

Pitfalls of consensus-orientated dialogue

The German Islam Conference (Deutsche Islam Konferenz)

This article discusses one deliberative approach to dialogue as conceptualized by the philosopher Jürgen Habermas and brings this into a conversation with the current dialogue practice of the *Deutsche Islam Konferenz* (DIK) in Germany. This ongoing dialogue forum was initiated by the Ministry of the Interior in the autumn of 2006 in order to enact a structured conversation with Muslims and as a means of recognising them as 'German Muslims'. My main argument is twofold. Focusing on Habermas's ideal of dialogue as a consensus oriented rational discourse of equal citizens in non-hegemonic structures, I will argue, on the one hand, that much of the promise of the DIK to enact a dialogue with Muslims at eyelevel and to recognise them as equal citizens on the basis of the liberal-democratic order has not been fulfilled. With its top-down approach to Muslims as mere *re-actors* the DIK has so far turned out to be much more a governmental technique which aims at reshaping Muslims according to liberal/secular norms. On the other hand, I claim that although the DIK obviously runs counter to Habermas's principles in many ways, it also shares and simultaneously lays bare the difficulties entailed in his consensus orientation, and, more importantly, in the secular bias of his approach.

Introduction

In the run-up to the second round of the *Deutsche Islam Konferenz* (DIK)¹ we heard a series of critical voices complaining about the diminishing relevance

1 The Deutsche Islam Konferenz is a dialogue initiative which was created in 2006 by the then Minister of the Interior Wolfgang Schäuble. The central idea was to create an institution by setting up a communication forum between representatives of the government and Muslims of all tendencies. Precise information on the history and structure of the DIK can be found on the home page: <http://www.deutsche-islam-konferenz.de>.

and credibility of this event (Mazyek 2010, Foroutan 2010, Akyün 2010). This general cooling-off, especially of those who, despite the best of intentions to be inclusive, have in fact been the victims of the excluding mechanisms of the event, is due in my view to two inbuilt structural deficiencies which form part of the basis of state-initiated dialogue with Muslims. First, the DIK remains to this day highly hierarchical. This is apparent from its one-sided agenda-setting, its equally one-sided invitation policy and also finally in the process of publishing and recording of the „jointly“ achieved results, which are more or less exclusively controlled and screened by representatives of the state, and are largely self-justifying in nature.²

Second, the basic understanding of dialogue by the main protagonists, which favours normalisation and consensus and tends to reject diversity and dissent, appears to block anything which might lead to a serious commitment to the pluralistic nature of German society. In this article I would like to pursue the second point in particular, by subjecting the DIK to politico-philosophical appraisal, with the aid of which I would like to reflect on the nature of consensus-orientated dialogue (and/or deliberation³). I argue that consensus-orientated dialogue, as practised even in the DIK, is based on liberal, secular assump-

- 2 The government never tires of pointing to the successes of the event, although a number of participants have expressed criticism of the process. As will be shown, there was far less agreement in the discussions than suggested in the published documents, which refer to 'successful meeting of minds' in a 'German value consensus'.
- 3 By deliberation I mean here a participatory theoretical arrangement which aims to include as many people as possible in the procedural character of the political dialogue. Its most important exponents are Jürgen Habermas, Seyla Benhabib and Amy Gutmann.

tions, whose normative and exclusive content is not made explicit and which manifests itself above all in non-conforming utterances.

As the most significant representative of the idea of consensus-orientated dialogue, I will draw on Jürgen Habermas and direct particular attention to his later writings on the ethics of discourse and the role of religious pluralism in the secular constitutional state (cf. Habermas 1981, 1991, 1992, 1993, 2008 and 2009). The DIK is manifestly diametrically opposed to Habermas's dialogue model, with its emphasis on the consensus of rational, ethnically and ideologically neutralised citizens in *non-hegemonic* areas of public life. As Habermas has moreover frequently stressed, his concept of dialogue cannot simply be applied on a one-to-one basis to political and social reality, since it is inherently 'counter-factual'—although this remains a desirable ideal.

With its involvement with the state, its hierarchical structure and its dialogue criteria being set in advance, the DIK is a far cry from Habermas's discourse model. We could immediately argue that the DIK is essentially not 'true' dialogue, but primarily governmental technique and an instrument of state-controlled integration (cf. Peter 2010 and Amir-Moazami 2009a). However this specific exercise of state power is billed as dialogue. Rather than dismissing the DIK out of hand, I am interested in the question of *how* it is so. In this manner, an analysis based on the political theory of the DIK can contribute to closer investigation of these rationalities and identify the weaknesses. And, looking at things the other way round, this particular dialogue practice reveals, strangely enough, that even Habermas's idealised dialogue model has concealed within it a set of basic assumptions with many preconditions, which to some extent reflect the political philosophy of the event.

Hence I do not make any real claim that Habermas or any other deliberative thinkers have inspired the DIK, even though Wolfgang Schäuble in his talks on the fringe of the DIK was fond of referring to Habermas (Schäuble 2006 and 2008). Rather, the DIK is characterised by the lack of critical reflection on what is meant by dialogue.⁴ My starting point is rather, using this concrete dialogue model, to reveal the po-

4 This has become obvious from the various conversations I have had with representatives of the state and initiators of the DIK. In answer to my enquiry as to what exactly the DIK understood by dialogue and which concept of dialogue it based itself on, I was met with stony silence or the response that they had hitherto not given any thought to this.

tential *and* limitations which consensus-orientated dialogue brings with it in an age of value pluralism with liberal/secular assumptions. Applying Habermas it is possible in particular to identify in terms of political theory, areas where the DIK's dialogue process has gone fundamentally wrong so far. Contrary to Habermas the DIK and with it a number of other dialogue initiatives have displayed precisely those exclusion mechanisms which are inimical to deliberative dialogue models, both at a theoretical level as well as at the level of the practical organisation.

