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Contesting the Public Sphere: Within and against Critical Theory

DAVID INGRAM

This chapter examines how European thinkers working from within and without the Frankfurt School of critical theory have understood the public sphere as a distinctive political category. First-generation members of the school rejected institutional democracy and mass politics as ideologies that mask domination. The succeeding generation, whose most important representative is Jürgen Habermas, rejected that diagnosis. Habermas's more optimistic assessment of the emancipatory potential of the public sphere as a medium of rational learning sought a middle ground between critics and defenders of liberal democracy. This ambivalence provoked strong counter-reactions from systems theorists, such as Niklas Luhmann, and from adherents of theories of agonal democracy descended from Carl Schmitt, on the right, and Hannah Arendt, on the Left. As we shall see, these reactions are amplified by those who seek to extend the public sphere beyond the boundaries of the nation state. Because of its contested interpretation as a descriptive and normative category, the public sphere presents us with ambivalent possibilities for legitimating regional governing bodies, such as the EU, as well as the global legal institutions of the United Nations.

Early Frankfurt School Dismissal of the Public Sphere

The public sphere as we know it today was not a central category of first-generation critical theory except in the sense that it epitomized a symptom of modern administered society. It was mass democracy and the propagandistic manipulation of public opinion, after all, that gave rise to the totalitarian political movements of the twentieth century.

Although first-generation critical theorists recalled the bourgeois ideal of liberal democracy as a high point of the European Enlightenment, they believed that the economic and political conditions sustaining it had long

been surpassed by the rise of industrial capitalism. In their opinion, even if the ideal was more than an ideology, given its utopian potential for realizing emancipatory, egalitarian, and communitarian aspirations, it clashed with the factual description of democratic politics they inherited from Marx and Weber and so was never taken seriously by them as a moral ideal that could ever have real purchase in modern political life.

As intellectuals who were committed to the Marxist critique of the state, first-generation critical theorists believed that politics passively mirrored economic class struggles. According to this interpretation, political interaction is fiercely partisan, non-consensual, and strategic. Here formal rights constitutive of liberal democracy, such as freedom of speech and freedom of association, appear not as universal norms serving the common interests of humanity but as false ideologies that conceal the true nature of the state as an instrument of bourgeois domination. Revolutionary politics thus reduces to a power struggle for hegemonic control of the state. In Antonio Gramsci's view, leaders of revolutionary movements (with the aid of "organic intellectuals") should mold their propaganda around the overlapping interests of diverse social groups in forming an oppositional united front. Compromises and strategic alliances between competing groups appear here as temporary weddings of convenience, nodal points in a precarious balance of power (*modus vivendi*) that serve the revolutionary struggle – hence Gramsci's Machiavellian disdain for moral scruples about fair play.¹

The bourgeois ideal of the public sphere finds just as little purpose in the Marxist vision of post-revolutionary communist society. For Marx, the overcoming of class domination that would accompany the advent of communism would usher in a "dictatorship of the proletariat," which, in turn, would gradually terminate in the "withering away of the state" as a coercive legal order once social conflicts were pacified. Over time, the rational administration of productive machinery under the democratic control of producers would ostensibly give rise to material abundance and a reduction of the workday, so that individuals could spend their non-laboring hours developing their aesthetic, social, and intellectual capacities. Discussions about economic planning and culture, however mentally stimulating, fall short of that vibrant political life involving clashing institutional values and partisan interests.

The second factor inclining first-generation critical theorists to dismiss the public sphere was their reception of Max Weber's science of organizational

¹ Antonio Gramsci, *The Modern Prince and Other Writings* (New York: International Publishers, 1959).

rationality. Although Weber's starkly pessimistic view of modern, rationalized societies led them to reject the orthodox Marxist understanding of communist society as a domination-free society, it also entrenched their dismissal of the public sphere as a counter-model of enlightened freedom. Especially seminal for their thinking was Georg Lukács's *History and Class Consciousness* (1923), which represented one of the earliest attempts to translate Marx's theory of "commodity fetishism" into a Weberian register. Linking the commodity form (the exchange of equivalents) to analytic reasoning, he argued that the orthodox Marxist scientific understanding of society as a law-governed system, which he believed correctly captured the mechanical nature of capitalism, nonetheless concealed a more revolutionary, dialectical understanding of society as a contradictory totality.

