that sense, incorporates Winter’s critique of Michelman’s theory of discursive legitimation. ‘The “self” that steps outside itself’ is precisely ‘the very same situated self.’ (Section 1) Whether Winter would accept this reformulation of Michelman’s theory of discursive legitimation, however, is difficult to determine.

Winter also distinguishes two complementary moves when he deals with the question of how to maintain some form of agency and autonomy despite the realization that freedom-as-transcendence is both impossible and empty. Although these two moves closely resemble Benhabib’s, there is an important difference. The first move is to reconceptualize freedom as ‘a function of social context.’ (Section 3) Freedom in this sense is the ‘situated capacity to transform – rather than

28 Benhabib, *Situating the Self*, 4.

29 Ibid., 5.

30 Ibid., 153.

31 Ibid.

transcend – the conditions in which we live.’ (Section 3) The second step, as far as I can see, is to add the ‘normative claim that freedom requires and depends on relations of commitment, solidarity, and mutual recognition.’ (Section 3)

These two moves, however, fail to solve a number of problems. First, the problem of how to ‘distinguish between more or less autonomous modes of being’ (see section 2.1). Secondly, they do not say much about the construction of a moral point of view, nor thirdly whether a defence of universalist moral theory is still possible. Winter could, of course, reply that he is not really opting for a form of post-Enlightenment universalism. But this claim does not fit well with the core of his paper. Winter, as I argued before, is neither a postmodernist nor a relativist. This also follows directly from his critique of Robert Pippins’ attempt to unite situated reason with ‘a Kantian understanding of autonomy as self-legislation.’ (Section 2) A Hegelian project can be defended, but not ‘on anything like Hegel’s own terms.’ (Section 2)

### 3 A Civic Republican Account of Self-Governance

What about the second main notion of Winter’s analysis: the idea of collective self-governance? Self-governance, according to Winter, ‘is only possible through collective action.’ (Section 4) Like freedom, it is a socially constituted and socially constructed capacity. Self-governance is ‘not a matter of self-legislation but of effective social action that depends on cooperation and coordination.’ (Section 4) Although this notion of self-governance looks convincing at first sight, this section will argue that three essential elements of Winter’s account of civic republican self-governance could be more adequately dealt with.

#### 3.1 *What Holds Political Societies Together?*

Civic republicanism is a very broad church that includes different theoretical positions, such as radical democracy or communitarianism. Philip Pettit, for example, clearly distinguishes his republican theory of non-domination from the populist tradition of republicanism. The latter form of republicanism – labelled civic republicanism – conceives of ‘democratic participation as one of the highest forms of good’ and longingly recalls the idea of close, homogeneous societies.<sup>32</sup> State representatives, in such a model, are only needed when no other options are available.

Chantal Mouffe, a strong proponent of the radical democratic or radical pluralistic version of civic republicanism, gives a similar critique of the communitarian version: ‘It is not a question of moving from a “unitary unencumbered self” to a “unitary situated self,” the problem is with the very idea of a unitary subject.’<sup>33</sup> We have to accept the fact that modern societies are radical pluralist in character.

32 Pettit, *Republicanism*, 8.

33 Chantal Mouffe, *The Return of the Political* (New York: Verso, 1993), 20.

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Human beings are always ‘multiple and contradictory subjects, inhabitants of a diversity of communities.’<sup>34</sup>

So where does Winter’s analysis stand within this broad church? His recent work on freedom and democracy does not present us with a ready-made answer. Although Winter would probably argue against a utopian form of communitarianism – like Sandel’s version of civic republicanism – there is no explicit reference to this issue in his recent work. The only reference that I was able to find is located in an article from the eighties. There Winter defends a perspective on transcendent individualism that does not fully coincide with the position he defends in his paper on this issue.<sup>35</sup> In his paper from the eighties, however, Winter does claim that

‘a utopian communitarianism might recreate the problem of collectivism that individualism purported to solve. It might allow the whole (read: government) to do things to the part (i.e., the individual) in the name of the greater good. This critique, however, misconstrues the communal enterprise that I am advocating. I do not argue that we should discard individualism, nor that we should abandon the salutary notion of constitutional rights.’<sup>36</sup>

From this we can gather that Winter – unlike Sandel or MacIntyre – will not reject liberal pluralism. Whereas Sandel and MacIntyre tend to combine anti-atomism with a limited form of collectivism, Winter defends both anti-atomism and anti-collectivism. Given the many footnotes to Charles Taylor’s work, it is more likely that Winter’s theory of freedom and self-governance is closer to the civic republican position of Taylor (and Michael Walzer). The fact that Winter sees Mouffe’s agonistic pluralism as ‘an important complement to contemporary republicanism’<sup>37</sup> also testifies to this conclusion. Taylor’s and Walzer’s revival of the civic republican tradition, according to Mouffe, is very close to radical democracy.<sup>38</sup>

The fact that it is not immediately clear which version of civic republicanism Winter defends, however, further complicates his solution to the *institutional difficulty* – how collective autonomy can be reconciled with modern conditions of disagreement and pluralism (Section 1) – and shows that his reinterpretation of democratic governance needs further refinement.