Consensus-orientated dialogue on liberal/secular terms

In this section I will confine myself to filtering out from Habermas's complex discourse ethics those aspects which refer to consensus thinking and to the secular character of his model and which in current dialogue practices find an echo with Muslims. Three closely associated argumentation threads which run through Habermas's thinking seem relevant to me here: firstly the basic thought of a certain form of *rational* argumentation, which is closely bound up with the idea of pressure to justify, secondly the consensus orientation and finally a thing which I would term 'secular prejudice'.

As do many other linguistic philosophers, Habermas works from the assumption that speakers never simply describe a state of affairs, but through the act of utterance they invariably expose themselves to the pressure to explain and justify what they say. Communicative behaviour only functions for him between individuals who are prepared to call each other to account and who undertake to give reasons for their own statements. That which is articulated in dialogue must therefore be delivered in language which is understandable and be realisable in the minds of all individuals concerned (Habermas 1991: 111). In order to have access to discussions, the acceptance of certain universal forms of communication is therefore required.

On the other hand communicative behaviour should according to Habermas aim at consensus: 'All those norms of behaviour are valid which all those who could possibly be concerned as participants in rational discussions could accept' (Habermas 1992: 138). For Habermas the basic principle however is that this consensus must not be not pre-structured, but must be *freely arrived at* using fair conditions for discussion. Only through discussion is it possible to arrive at new insights which at the same time have political relevance.

I can only talk of discussion when the sense of the problematised demand for relevance leads the participants conceptually to the conclusion that as a matter of principle a rationally motivated agreement may be achieved, where 'as a matter of principle' expresses the idealised condition: when the argumentation is only conducted openly enough and carried on for long enough (Habermas 1981: 71).

At the same time in Habermas's work essential conditions for dialogue are pre-structured. Above all in his theory of communicative behaviour Habermas highlights the conditions for communication in such a way that a universal structure with normative content is recognisable. In so doing Habermas does not only start with an ideal speaking situation, which includes all citizens to an equal degree and in which the better argument gains acceptance. He also has in mind the ideal of an articulate, reflective and independently thinking citizen who, using rational and universally comprehensible arguments, involves him- or herself in political debates and in this way helps to shape their outcomes. Hence all citizens should enjoy the same equal opportunity of participation in public discussion, provided always that they are able to justify their arguments well and in a rational manner.

According to Habermas, arguments must logically be capable of being articulated regardless of the ideological embedding context, and regardless of conceptions of the Good. Against the background of a liberal theory of justice he finds a distinction, essential for his discourse model, between the *ethical* conceptions of the Good Life, for which diversity needs to be preserved, and the *moral* obligations, which must apply in equal measure to all, and to which obligatory answers must be found in the form of valid norms:

The neutrality of the law *vis-à-vis* ethical differentiations within oneself is explained by the fact that in complex societies the whole of the citizenry can no longer be bound together by a substantive consensus of values, but only by a consensus on the process of legitimate legislation and exercise of power (Habermas 1993: 179).

Thus the ethical stance of a political integration which unites all citizens would need to 'be neutral *vis-à-vis* the differences which exist within the state between ethical and cultural notions of individuals as to what

constitutes the Good in an integrated community' (Habermas 1993: 181). One of his core arguments in *Faktizität und Geltung* says that institutions in democratic states justify their existence through such processes. The citizens are thereby both the subjects as well as the co-formers of the law. The forum in which this inclusive participation of as many as possible takes place, is according to Habermas the public sphere, which one should view as set free from the influence of the state, in which the citizenry however are able to pursue the processes of legislation and administration of justice, comment critically and make amendments in the longer term.

This focus on constitutional norms and their dynamic character should also, and primarily, be seen as an examination of German history and the, in this context, inimical ethnic/romantic idea of nationhood. In the place of an ethnically and *a priori* defined concept of nationhood, according to Habermas, the ideologically neutral constitutional state needs to step in. As suggested in the term 'constitutional patriotism', a term coined by Dolf Sternberger and developed by Habermas, the citizens of a nation state should not base their loyalty on its ethnic foundations. Instead they should define and identify with common constitutional principles agreed on by the nation state, but capable at any time of being re-negotiated through public discourse which is as inclusive as possible.

In his response to Charles Taylor's *Politics of Recognition* Habermas spells this out particularly plainly for culturally diverse contexts. As opposed to a particularist model of the recognition of cultural minorities, as Taylor attempts to render plausible, Habermas is here stressing the diversity-promoting power of universal constitutional norms. True, he does concede that the political culture of a nation state, as reflected in the foundations of its constitution, are 'ethically impregnated' (Habermas 1993: 181). As an example he quotes the historically conditioned close relationship between church and state in Germany. Through the ideal of the participating citizen however there must inevitably arise a diversification of political and ethical culture of a society, manifested ultimately in the diversification of legal norms. Should there be an alteration of the horizon, within which the citizens have expressed themselves through their ethical and political discourses, then the discourses and results would alter. (Habermas 1993: 169.)

As will be shown later, this model also finds an echo in the realities of society. However Habermas's ideal of the rational, self-reflecting and mature citi-

zen, who always learns from and is persuaded by other, better arguments, has been much-criticised from various angles since the beginning of the 1980s.