Weber had described modern capitalism in similar terms, as a regime that placed on the individual not just a light cloak of easily discarded material comfort but a hard shell (*stahlhartes Gehäuse*) of rationally efficient consumption and production in which sub-rational impulses for moral autonomy were crushed between the oscillating hedonism and bureaucratic discipline dictated by the system. First-generation critical theorists expanded this diagnosis further by noting that the drive toward logical coherence and instrumental efficiency governing rational society inevitably leads to government administration of a crisis-prone economic system (the thesis of state capitalism). The "totalitarian" image of a managed society wherein bureaucratic social engineers, government insiders, and elite party cadre join forces to manufacture popular consent around a policy of stable growth under conditions of class compromise found its most memorable depiction in the diagnosis of the "culture industry" advanced in Adorno and Horkheimer's wartime classic *Dialectic of Enlightenment*.² Adorno and Horkheimer not only dissected the "identity thinking" underlying the manipulation of public opinion from above, but also showed how mass culture generally reinforces conformism. From their perspective, the mass-culture-mediated public sphere was thoroughly permeated by the unspontaneous responses of pre-programmed ("scripted") actors mechanically playing out their pre-assigned roles.

Critical reflection that resists the objectifying effects of the system, they concluded, can thus arise only by withdrawing from the public and its political spectacles and cultivating solitary meditation on literature and

2 Theodor W. Adorno and Max Horkheimer, *Dialectic of Enlightenment* (London: Continuum, 1973).

other “non-affirmative” art forms that bespeak internal psychological conflicts in the face of conformist social demands. In the words of Herbert Marcuse, true enlightenment and emancipation must begin with the “Great Refusal”: “dropping out” of society and reconnecting with repressed erotic instincts which aim toward utopian fulfillment in a domination-free reconciliation of reason and sensibility, individual and society.³ This aesthetic pathway toward enlightenment – satirized by Lukács as a “retreat to the grand hotel Abyss” – would eventually clash with the student political movements that were celebrated by Marcuse for their erotic counter-cultural imaginary.⁴ True to Marcuse’s philosophy, these movements combined political protest with civilly disobedient carnival-like displays, thereby constituting an anarchic, plebeian counterpart to the government-manipulated, mass-mediated bourgeois public sphere.

Habermas’s Reappraisal of the Early Modern Public Sphere

Habermas’s reappraisal of the public sphere is typically understood from the vantage point of his mature thought. The theory of communicative action and the discourse theory of law and democracy inaugurated a paradigm shift in the way critical theorists conceived reason in general and practical reason in particular. The elevation of democratic debate rather than scientific calculation as the essence of practical reason enabled Habermas to circumvent many of the pessimistic implications of the “dialectic of enlightenment.” But Habermas did not develop his theory of communicative rationality – let alone his discourse theory of the public sphere – until long after he had resurrected a category of political life that had chiefly described middle-class society in eighteenth-century Europe and North America. Today, “critical theory” and “public sphere” have become indelibly linked in contemporary thought thanks to the original publication of his second dissertation, *The Structural Transformation of the Public Sphere* (1962), and its momentous translation into English in 1989.⁵

Indeed, this book might be understood as foreshadowing Habermas’s later involvement in the Sixties student movement. This is only partly true.

3 Herbert Marcuse, *One-Dimensional Man: Studies in the Ideology of Advanced Industrial Society* (Boston: Beacon Press, 1964).

4 Herbert Marcuse, *Counter-revolution and Revolt* (Boston: Beacon Press, 1972).

5 Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge: MIT Press, 1989).

Habermas's entry into public life as well as his theoretical elaboration of the public sphere did valorize liberal bourgeois sensibilities, but these were not the *plebeian* sensibilities associated with late-eighteenth-century revolutionary mass movements that foreshadowed the rise of the proletariat and contemporary student protest movements. That said, it is important to bear in mind that in Habermas's account even the plebeian public sphere, with its "pre-literary" populist and anarchist undertones, "remain[ed] oriented toward the intentions of the bourgeois public sphere."⁶ In this respect both plebeian and bourgeois public spheres stand opposed to another mass political type of public sphere: the "plebiscitary-acclamatory form of regimented public sphere characterizing dictatorships in highly developed industrial societies." For Habermas, then, the plebeian public sphere is an outgrowth of the Enlightenment and its critical sensibilities, and is thus to be distinguished from the conservative, counter-Enlightenment public sphere associated with authoritarian rule as well as from the desiccated, depoliticized and manipulated, public sphere associated with the modern welfare state.