The dominant strategy for solving the institutional difficulty, according to Winter, is one of discursive legitimation. The ‘gap between self-sovereignty and majority rule’ is bridged by positing ‘conditions of participation sufficiently fair

34 Ibid., 34.

35 I have to admit, of course, that I haven’t read all of Winter’s work. I limit my analysis to his work on freedom and self-governance.

36 Steven L. Winter, ‘The Metaphor of Standing and the Problem of Self-Governance,’ *Stanford Law Review* 40 (6) (1988): 1514.

37 Steven L. Winter, *Democracy Ten Years After 9/11* (2011), 1140n, <[http://law.wayne.edu/pdf/democracy\\_ten\\_years\\_after.pdf](http://law.wayne.edu/pdf/democracy_ten_years_after.pdf)>.

38 Mouffe, *Return of the Political*, 19.

and inclusive to persuade the minority nevertheless to identify with the result as their own.' (Section 1) This route, however, is untenable due to the fact that it depends on the questionable modern interpretation of self, agency, and autonomy.

The only way in which the institutional difficulty can be solved, in Winter's opinion, is on the basis of two claims: to acknowledge the fact that the self of self-governance is a socially constituted self, and to reinterpret self-governance as the *shared* and *collective* 'ability to exercise initiative with respect to one's fate.' (Section 4) Although Mouffe would agree with the first claim, her agonist notion of politics does not necessarily square well with the second. Characteristic of the domain of the political, according to her, is a clear-cut distinction between friend/enemy. There can be no politics without competing collective identities, without a differentiation between we/they. This contrast constitutes its 'condition of possibility.'<sup>39</sup>

But what Mouffe, in contrast to Winter, does recognize, is that the institutional difficulty can only be solved on the basis of a minimal political consensus among citizens. Although she doesn't deny that the we/they distinction could become the 'locus of an antagonism,' she stresses the importance of a 'common symbolic space' within which the conflict between 'we' and 'they' takes place.<sup>40</sup> Within this space the conflicting parties recognize each other's legitimacy. If Winter, however, both rejects a utopian form of communitarianism (because of the problem of collectivism) and a discursive form of legitimacy (because of the modern conception of the individual on which it is based), he needs to add a third claim to the two mentioned above: an analysis of what this 'common symbolic space' might look like.

Take the major demonstrations at the Tahrir Square in Cairo. Winter is right in arguing that these demonstrations clearly show the potential of an emancipatory politics that is based on 'relations of mutual recognition and solidarity.' (Section 3) However, what these protests also show is that feelings of belonging and unity are often short-lived. The transformation in gender relations that Winter mentioned, as he himself also recognizes, were of short-duration. Sexual harassment quickly returned in daily life. But if the political is inherently defined by conflict, we need some form of consensus to prevent agonistic relations from becoming antagonistic.

### 3.2 *Political Apathy and Political Participation*

In his paper Winter gives a rather broad definition of democracy. Democracy is seen as 'the sharing of authority with others under conditions of mutual recognition and respect.' (Section 0) The crucial question is, of course, what this 'sharing of authority' precisely entails. Given his appreciation of Machiavelli's republican(ist) views, one might expect Winter to defend a contestatory form of democ-

39 Chantal Mouffe, *On the Political* (London: Routledge, 2005), 16.

40 *Ibid.*, 16, 20.