A frequently voiced criticism therefore leads me to think that asymmetries of power and power techniques, which inevitably pervade liberal and egalitarian societies, are consistently phased out by Habermas's ideal of non-hegemonic discourse. Particularly in ideologically diverse contexts the structurally disadvantaged (religious/communities) will inevitably encounter unequal terms on which to shape the discourse. And here I am referring not only to overt and institutionalised power techniques, but also those which are unspoken, embodied and incorporated, and as a result of this neutralisation, need no translation. Chantal Mouffe for example criticises Habermas and other exponents of deliberative approaches as 'post-political' and/or 'post-democratic', particularly as they attempt to circumvent, by means of striving for consensus, the dimensions of power, conflict and antagonism, all of which are central to *political* struggles. Mouffe raises the objection that consensus invariably operates with exclusion mechanisms, not least because the starting point is from jointly shared background assumptions, which are not made explicit. A recognition of the pluralism which constitutes democracy would be deficient without a recognition of antagonisms.⁵

In addition the objection must be raised—and a number of Habermas's critics have done so—that this highly idealised version of argumentative dialogue fails to meet the needs of those involved in dialogue, and for that matter real speaking situations, since the ideal of the constantly striving citizen is often characterised by undisclosed assumptions. Thus normative conflicts frequently do not involve rational arguments, but are rather a matter of 'irrational' sensibilities, emotions and passions, which militate one against the other (Mouffe 2007: 22).

This also applies to a great extent to the context which interests us here. The thing which as a rule marks out religious movements and religiously motivated utterances is that they take precisely those ethical dimensions to the political agenda, which Habermas, even if he does not seek to exclude them from public discourse, would wish to be translated

into universally comprehensible language. In the process they make available the consensus, as defined above, on what is universally comprehensible, absorbed and consumed.

Whilst Habermas at first paid no attention to religion, he strives in his later works to credit this 'life-worldly' context with high importance, since the latter could potentially cast doubt on the previously unmentioned secular premises of his dialogue model. If his response to Taylor once aimed generally at pointing out the limitations of controlled multiculturalism, then more recently Habermas has more consistently included religious projects as central components of value pluralism. Despite the attempt to broaden his model, which was originally established in the context of linguistic theory and subsequently widened to political and/or religio-pluralistic contexts, this was precisely where the limitations of the attempt became apparent. For it is precisely at this point that the secular character of his discourse model comes into play.

The starting point is the existence of worldwide religious revivalist movements in the twentieth and twenty-first centuries, which made the view of a gradual secularisation of religion look shaky. Habermas asks the meaning of the required division in liberal democracies between church and state *vis-à-vis* this development, and in what way in certain circumstances it must be considered. He discusses a 'classically' secular argument. It states that the democratic constitutional state must be ideologically neutral and and, despite or even as a result of (individual or joint) divergences, must be based on the concept of natural reason. Habermas criticises the too narrowly expressed secularist, rather than 'truly' ideologically neutral determination of the political role of religion and essentially considers two lines of argument which in the sociology of religion have gained credence over the last two decades: first, with the view that religious movements might also have a democracy-furthering influence,⁶ and second, with the assertion that faith is something too comprehensive for it to be simply excluded from the exercise of public reason. He reaches this provisional conclusion:

If we accept this objection, which I would term a violent one, then the liberal state, which with its constitutional guarantee of freedom of religion is clearly bound to protect such entities,

5 Mouffe proposes transforming antagonisms into agonisms. In so doing 'them and us' differences would merely be kept under control, and not kept quiet or overcome through consensus-forming. Mouffe 2007: 22.

6 A prominent exponent of this argument, which is also quoted by Habermas, is Nicholas Wolterstorff (1997).

cannot at the same time expect all of those who are believers to justify their political stances quite independently of their religious or ideological ones (Habermas 2009: 133).

If this sounds like a revision of his works, then Habermas in the next breath places strictures upon it, when he only allows religious discourses in dialogue subject to a general reservation of translation:

Indeed matters of religious certainty within the sophisticated shell of modern society are exposed to an increasing pressure for reflection. But existential convictions which are rooted in religion escape this through what is in certain circumstances their rationally defended link with dogmatic authority of an inviolate core of infallible revelations of the type of unreserved discursive discussion and scrutiny, to which however other ethical life-orientations and ideologies, that is to say worldly 'concepts of the Good' are exposed. (Habermas 2009: 135.)

Habermas understands religion here as something which aids the endowment of sense, which however should not exert any influence without the provision of translation into public discourse, and definitely not in an ideologically neutral state and its legislation. If it urges those of secularist ideology to keep an open mind to the possibility of religious statements containing truth, and to enter into dialogue, then his call for translatability results from an unequivocal hierarchisation of secular and religious arguments:

Under the normative premises of the constitutional state and an ethos of democratic citizenship the admission of religious statements in a political context in the public domain is only meaningful when all citizens are expected not to exclude the possibility of cognitive content—whilst respecting the principle of *precedence of secular reasons* and of the institutional translation reservation (Habermas 2009: 145).

Here we must first of all ask ourselves why worldly concepts of the Good should better stand up to unreserved discursive discussion than do religious ones. Habermas has without doubt above all the dangers of 'religious fundamentalism' in mind, yet without defining more precisely what he means by this. Thus his attempt to activate certain forms of the religious as a resource of the democratic state indicates that re-

ligion as such disturbs him less than do certain illiberal features of monotheistic religions. Yet secularist positions at present springing up indicate that even secular sense resources are not as a matter of principle less politicisable than are religious utterances.

In addition, the strong contrast, which Habermas proposes here between religious and secular language, is less convincing, chiefly because he of his own accord disputes the outcomes of the translation effort he himself demands. The secular premises of the discourse, which are particularly reflected in the secular foundation of the liberal, constitutional state, prove consequently to be that ethical impregnation which Habermas in other contexts regarded as still being dynamic and capable of change by virtue of cultural diversity, but which he here views as sacrosanct.