The critical sensibilities of the plebeian public sphere could not have been cultivated independently of the bourgeois public sphere, because these sensibilities drew their nourishment from a literate and educated class composed of students, writers, and artists that had the time and the freedom to engage in solitary reflection. Conversely – and contrary to the dominant strand of Frankfurt School thinking, with the possible exception of Walter Benjamin – Habermas insisted that such solitary literary reflections be linked to a public sphere, which in the twentieth century would include mass-mediated venues of communication, such as television, radio, film, and the internet.⁷ In any event, by the end of the eighteenth century the bourgeois public would begin to awaken to the cries emanating from the plebeian public, with both complementing the other in attacking injustices associated with class privilege.

As we shall see, Habermas's most mature thinking about the public sphere realigns the bourgeois public sphere and the plebeian public sphere with different but complementary political functions within liberal democracy. Whereas the informal public sphere of civil society gives voice to discontent and protest, the formal public sphere institutionalized in parliamentary

6 Habermas, *The Structural Transformation of the Public Sphere*, xviii.

7 Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," in Walter Benjamin, *Illuminations*, ed. Hannah Arendt (London: Fontana, 1969); and Jürgen Habermas, *The Theory of Communicative Action, Volume Two. Lifeworld and System: A Critique of Functionalist Reason* (Boston: Beacon Press, 1987), 387–391.

bodies obeys the logic of public-spirited argumentation oriented toward reaching consensus (or compromise) for purposes of decision-making. In between these informal and formal public spheres is the quasi-formal public sphere constituted by mass media, which, when properly regulated, transform expressions of discontent into reasoned opinions carrying varying degrees of weight that government officials should take into account when formulating their agendas. At issue is whether this two-track division of political communication does not reflect an unstable marriage between fundamentally opposed conceptions of political action that fall short of Habermas's ideal of rational discourse: agonal contestation on one side versus system-managed communication on the other.

Habermas and the Structural Transformation of the Public Sphere

The earliest and most seminal of Habermas's writings on the public sphere was his second dissertation, published in 1962 under the title *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft* (*The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*). The timing of its publication was prescient, as the West German government was engaging in draconian suppression of free speech; in October of 1962 the offices of one of the most critical and respected news journals, *Der Spiegel*, were raided by the police, and several of its editors were arrested, imprisoned, and charged with treason for allegedly disclosing classified defense "secrets" in the journal's critical exposé of the FRG's defense policies. Cold War hysteria had already forced the German Social Democratic Party to renounce the Marxist language in its platform during its 1959 conference in Bad Godesberg. Habermas was among those professors who officially protested the suppression of *Der Spiegel*; he and his second-dissertation supervisor, Wolfgang Abendroth, helped co-found an academic support group for the radical student wing of the Social Democratic Party, the SDS, whose expulsion from its increasingly reactionary parent organization would eventually propel the SDS (and Habermas) into the maelstrom of the student movement.

Structural Transformation chronicles the rise and fall of the bourgeois public sphere in Northern Europe during the eighteenth century. It philosophically interprets this sphere as a space encompassing face-to-face discussions in public gatherings (such as coffee shops and town squares), informed by a public of letters (such as newspaper and journal readership), and facilitating

the generation and dissemination of public opinion as a critical check on government.

The emergence of the public sphere is here portrayed as paralleling the rise of pre-industrial capitalism and the decline of feudalism, in which state and society, public and private, were undifferentiated. According to Habermas, most decisive in this regard was the public appearance of “civil society.” Paraphrasing Hannah Arendt, Habermas attributes this appearance to “[a] private sphere that has become publicly relevant.”⁸ Ancient Greek society had consigned economic concerns to the unfree, private dominion of the household (*oikos*), far from the agora, the assembly, and other public venues where political issues were openly discussed among a very small minority of free male citizens. In the Middle Ages, economic concerns migrated out of the household only to the extent that they came under the private dominion of church and state. With few exceptions (such as carnivals), these institutions monopolized public spaces for their own benefit, aimed at representing their exclusive dominion over all things public and private.⁹ This form of “representative publicity” gradually lost its exclusive hold with the ascendance of city life and a burgeoning commercial trade among independent artisans and merchants.¹⁰ Now economic life, partly emancipated from church and state, became a matter of social concern and public discussion, much of it increasingly directed against official censorship and tax policy.¹¹