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racy. Within such a model of democracy political authority is primarily seen as a form of control and contestation. The people should not only be able to actively control the powers of government, by means of 'electoral arrangements whereby issues are decided by plebiscite or representatives who are chosen to decide them,' but also be able to scrutinize government laws and policies and 'weed out those that do not answer to common, recognizable interests.'<sup>41</sup>

Despite his appreciation of Machiavelli's republicanism, the emphasis of Winter's civic republican theory is not on constitutional restraints, checks and balances, or contestation. Instead he strongly stresses the importance of 'equal participation in determining the terms and conditions of social life.' (Section 0) Self-governance is mainly a 'function of contribution and not control':

'The democratic ideal designated by *isonomia* is not one that promises to each individual actual ... authorship of the laws. Rather, it promises the dignity of equal participation in governance under terms of mutual recognition and respect.' (Section 4)

But what are we left with if political participation is not primarily seen as a vehicle for control and contestation? At this point there is a strange leap in Winter's argument. Although highly critical of Michelman's theory of discursive legitimation (see above), Winter seems to opt for a model of democracy that precisely embraces the idea of discursive legitimation as its core: the theory of deliberative democracy.

According to deliberative democrats, political opinion and will-formation should be conducted on the basis of a public exchange of reasonable arguments under the rather general conditions of freedom, equality and inclusiveness. Winter's wording of democratic self-governance fits perfectly within such a model of democracy. Democratic self-governance, according to Winter, is constituted by deliberative discourse – 'a reflective, inclusive public discourse that respects differences and promotes responsibility and solidarity.'<sup>42</sup> Democracy, in other words, is based on public and inclusive deliberation among citizens.<sup>43</sup> The importance of communicative relations furthermore, also seems to form the core of his notion of freedom: 'freedom requires others – that is, dependence – and is made possible by communicative relations of equality, solidarity, and mutual recognition.' (Section 0) At this point Winter's analysis needs to be further clarified. Can discursive legitimation be simultaneously repudiated and embraced? Can Winter really have his cake and eat it too?

41 Philip Pettit, 'Legitimate International Institutions: A Neorepublican Perspective,' in *The Philosophy of International Law*, ed. Samantha Besson & John Tasioulas (Oxford: Oxford University Press, 2009), 145; idem, 'Democracy, Electoral and Contestatory,' *Nomos* 42 (1) (2000): 114-15.

42 Winter, 'Citizens Disunited,' 1140.

43 Winter, 'What Makes Modernity Late?,' 78.

But there is also a second strange leap in Winter's analysis of democratic self-governance and political participation. In criticizing the 'passive ethic of spectatorship and consumerism' Winter makes the following claim: 'Instead of looking to politics and the public sphere *for fulfilment*, we are prompted to find meaning in our lives through consumption and other forms of personal gratification.'<sup>44</sup> But if democratic participation is seen as a form of fulfilment, are we then to conclude that Winter defends a participatory form of democracy in addition to a deliberative theory?

Although this seems a rather insignificant shift at first sight, an important problem does crop up. Even though similar in many regards, deliberative and participatory democrats strongly oppose their respective point of views of political participation. Deliberative democrats, after all, will never argue that participation should be seen as a form of fulfilment or as 'one of the highest forms of good.' They are, in fact, highly critical of such a view of political participation. And probably rightly so, as both views of political participation pull in different directions. Winter's analysis, therefore, also needs to be further clarified regarding this issue. Can political participation simultaneously be seen as a vehicle for deliberative discourse (and of course also public autonomy) and as a form of fulfilment?

### 3.3 *How to Encourage Political Participation?*

Regardless of the specific status that is attached to political participation, two questions still remain to be dealt with if Professor Winter wants to defend a comprehensive civic republican theory of democracy: (1) which skills and virtues are needed to sustain democratic governance and (2) how can political participation and public-spiritedness be encouraged among citizens who are politically disinterested or even apathetic?<sup>45</sup> Winter only answers the first question in detail. Democratic self-governance demands such skills as 'empathy, negotiation, compromise, cooperation, recognition of and respect for the other.' (Section 2) In addition, citizens must 'insist on public control of the institutions of public power' (Section 4) and 'place the common good before his or her own.' (Section 4)

What about the second question? How can political participation be encouraged and what kind of political institutions are best suited to counter political apathy among citizens? Winter raises this question in several of his articles. And given his civic republican account of freedom – which entails 'an active, social dimension' (Section 4) – there is no way around this question. Democratic self-governance is not something that can be taken for granted. It should be seen as a practice that needs to be reified and cultivated.

44 Ibid., 71. Italics added.

45 Although these questions, of course, gain in relevance if Winter is defending a participatory view of democracy instead of a deliberative one.

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This second question is, of course, extremely difficult to answer. Political apathy, according to many, has been deeply rooted in contemporary Western societies.<sup>46</sup> One cannot expect Professor Winter to present us with a fully worked out theory in this regard. Nevertheless, readers would greatly appreciate some general guidelines regarding this topic. Addressing questions of participation and representation, moreover, is *essential* if Winter wants to present us with a convincing account of democratic self-governance. Without a more elaborate account of representation and participation, after all, it remains extremely difficult to see how 'freedom as a function of social context' can lead to a political constellation in which citizens are actually free to partake in processes of collective self-governance. To instigate such a response I end this paper by taking a quick glance at Richard Dagger's theory of civic republicanism.