Consequently Habermas of his own accord draws attention to the asymmetrical departure conditions of the ostensibly ideologically neutral constitutional state and justifies this empirically whilst considering the truly completed secularisation processes in the wake of reformation and enlightenment. 'Traditional religions', in his view, would need to make up ground on certain points, that is to say, they would need to learn to accept the body of secular knowledge.⁷ Whilst Habermas would not venture to single out Islam as the chief candidate for this catching-up process, at certain points it is very clear who, above all in a European context, this requirement is aimed at. For at the same time he states that the Catholic Church, following a laborious process, has already successfully met this secular requirement. With reference to Muslims he says: 'Many Muslim communities still have this painful learning process before them. Certainly, the insight is also growing in the Islamic world that today an historical-hermeneutic approach to the Koran's doctrine is required.' (Habermas 2008: 27–8.)

As do other liberal thinkers, Habermas constructs a religious norm against which, among others, Islam must measure itself. In so doing however, Habermas places a severe burden on religious groups, especially those structurally disadvantaged ones such as Muslims in Europe. Hence established religious communities, and in particular Christian ones, benefit from from a whole range of handed-down religious structures, which Muslims still need to call for. It is questionable how, faced with these unequal points of

7 At one point Habermas gives 'religious citizens' a whole catalogue of characteristics to catch up on (2009: 143 f.).

departure, they would culturally sublimate their own religious convictions in discourse.

Although Habermas views consensus as a process, in which all citizens—subject always to the above-mentioned conditions—should participate equally, he hesitates to state this openly, something which we could term his own secular background consensus. The largely unjustified, unqualified acceptance of the secular character of the constitutional state and the precedence of secular, as opposed to religious utterances, nevertheless involve many pre-conditions and consequences. This is even more the case when we understand secularity in the sense of Talal Asad (esp. 2006), that is to say not only as a formal and legal division of state and religious institutions, but also as a mechanism in which state institutions, through micropolitical power techniques, authorise and/or demarcate normative models of religion and religious ways of life. As I will now attempt to show, the mechanisms of the DIK at a practical level display precisely that secular prejudice as referred to by Habermas, as well as possible, but by no means inevitable, consequences which this may entail.

The DIK, 'free and democratic' consensus and 'Constitution Plus'

Although the DIK is a far cry from the inclusive ideal of deliberative models, not least because state actors control the dialogue, this dialogue practice is based on the attempt, in conversations between representatives of the state and Muslims to reach a *consensus* on the basis of 'free and democratic principles'.⁸ Although this consensus is not intended to be of a legally binding nature, it is nevertheless supposed to contribute to the creation of cohesion and conflict harmonisation. Organised Muslims above all are not even required to declare formal allegiance to constitutional principles; it is rather the case that in the course of structured conversation the constitution is accorded an ethical substance which has begun to crumble, as I will demonstrate in the following.

The DIK could firstly in the way Habermas sets out, be interpreted as an overdue political commitment to the ideological diversity of Germany. Regarding Muslims as a 'section of German society', which Interior Minister de Maizière recently confirmed, must firstly be interpreted as a symbolic gesture of acceptance. Even extracts from the setting of

8 Wolfgang Schäuble stated this in his maiden speech to the DIK.

the agenda reflect the well-intentioned stance of the state and its readiness to move forward the areas of discussion repeatedly put forward by Muslims, such as the training of Imams in higher education or Islamic education in state schools.

At the same time within the DIK there is to be found a certain inherent reservation particularly with regard to pious Muslims, and this very much resembles the requirement for translation for religious utterances as described by Habermas. However the way in which this requirement is articulated runs totally counter to Habermas's concept of fair dialogue. This reservation is seen principally in the pronounced emphasis on values, something which is to be found in the whole of the previous history of the DIK. Thus the state rhetoric and setting of subjects for discussion make it clear time and time again that Muslims first of all must fulfil certain conditions and/or that when the state gives recognition to Muslims it is able to demand certain preconditions from them in return. This applies to the area of political Islam, in which Islamic societies above all are meant to appear as 'security partners' (Schiffauer 2008). It also applies to aspects of lifestyle, values and ethics, and it is this feature which I would like to focus on particularly.

In outlining his vision of the DIK, Wolfgang Schäuble in particular referred repeatedly to the 'free and democratic' premises underlying the consensus between the state and Muslims. In the course of the event it became clear however that the underlying values had been much more markedly loaded and idealised and that these arise from a much closer texture than at first suggested. This is shown in the setting of the agenda, the course it has taken to date, but also in the general ethos of the event.⁹ In addition, it does seem less of a question of an exchange of divergent positions as would be expected in such an event, and more a case of a conscious process aimed at achieving a (pre-determined) 'consensus of values'.

Particularly on the fringes of the DIK, and frequently behind the scenes unofficially, there is to be detected a concretisation and idealisation of the initially abstract liberal/democratic premises. Thus Schäuble, speaking on the fringes of the DIK, a number of times urged Muslims, and Muslims alone, to be sure to observe the rules and fundamentals of the

9 Above all in the first round this marked emphasis is obvious from the title and subjects of the workshops. For this, Amir-Moazami 2009b. In fact the workshops in DIK II have been re-named. Nevertheless the emphasis on values remains.

constitution. In the next breath he led us to suspect that this was not the end of it:

. . . political or legal institutions do not [suffice] on their own for integration to succeed. Even the constitution on its own is not enough. It requires other foundations, so that it can be filled with life by the citizens. . . . If we want to feel that we are a part of a common body, then there must exist something which binds us together *at a deeper human level*: at precisely that level at which we find religion, culture, values and identity. (Schäuble 2006, see also Schäuble 2008, my italics.)

In Schäuble's appeal to the emotional and ethical side of citizens' loyalty we can clearly see what behind the scenes at the DIK is termed 'Constitution Plus' (Grundgesetz Plus in German).¹⁰ In the published documentation after three years of practising dialogue we simply find reference to a successful consensus on a 'German value community', which hardly goes beyond the constitutional status quo. However it is very clear from conversations with DIK participants that organised Muslims in particular are often invited to recognise the value *substance* of the constitution. Thus in the third plenary session of the DIK Muslim organisations were urged to agree on a document which goes beyond the mere confirmation of their loyalty to the constitution, and in which they were to pledge their identification with the 'German value community' over and above bare legal principles.¹¹ Muslims were in this instance asked to sign up to what was virtually an *inner* allegiance to the constitution. This goes far beyond the initially formulated idea of a consensus based on 'free democratic' values, and so can be viewed as significantly exceeding the de-linking of ethical notions and moral obligations proposed by Habermas.