The gradual expansion of a market economy composed of independent property owners who increasingly sought to broaden their economic freedom *vis-à-vis* government led to correlative demands for broader civil and political freedom. The middle class (the Third Estate) pressured their representatives to hold government accountable to their interests, which they came to regard as inherently rational, and to rule by their consent. The public’s right to know everything that affected it demanded an end to government secrecy. In addition to challenging the legitimacy of the state, members of the middle class organized themselves as political parties in informal gatherings which took place in coffee houses, domestic salons, and semi-secret “table societies” (*Tischgesellschaften*). By the end of the eighteenth century the presumed fairness of a *laissez-faire* market economy based on contractual exchanges between free and equals would find its supreme philosophical defense in Immanuel Kant’s

8 Habermas, *The Structural Transformation of the Public Sphere*, 19; and Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 46.

9 Habermas, *The Structural Transformation of the Public Sphere*, 8.

10 Habermas, *The Structural Transformation of the Public Sphere*, 18.

11 Habermas, *The Structural Transformation of the Public Sphere*, 27.

1784 essay “What Is Enlightenment?,” which defended the “public use of reason” in transforming politics into morality.¹² For Kant, the critical force of rational suasion in polite conversation among intellectuals, businessmen, and women could effect a harmonization of conflicting economic and political interests in conformity with Rousseau’s moral ideal of a General Will, thereby revealing the cosmopolitan unity of humanity necessary for universally binding citizens to *legitimate* legal coercion.¹³ The rational overcoming of what appeared to be an underlying contradiction between *bourgeois*, *citoyen*, and *homme*, however, presumed that private property ownership and contractual exchange between free and equals rested on a natural foundation.¹⁴

The reverse side of the bourgeois public sphere was the bourgeois private sphere, centered on the nuclear family. Middle-class domiciles were divided into private and public spaces; libraries and bedrooms provided room for reading and solitary reflection; parlors and salons provided furnishings for intimate discussions between friends, neighbors, and other members of the community. The consumption of popular literature and culture generally was seen as indispensable to forming good taste in morals, but the public’s right to judge what it read, heard, and saw had to be informed by the philosophical arguments of essayists. At stake were social mores, which writers and painters often depicted as hypocritical and counter to natural common sense. Importantly, it was the cultivation of empathy in the arts and letters that stimulated reflection on ordinary life and a common humanity that would later galvanize the political struggle for equal rights.¹⁵ Here, as in the public sphere, the illusion of universal culture – and later, of universal rights – was premised on masking over the contradiction that the bourgeois nuclear family, as a space of intimate equality and humanity, presupposed ownership of private property under the supreme authority of an independent patriarch.¹⁶

Although Habermas observes that the bourgeois public sphere was an elite network composed mainly of *men* of education and/or property, it was in principle open to all regardless of status (hence the crucial role played by women in the salons). The equality among participants was further supported by their common economic independence (whether aristocratic or middle class), which, in turn, encouraged trust and openness among the

12 Habermas, *The Structural Transformation of the Public Sphere*, 104–106.

13 Habermas, *The Structural Transformation of the Public Sphere*, 54.

14 Habermas, *The Structural Transformation of the Public Sphere*, 115.

15 Habermas, *The Structural Transformation of the Public Sphere*, 48–51.

16 Habermas, *The Structural Transformation of the Public Sphere*, 55.

interlocutors. Rational suasion, rather than the status of the speaker, ideally governed the outcome of discussion; and, in principle, anything that had formerly been viewed as falling under the exclusive purview of church and state was now open to question.¹⁷ The equality, freedom, openness, and public-mindedness of the public sphere in turn informed the liberal and democratic ethos of the enlightenment. But mass democracy – driven by the emergence of industrial capitalism – coupled with the corresponding decline of independent shop owners and small farmers, would lead to the demise of the public sphere by the late nineteenth century.