Although I do not necessarily agree with Dagger, his position is fruitful to start with. Dagger, after all, defends a version of liberal republicanism that closely resembles Winter's theory in many important aspects. Both theorists argue against excessive individualism, emphasize social embeddedness, and try to incorporate a form of *holist individualism*. Holist individualism, as is well-known, is 'a trend of thought that is fully aware of the (ontological) social embedding of human agents, but at the same time prizes liberty and individual differences highly.'<sup>47</sup>

Dagger examines two strategies for overcoming political apathy. The first – a form of instant direct democracy based on 'electronic voting devices in the homes of all citizens'<sup>48</sup> is inconsistent with liberal republicanism. The second strategy – adding compulsory voting and compulsory self-registration for voters to the current system of representative government – is not. Supplementary to these two changes in the voting system, Dagger also embraces attempts to establish and support local political forums and deliberative opinion polling. The specifics of these two strategies are not really relevant to our case. The main reasons for embracing the second and condemning the first are.

Dagger's argument against instant direct democracy is not that citizens are not willing to participate in such a system. Rather he rejects it on the basis that it doesn't 'instill a heightened sense of responsibility in the citizen' and because some 'form of representation is necessary ... if questions are to be formulated properly and inconsistent demands are to be reconciled.'<sup>49</sup> This last point of course, raises the very interesting question to what extent political representation should be seen as an integral part of democratic participation.

46 An interesting question is of course whether Winter is right to be so pessimistic regarding the political behaviour of citizens. I cannot, however, address this question here.

47 Charles Taylor, 'Cross-Purposes,' in *Liberalism and the Moral Life*, ed. N. Rosenblum (Cambridge, MA: Harvard University Press, 1989), 163. See also Charles Taylor, *Hegel and the Modern Society* (Cambridge: Cambridge University Press, 1979), 155-57.

48 Richard Dagger, *Civic Virtues: Rights, Citizenship, and Republican Liberalism* (New York: Oxford University Press, 1997), 136.

49 Dagger, *Civic Virtues*, 141, 143.

Dagger's argument for compulsory voting and compulsory self-registration is a rather pragmatic one. Although compulsory voting and compulsory self-registration merely treat the symptoms and not the disease of political apathy itself, they force citizens to consider the importance of political participation and give them a forum to express their social and political discontents. Voting, in that sense, 'is a step toward other, more demanding forms of political participation.'<sup>50</sup>

I want to end this section by posing two general questions: (1) to what extent can these two strategies for overcoming political apathy complement Winter's civic republican theory of freedom and self-governance?, and (2) could Winter agree with Dagger's arguments against the first strategy? One of the reasons for asking this last question is because both deliberative and participatory democrats have a tough time incorporating the idea of representation in their models of democracy. A more important reason, however, deals with the pillars on which Winter's civic republican theory of self-governance is build. As long as questions related to representation and participation are not adequately solved, the basis of Winter's theory will have all the characteristics of quicksand.

#### 4 Concluding Remarks

To what extent is a post-Enlightenment defence of universalism still possible in a world in which both human beings and reason are socially embedded and socially constituted? And how can we inspire political participation if many 'prefer to play the part of the citizen-consumer?'<sup>51</sup> These were two of the guiding questions for my discussion of Professor Winter's account of freedom and self-governance. Considering that I agree with many of Winter's claims, this paper does not present a full-blown critique of his arguments, but merely the posing of some critical questions for further clarification. Some of these questions are based on the presumption that Winter still defends a version of post-Enlightenment universalism, others are not. So even assuming that I misinterpreted the consequences of Winter's critique of the 'Enlightenment's dualist schema of subject and object' – i.e., that he does not want to retain a version of the epistemological perspective of Enlightenment universalism – some important questions will still remain. Given, however, that Winter in different papers repeatedly argues that 'communicative relations of equality, solidarity, and mutual recognition' are an important aspect of and maybe even necessary condition for democratic self-governance, defending a relativist position seems rather inconsistent. Does it really make sense, after all, to defend a relativist position (perhaps one similar to that of Richard Rorty) and – at the same time – argue that some concepts of individual freedom and democracy are false?

50 Ibid., 150.

51 Ibid., 132.