So how precisely does this ethical content of the common body which Muslims are supposed to feel themselves a part of manifest itself? It can be demonstrated especially clearly in the question as to how Islam and sex have hitherto been linked and negotiated. Questions of gender and sexuality, or more pre-

cisely that which has been identified as Islamically based ideas of gender, form a core area which runs through virtually all DIK workshops. The current DIK II goes so far as to devote a whole workshop, entitled 'Gender Justice as a Common Value'.

There were in one of the workshops clearly moments in which the Muslims present were supposed, with reference to the role of women, to be prepared to strike out suspect passages of the Koran. On the fringes of the DIK they were rebuked by the person responsible for integration, Maria Böhmer, for not being open to the *value* of sexual equality. And in this case this would be demonstrated by a willingness to take part in mixed sex sport and swimming lessons.¹² The negotiations have broadened into Muslim behaviour, gender norms and ideas about sexuality. This is indicative of a sexual politics tailored to Muslims, who are unilaterally regarded as not conforming, and this policy pursues a logic which lies beyond legal regulation (Amir-Moazami 2009b).

In all this it is striking that the event is so designed that it is only Muslims who are interrogated about gender equality and are urged to go on the offensive. For example it remains questionable as to why the topic of gender equality has not been taken as a reason to ask about the state of affairs across the whole social spectrum and to stimulate a general discussion on the contours and nature of this same value. But instead, with the one-sided concentration on Muslims, a concept, which is anything but clear and not always necessarily accepted by non-Muslims, is simply being laid down as a yardstick; and by applying it, a whole religious community is being assessed and measured.

On closer inspection, there is a type of logic at work here which attempts to touch on ethical behaviour, value concepts and to some extent even feelings and seeks to regulate them—hence assets which in the liberal/democratic constitutional state, according to Habermas's ideal, should never fall within the state-regulated domain. It is worthy of particular note that the state is here appearing as the chief actor, regulating religious sensitivities and making judgments on norms and deviations. In so doing it uses a particular religious model as a pattern, on the basis of which Muslims are to be shaped and transformed into secular subjects.

10 On this point I cannot be precise, as we are not dealing with a documented concept. I have however learned in the course of various conversations that this extra loyalty to the constitution has been termed in state circles 'Constitution Plus'.

11 These items of Information are taken from personal conversations with various people active in the DIK.

12 More comprehensively dealt with in Amir-Moazami 2009b.

The forms which this swearing to a joint value base as such run counter to the previously formulated ideal of liberal-democratic consensus, and also counter to more general forms of deliberative initiatives, according to which such a value consensus, for preference in discourse, and taking account of *all* arguments, should be found. And yet at the same time we have here precisely that ethical foundation of constitutional norms which Habermas and other deliberative thinkers quote as unmarked pre-assumptions of rational argumentation, and which Habermas would like re-shaped as discourse, on certain of which however, namely religious utterances, he imposes a translation requirement.

Seen through the prism of deliberative dialogue models, the example of the DIK on the one hand displays its own weak points and also on the other hand the potential of such models, which oblige us to uncover these weak points. On the other hand however the DIK shows up the blind spots of liberal dialogue models, by bringing to light the ethical—in this case secular—foundation and the power techniques of the liberal constitutional state, which liberal thinkers such as Habermas attempt to neutralise through deliberation. For we are in such cases not dealing with exchanges between egalitarian citizens on an equal footing, who—whilst translating concepts of the Good and giving each other a fair hearing—achieve answers in the form of binding normative solutions. On the contrary, asymmetricalities and techniques of power are not alleviated by deliberation. There remains a sovereignty of interpretation as to what is considered worthwhile and as to what reflects the adequate use of constitutional norms. And this is in my opinion not only a result of the fact that in such cases the state as the sovereign actor controls the manner of dialogue, sets the agenda, and decides who takes part in discourse and who does not. Rather, it is an expression of comprehensive power relations and power mechanisms which at best come to light in the course of deliberation, but are not however overcome. Hence I would also not claim that a dialogue which is initiated solely at the level of civilian society is immune to such power techniques.

Of course in liberal deliberative dialogue models the ethical content of the constitutional principles is not determined *a priori* and hence not unilaterally laid down, but it arises ideally in dialogue conducted under fair conditions. However, the condition of universal comprehensibility is based on an ethical pre-judgement, which in the procedures of the DIK

is fairly heavily emphasised. The call for Muslims to translate their utterances into universally understood language is therefore not dissimilar to the call to identify oneself with more than mere constitutional norms. For it is the secular norm, and hence a whole raft of secular allegiances into which religious utterances are to be translated. In other words, this act of translation requires identifications which go beyond abstract universal principles, and concerns those very particularities which are written into these principles. In a paper on the ‘post-secular’ character of contemporary European societies, published in 2008, Habermas hints at something similar, when he claims:

... the constitutional state confronts its citizens with the demanding expectations of an *ethics* of citizenship that reaches beyond mere obedience to the law. Religious citizens and communities must not only superficially adjust to the constitutional order. They are expected to appropriate the secular legitimisation of constitutional principles under the very premises of their own faith. (Habermas 2008: 27, my italics.)

In this sense the DIK process and the rationalities on which it is built express that which Habermas and other liberal thinkers address, even if they would formulate it in a less overtly particularising, and very abstract manner: the ones who need to be required to produce translations are ‘traditional religious projects’, which have not yet achieved the equivalent stage of secularity as other, established religions.