Much of Habermas's history of the structural transformation of the public sphere in the nineteenth and twentieth centuries recalls familiar themes previously adumbrated by the political theorist Hannah Arendt, concerning the corrosive effect that socio-economic inequalities, instrumental thinking, and the welfare state had on political action as a medium for the plural expression of free personality, and by Adorno and other first-generation critical theorists, concerning the degradation of a critical literary culture in the era of mass consumerism. The impetus for this transformation is a dialectic pitting the implicit universality of the public sphere, which presages the advent of mass democracy, against its foundation on private property and commerce, whose inherent naturalness came under attack by the other class seeking a political voice: the proletariat. This contradiction undermined the idea of the public sphere as an arena in which rational agreement on common interests was possible. Carl Schmitt, whose analysis of the crisis of parliamentary democracy Habermas approvingly cites,¹⁸ portrayed this crisis as a contradiction between liberalism's Enlightenment faith in rational discourse and the democratic ideal of majority rule. Unlike the former, the latter could be configured only as a Hobbesian war between friend and foe culminating in the sovereign imposition of a single will. To a certain extent, Schmitt was echoing Hegel's own suspicions about the irrationality of public opinion as an expression of civil society's competing interests.¹⁹ However, whereas Hegel and Schmitt looked to a strong bureaucracy and executive authority to restore rational order, Marx sought a more populist solution. Rather than abandon the Enlightenment ideals underwriting the public sphere, he predicated their realization on the revolutionary

17 Habermas, *The Structural Transformation of the Public Sphere*, 36.

18 Habermas, *The Structural Transformation of the Public Sphere*, 81 and 205; and Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. E. Kennedy (Cambridge: MIT Press, 1988), 3–6.

19 Habermas, *The Structural Transformation of the Public Sphere*, 122.

abolishment of bourgeois civil society and its constitutional institutionalization of class domination, coupled with the reabsorption of a tyrannical state bureaucracy into a now democratized proletarian civil society. John Stuart Mill, by contrast, took the side of liberalism in his critique of majoritarian tyranny and conformism. Defending the free and open marketplace of ideas as the *via regia* toward reason and truth, he defended the importance of educated and reasoned dissent in maintaining a politically vital public sphere. However, because he rejected the postulate of a natural unity of interests that still informed Marx's vision of communist society, his faith in the epistemological virtues of the marketplace of ideas proved to be ill-founded.²⁰

As Habermas observed, echoing Schmitt, once the social question concerning inequality entered the expanded public sphere, the purpose of parliamentary discussion shifted from reaching rational consensus on common interests to negotiating compromises between differently weighted and irreconcilably opposed interests.²¹ Given the importance of securing popular support in leveraging political demands, politicians came to rely on the less-compromising rhetoric of class warfare in their popular political propaganda. After the political debacles of the first half of the twentieth century, Europe's efforts at seeking class compromise finally succeeded in the form of the welfare state. Government management of an industrial corporate economy dissolved the distinction between state and civil society, on one side, and public and private spheres, on the other, that had been foundational for the bourgeois public sphere. The resulting "refeudalization" of society saw the return of the older representational form of publicity, with staged spectacles featuring political stars who exploit the cult of personality in attracting a loyal following. Mass democracy here amounts to passively acclaiming this or that slate of techno-political elites,²² who in turn negotiate back-room deals between the special interest groups that elected them, in a manner reminiscent of older forms of privatized corporatist decision-making.²³ Once elected, these elites follow the dictates of their respective parties, whose administrative practices, if not campaign platforms, converge toward the political center in managing economic growth conducive to sustaining class compromise.

Accompanying this privatization of political decision-making is an "externalization" of private domestic life.²⁴ The mass-media invasion of the

20 Habermas, *The Structural Transformation of the Public Sphere*, 135.

21 Habermas, *The Structural Transformation of the Public Sphere*, 178.

22 Habermas, *The Structural Transformation of the Public Sphere*, 176 and 231.

23 Habermas, *The Structural Transformation of the Public Sphere*, 203–204.

24 Habermas, *The Structural Transformation of the Public Sphere*, 159.

household in the form of radio and television transfers thinking from the inward and solitary experience of reading to an outward immersion in mass culture and advertising, where “consent” to social norms is manufactured by government and commercial propaganda.²⁵ Accompanying this depoliticization of consumers and clients, we find the intelligentsia receding into their ivory towers, taking with them their specialized focus on serious culture and leaving the masses bereft of public reason.²⁶