At the same time the first round of the DIK, with its concentration on values, has set in motion an unexpected process, which as it were confirms Habermas’s ideal of modified discourses through modified horizons.

Non-conforming Muslim utterances in controlled dialogue

What scope is available in such a dialogue context to those Muslim actors who are not prepared to pledge adherence to a prearranged value consensus? The aspect of ‘speaking back’ interests me above all with respect to the question as to what possibilities of criticism are permitted by the mechanisms of subjectivisation which apply in the DIK. I hold of particular interest those actors who from the outset were among the more dubious interlocutors, because

they are placed into the category of 'political Islam'. For here we are dealing with forms of criticism of the dialogue structure and practice which at the same time make it clear that this criticism is itself a product of liberal reflection, and is by no means operating *outside* liberal discourse structures.

First of all let it be made clear that organised Muslims in particular who have participated in the DIK have a totally different concept of dialogue than that of most of the state participants, as well as some of the non-organised Muslims who have been invited to the DIK as representatives of the 'silent majority'. Whilst representatives of the government gain an impression of the compatibility of Muslim views and liberal/democratic premises, with a heavy emphasis on values, and so seek to stimulate discourse on the *content* of constitutional norms, the concern of larger organisations of organised Muslims has been their efforts to bring to life *rights* as enshrined in the constitution.

Organised Muslims in particular seem only to have involved themselves in the mechanisms of the DIK because they wished to drive forward the institutionalisation of Islam in Germany with state aid. In particular the debate on values appeared to have been felt to be an irritating co-component which has marginalised what are to them vital issues such as the training of Imams, the building of mosques or Islamic theological teaching in state schools. Hence the various starting points reveal not only considerable asymmetries of power, but are also evidence of major miscalculations on the part of the negotiating partners as regards the aims, aspirations and demands of the Other. Naturally I am able here once more to voice the criticism that at the planning stage there was a lack of opportunity to reveal these divergencies immediately.

Of particular interest to me is the fact that Muslim organisations, previously declared as having conservative values and as being enemies of the constitution, such as the Islamic Association of Milli Görüs, which, in the first round of the DIK at least, were publicly described as 'equal partners':¹³

So I actually find it exciting that the discussion on this type of topic always touches on the fact that there must be something beyond the constitution. So that was an exciting discussion at

¹³ The IGMG was in the second round of the DIK offered mere 'observer status', as the organisation was at the time being investigated by the state attorney.

the German Islam Conference, when they tried to pin us down to values, to an order of values, a German order of values. . . . But ultimately when you ask the first concrete question as to what there is beyond this constitution, in other words beyond what is laid down there and forms joint values, you get from your interlocutor mostly just a quizzical look, something along the lines of: 'well our culture, our achievements' . . . And then you ask: 'Well what kind of achievements?' ' . . . the fact that we hold open doors for women when we go through them' . . . and you can very quickly see that what they are being guided by is the constitutional order . . . and the values of the constitutional order. Because they are definite and they can be agreed upon and they make a good basis to shape co-existence on. (Interview with the General Secretary of the IGMG Oğuz Ücuncü on 1 April 2008 in Köln-Kerpen.)

I find Ücuncü's remarks interesting from a number of points of view. First, they make clear the problematical implications of the attempt, as outlined above, to dictate values. Here Ücuncü indicates the fact that the state is essentially going beyond its own remit. In so doing he to some extent turns round those accusations which his own movement have had laid before their door for many years: this is an organisation which, having been under surveillance by the German Security Service, is now reminding the state not to stray beyond the bounds of the constitution.

Second, Ücuncü in this way points to the exclusion mechanisms, implicit in the attempt to fix a jointly shared value base in the sense of an immutable source, which do not even allow non-conforming religious (Muslim) citizens to take part in discourse subject to a translation requirement, but rather *by definition* seek to exclude them. Last, he reveals the manner in which some representatives of the state construct a particularist value consensus in the exclusion procedure.

The emphasis on loyalty to the constitution and law-abidingness of the IGMG whilst at the same time rejecting a uniform model of religiosity in the public domain seems to me ultimately symptomatic of the younger generation of intellectuals who have risen to leadership level at the IGMG, and whom Werner Schiffauer terms 'post-Islamist' (cf. Schiffauer 2010). Especially the adoption of a liberally characterised legal discourse is a particular trait, which may be seen in other aspects of Islamist and/or post-Islamist movements (cf. Henkel 2005). In so doing there is a

striving for universal rights and not, contrary to the criticism which is often levelled, for particularist rights. With his confidence in the identification-endowing powers of the constitution, Ücüncü sets out what is essentially Habermas's ideal of a 'constitutional patriot'.

There are a number of examples of organised Muslims having recourse to constitutional norms—primarily to the principle of religious freedom, but also to the concept of equality, something which permeates the core of the constitution. All too often they become involved in controversial areas which essentially deal with the legitimisation of religious practice in the public domain. It is often a case of gender issues which are on the agenda of the DIK—such as mixed gender swimming lessons or the Islamic headscarf. Thus for example the deputy (female) head of the IGMG Legal Department Gülüzar Keskin, in an interview concerning mixed gender swimming lessons, insisted on the *right* to decency and religious feelings. Even in this area the admissibility of religious sensitivities are consequently linked to a liberal discourse on rights. (Interview with Gülüzar Keskin 1.4.2008 in Köln-Kerpen.)

In the context of this article, there are two interesting aspects to this argumentation. On the one hand, some aspects of it confirm Habermas's ideal of a consensus to be arrived at on the basis of the best arguments and the justification which has been best thought through, even if Ücüncü's argument, querying and ultimately also bringing to light of culturalist argumentations might not necessarily even be 'heard'. Representatives of the state have in so doing found themselves having to supply justifications which they have not anticipated and thereby, in Habermas's sense, they have come under pressure to give justification.