Habermas’s Transition to His Mature Theory of the Public Sphere

By 1973 these sentiments would find but a distant echo in Habermas’s work. Reversing course in the wake of the turbulent sixties, Habermas argued that a re-politicized public of students, political activists, and denizens of counter-cultural venues had provoked a legitimation crisis.²⁷ Aside from changing events, what led to Habermas’s more optimistic appraisal of the critical potential of mass democracy was a change in his thinking about the public sphere. *The Structural Transformation of the Public Sphere* could not have envisaged even the conceptual possibility for a reinvigorated politics because in theory it provided no way for the modern welfare state to recover the ideals that had formerly underwritten the bourgeois public sphere. Habermas’s concluding recommendation in that earlier book – that political parties and special interest groups adopt more transparent, inclusive, and rationally accountable forms of communication – only democratized organizational decision-making and did not address the intransigency of inter-group conflict that had proven so fatal to a moral form of politics.²⁸ His hope that future development of the welfare state might transform conflict into consensus recalled a familiar theme among socialists.²⁹ Three decades later Habermas himself remarked³⁰ that the book’s implicit hope that a state-administered political economy could be totally democratized from within, conformable to Marx’s own belief in radical democratic socialism, grossly underestimated the degree to which modern social alienation could be overcome, first with regard to conflicting values and interests and second

25 Habermas, *The Structural Transformation of the Public Sphere*, 172.

26 Habermas, *The Structural Transformation of the Public Sphere*, 175.

27 Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975).

28 Habermas, *The Structural Transformation of the Public Sphere*, 248–250.

29 Habermas, *The Structural Transformation of the Public Sphere*, 250.

30 Jürgen Habermas, “Further Reflections on the Public Sphere,” in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge: MIT Press, 1992), 431–436 and 442–444.

with regard to a functional split between a technically administered legal–economic system and a communicatively mediated lifeworld.

To a large extent, Habermas blamed the book's confusion of normative idealization and empirical description – which provoked criticism from historians as well as from feminists and other critics writing on behalf of marginalized groups and their counter-publics – on the Hegelian Marxist method of ideology critique it deployed.³¹ This approach depended on selectively reducing a complex historical institution to an ideal type, whose underlying values pointed beyond their partial, contradictory constellation toward a more complete realization. The idea of a complete democratization of society undervalued not only efficiencies associated with bureaucratic administration and market economy, but also the difficulties of including domestic caregivers (chiefly women), over-worked employees, and less educated persons as equal participants in what were supposed to be informed and impartial political discussions.³²

Rejecting the Hegelian idealization of the public sphere, Habermas also rejected his countervailing Marxist tendency to misrepresent the civil society in which it was anchored as a quasi-economic category. By linking the structural transformation of the public sphere to the structural transformation of capitalism, Habermas's account in *Structural Transformation* displayed the defects of an economic determinism that undervalued that sphere's enduring capacity to function in a critical capacity despite distortions wrought by the economic–administrative system.

Habermas's subsequent effort to ground public sphere and civil society on a non-economic foundation, specifically with reference to universal normative presuppositions of communicative action, removed the central contradiction that prevented his understanding of the bourgeois public sphere from being reduced to either utopian wish fantasy or uncritical appendage of the system. By the late sixties Habermas had begun exploring several Kantian approaches that sharply distinguished instrumental–economic and moral–practical domains of action, learning, and social development.³³ By the early seventies this line of thought had led him to reconstruct the universal pragmatic presuppositions underlying everyday speech action oriented toward facilitating open and transparent cooperation.³⁴ Unlike

31 Habermas, "Further Reflections on the Public Sphere," 435–436.

32 Habermas, "Further Reflections on the Public Sphere," 426–428.

33 Jürgen Habermas, *Knowledge and Human Interests* (Boston: Beacon Press, 1971); and Jürgen Habermas, *Toward a Rational Society* (Boston: Beacon Press, 1970).

34 Jürgen Habermas, *Communication and the Evolution of Society* (Boston: Beacon Press, 1979).

strategic or otherwise manipulative uses of language, communicative action presupposes mutual agreement between the agent proposing cooperation and the recipient of the proposal. More precisely, communicative action presupposes that the recipient understands and accepts, among other things, the proposer's understanding of the factual background and rightness of the proposed interaction, an understanding that the proposer tacitly claims to be valid (true or right). Most importantly, in claiming this about her action, the proposer also commits herself to justifying these claims.