On the other hand this illustrates clearly the potency of Habermas's argument of the change in discourse brought about by changed conditions in society. The recourse to valid legal norms does not attack constitutional principles, but essentially reveals their pluralistic and controversial character—sharp contrast to the attempt to give the constitution a uniform ethical content. Applying liberal/democratic argumentation, we can read this, in the sense of Seyla Benhabib, as an expression of 'democratic reiteration' (Benhabib 2004: Ch. 5). Benhabib relies on the concept of iteration (repetition) as used by Jacques Derrida and on his emphasising of the pluralistic structure and of the essential semantic change in concepts:

In the process of repeating a term or a concept, we never simply produce a replica of the first original usage and its intended meaning: rather, every repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. (Benhabib 2004: 179.)

With regard to the difficulties connected with the headscarf in France, maintains Benhabib, covered Muslim women have, though their recourse to constitutional principles such as equality and freedom, brought about one such 'enrichment' of the meanings of these norms. By justifying their religious identity with freely available legal norms, they have introduced Islamic/religious components into these very norms. This act of repetition, according to Benhabib, opens up a way for individuals to appropriate these rights, which are firmly established in democratic constitutions, and totally in Habermas's sense, to become not only the subject, but at the same time the originator, of the right. (Benhabib 2004: 181.)

In this sense one might similarly claim that the liberal, constitutionally-based legal order in Germany enables Muslims to 'reiterate' constitutional rights, with the aim of dynamising and widening their own sphere of participation. Against the backdrop of these reiterations we can see the form of state intervention, as expressed in the DIK, as a reaction which indicates that it is primarily organised Muslims who have increasingly sought to prove their ability to secure their religiousness in constitutional terms, and without having recourse to alternative legal forms and norms.

I would at this point introduce a note of caution, and with it close the circle with respect to the potential, and also the limitations, of liberal/legal dialogue models. I would be far less optimistic than Habermas or Benhabib, as to the effects of such democratic repetitions. As writers such as Wendy Brown or Judith Butler remind us, good faith in the pluralistic power of constitutional norms overlooks the dense texture itself, which is written into the contract and which endures beyond the context of its origin by means of discursive power techniques:

We might conclude that at a basic level, the entitlement to a notion of freedom that is based on contract is limited by those freedoms that might extend the contract too far, that is to the point of disrupting the cultural preconditions of the contract itself (Butler 2008: 10).

On closer inspection, Ücücü therefore reveals the inbuilt limitations in the liberal project, above all when we examine it in the total context of the DIK and what can be heard, said and thought of it and what correspondingly cannot be heard, said or thought. Because in liberal/democratic constitutional contexts it is by no means a matter of indifference as to *who* speaks. It is definitely also not just a question of *how* argumentation is conducted, but often enough also *who* is doing the arguing and on what ethical bases and also what assumptions are being made. Thus the arguments of the IGMG leadership could be considered more or less discredited, not least because the IGMG *in toto* is considered a dubious organisation, whose reference to the constitutional bases and constitutional conformity are judged to be devious, because behind it there can be assumed to be no seriously-meant constitutional loyalty, but simply goal-orientated tactical manoeuvring (Schiffauer 2010).

In the case of pious Muslims this very principle of religious freedom, which Ücücü is also driving at in the above quotation, can be illustrated. Thus for instance the successful application by Islamic organisations before the Federal Constitutional Court to allow them to carry out Islamic ritual slaughter set in train a process which revealed the written-in ethical foundation of the constitutional state, and not just at this judicial level. Werner Schiffauer gives the very clear example of how state authorities have undermined the verdict granting an exemption for ritual slaughter, using the argument of animal welfare to limit it to a minimum (Schiffauer 2010: 298 f.).

By having recourse to the principle of religious freedom Muslims are behaving in a thoroughly constitutionally correct manner. However in so doing they not infrequently demand things which have not been provided for in the contract in this form. Although the demands are rational, legitimate and in conformity with the law, the contents are frequently offensive. They are not offensive because they for example attempt to raise the religious to a sphere which is not permitted—for forms of religious expression, for instance of Christianity, are present and active in the public domain. But they are considered to be an infringement of what is permitted because they challenge a written-in and assimilated form of the religious consensus and also that secular consensus, which Habermas lays down as an unmarked template, and introduces into the public and legal discourse an unknown form of the religious, which is found to be disruptive, and which is considered ar-

chaic, traditional and in need of translation.¹⁴ Hence it is here less a case of religious practices which are allowed or disallowed in law, but rather of questions which touch on embodied secular emotions and passions.¹⁵ This applies above all to those demands which point to a concept of arrangements regarding the sexes which deviate from the secular norm.

A pluralistic, reiterative concept of constitutional norms does not necessarily predominate in societal practice, particularly when it is a question of uncomfortable demands which do not easily fit into the predominating ideal of secularised, and hence more reticent or even publicly invisible religiousness. Contrary to the assumption made by Ücücü, religious freedom is not a good which is enshrined for ever which any of us—provided always that we present the correct argument—can utilise, but varies in interpretation according to context and is permanently linked to certain dispositions and is for this reason far more ethically charged than is frequently claimed in liberal/judicial discourses.

Even if for example schoolchildren succeed in excusing themselves *in accordance with the law* from coeducational sport and swimming lessons at school, this hardly means that we can hope for recognition by society of a religiously based sexual morality which cannot immediately be translated into a liberal repertoire. Let it be stressed here that the demands which are hidden behind the striven-for principle of religious freedom are equally anything but neutral, as Ücücü and others with a tendency to constitutional patriotism suggest. Rather, they are in all probability on a religious foundation which will not easily slot into a secular, liberal repertoire. Without here wishing to make the accusation of using the liberal constitutional repertoire for illiberal purposes, it does seem in this case clear that even representatives of Islamic organisations frequently do not explain the ethical premises with which they have recourse to constitutional bases. Thus IGMG actors such as Ücücü, with their assertion that concepts of the Good must immediately be separated from the domain of the rights, are simply repeating the contradictions inherent in liberal/judicial discourses. They do this firstly by suppressing their own value-orientated (and therefore not value-free) interpretation of these

14 This is one of the central arguments of Bhikhu Parekh in ‘European Liberalism and “the Muslim Question”’ (Parekh 2008). https://openaccess.leidenuniv.nl/bitstream/1887/12641/1/paper_Parekh.pdf.

15 On this point see chiefly Asad 2006.

rights, and secondly by overlooking the limitations, which in this case result from the secular impregnation of constitutional norms.

The call for equal rights of religious groups as well as their recourse to legal discourse is in particular hardly able to address moral forms of exclusion, not least because the law is not a neutral authority which exists independently of concepts of the Good and is thereby isolated within society. Wendy Brown even goes a step further. She maintains that the search for liberation from certain exclusion mechanisms and experiences of being placed under guardianship through the use of a repertoire which the liberal state offers primarily in its legal forms and which often results in unintentional guardianship, above all because this leads to reification of identities. (Brown 2005: 21.) Criticism which refers to law and above all to codification thus merely indicates the existence of power, but does not undermine it.

On this issue I have no conclusive answer, and not even a preliminary one, to offer. However there follow certain questions from these justified objections against the backdrop of what have hitherto been the dialogue practices of the DIK; these seem to me to be suspect and this article has attempted to expose them: what happens when the act of repetition does not lead to the desired establishment of democratic will formation—as Habermas would have put it, when the discourses do not alter in spite of an altered horizon, because an idealised foundation of the contract itself was being tested along with the repetition? To what extent do the making use of the law and the appeal to the courts not reify the very forms of exclusion and moral injury which they were intended to cure? The challenge lies in thinking out which forms of recognition of value pluralism might exist beyond liberal/judicial initiatives, in order to comprehend the principle of secularity more consistently, even in its results which strive for freedom, as permeated by power. Accordingly, any planning of dialogue which covers this universal permeation of power seems to me ultimately little suited for the context of ideologically diverse dialogue.

Concluding observations

In the preceding discussion I have attempted to show how the ideal of consensus-orientated dialogue in ideologically pluralistic contexts causes exclusive effects, despite best intentions to be inclusive. These exclusion mechanisms are for one thing evident in the theoretical premises. For the other they also manifest

themselves in concrete dialogue practices such as the DIK.

And how fit for purpose is a dialogue model which urges religious citizens to translate specific matters concerning a religious faith into a universal language and for the benefit of comprehensibility to disregard the power implications of this universally binding thing? And how fit for purpose is a dialogue practice which above all does not even allow the Other, who is considered as not fitting in, to introduce reflectively his own concept of the Good into the discourse, because it is led by unspoken assumptions and prejudices?

The DIK operates with mechanisms which are hard to reconcile with the concept of liberal dialogue. This is chiefly because we are here not dealing with that kind of *voluntary* assent to a jointly developed value consensus. At the same time it reveals, strangely enough, the particularist content of abstract liberal theories and thereby highlights the non-neutral, ethical character of what are ostensibly neutralised, permanently adaptable constitutional norms. In discussion of ‘Constitution Plus’ the fact is revealed, interestingly, that there exists a real sovereignty of interpretation of ethical foundations of constitutional norms; the ways for non-conforming religious projects to break through this sovereignty of interpretation are limited, even if their stance *vis-à-vis* the constitutional framework is an affirmative one.

With its recourse to constitutional principles of ethical substance the DIK displays the related exclusion mechanisms for non-conforming utterances and with that at the same time the contract-specific limitations of constitutional patriotism. For this reason I regard as rather less dubious the understanding, encouraged by the DIK, on ethically-led interpretations of constitutional norms. On the contrary, this very thing might give some indication of the non-neutral, ethically-based premises of such norms. In the spirit of philosophical/hermeneutic dialogue this might stimulate decoding of the assumptions which hamper even dialogue models of the liberal type. Discourse on values, lifestyle and ethics is something I consider to be urgently required in view of the necessarily divergent concepts of the Good even in the political and public spheres.

However, on the one hand it is problematical that in the DIK process the impression is created that non-Muslims have already absorbed all basic values in a uniform manner, whereas organised and/or devout Muslims are generally accused of having a deficit in their acquisition. In such cases the need to

catch up where religious speech events are concerned, becomes acute. On the other hand the call for the search for common ground is somewhat threadbare, when agreement on this common ground does not even arise in the dialogue process, but above all in the process of construction takes shape in people's minds as a disrupting otherness. In the DIK the production of value material takes place chiefly via demarcating techniques. As has been demonstrated in the area of Islamic sexual norms, the underlying concept of dialogue is mainly based on the expectation that Muslims will adhere to certain rules and norms—in this case a certain religious norm which is based on a totally ambivalent concept of freedom.

Faced with these forms of state-initiated dialogue and its involvement with welfare and provision power techniques, subject forms are produced through processes of ascription. Even the constitutional patriotism of Islamic organisations, which are considered as having conservative values, are unable to penetrate these subject forms. The organisations' having recourse to a liberal and democratic discursive repertoire should be interpreted as a reaction to these forms of state intervention in Islamic life. They aim to resist this intervention, even if in using this repertoire they re-create a number of weak points in liberal theory.

However, to conclude let me once more point out the potential of a deliberative dialogue model of the type described by Habermas. It has for one enabled us to highlight the coercive practices of the DIK. Secondly, it must be stressed as a general observation that the effects of such dialogue practices conducted on liberal and secular terms are entirely open, even when they operate with overtly exclusion mechanisms, since these constraints presumably also offer *possibilities* of participation. ■

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