Crucially, Habermas reconstructs how speaker and listener must imagine the way justification should unfold as a critical dialogue ("discourse") wherein skeptical doubts are overcome and consensus restored by the "unforced force" of the better argument alone, a force that gains strength only to the extent that the interlocutors are presumed to have equal opportunities to present the fullest range of reasons without any mental or physical constraints.³⁵ This counterfactual ideal perfectly captures the moral point of view – that each person must be accountable to others, so that their reasonable (justifiable) dissent is respected. When transferred to the legal sphere, the discourse principle retains this reference to morality but with an important twist.³⁶ The basic equal rights to free speech, association, and personal liberty that it stipulates do not impose a reciprocal moral duty to justify one's actions but instead open up a range of permissible action to which the individual rights holder need be accountable to no one. Such liberal rights, however, are but empty principles of freedom unless politically qualified by another application of the discourse principle, this one involving a procedure of democratic consent.³⁷

Thus, contrary to the Schmittian analysis of modern liberal democracy Habermas had once partly endorsed, the discourse-theoretic conception of democracy logically entails liberal features – basic individual freedoms, equal protection from discrimination, separation of powers, and the rule of law. However, elements of Schmitt's analysis are retained in Habermas's two-track model of political deliberation. For example, while discourse in so-called *weak* publics is largely contestatory and agonal – aimed at interminable protestation of injustice rather than timely resolution on positive courses of

35 Jürgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification," in Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge: MIT Press, 1990), 43–115.

36 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Morality* (Cambridge: MIT Press, 1996).

37 Habermas, *Between Facts and Norms*, 123.

action – discourse in *strong* publics oriented to institutional decision-making terminates in reaching some kind of agreement. Although the legitimation of law remains conceptually linked to the regulative ideal of attempted rational consensus on generalizable interests, deliberation that terminates in political compromise – which Habermas regards as the normal outcome of policy debates – conforms to this ideal insofar as all parties undertake to modify their irreducibly competing interests for the sake of achieving a fair and mutually acceptable balance of power.³⁸

Habermas's Analysis of the Public Sphere in Later Writings

Suffice it to say that Habermas's discourse theory has implications for the way in which the abstract features of a procedurally just liberal democracy are concretely interpreted and institutionalized. The constitutional flow of institutional power – from legislative deliberation and enactment to executive and judicial application – should be entirely responsive to public opinion undistorted by excessive influence emanating from government elites and private interests.³⁹

In a more recent essay on normative democratic theory and empirical mass media studies, Habermas formulates the supposition that rational discourse can legitimate democratic decision-making as an assumption

- that relevant issues and controversial answers, requisite information, and appropriate arguments for and against will be mobilized;
- that the alternatives which emerge will be subjected to examination in argumentation and will be evaluated accordingly; and
- that rationally motivated 'yes' and 'no' positions on procedurally correct decisions will be a deciding factor.⁴⁰

These three suppositions are satisfied differently depending on what arena of the public sphere they occur within: (1) the *formal institutional debates* that occur within the *political system*; (2) the *informal, everyday communications* that occur within *civil society*; or (3) the *passive reception and reflective consideration of abstract information and public opinion that occur in mass media*.⁴¹ Beginning with the peripheral sphere of political life that is furthest removed from political decision-making proper, Habermas identifies *civil society*, composed

³⁸ Habermas, *Between Facts and Norms*, 166. ³⁹ Habermas, *Between Facts and Norms*, 193.

⁴⁰ Jürgen Habermas, *Europe: The Faltering Project* (Cambridge: Polity Press, 2009), 162.

⁴¹ Habermas, *Europe*, 159.

of “citizen groups, advocates, churches, and intellectuals,” as well as the social movements and social networks around which they organize themselves, as responsible for communicating social injustices.⁴² The political communication generated through physical encounter and social media contains a large quantity of non-discursive expressions of social discontent, involving the use of “story-telling and images, facial and bodily expressions in general, testimonies, appeals, and the like.”⁴³ The “wild” (spontaneous and unregulated) nature of political expression within civil society, ranging from loud plebeian demonstrations of civil disobedience to dispassionate arguments in academic forums, stands in sharp contrast to the highly regulated arguments that occur within the center of political life, the *political system*, which is charged with responding sensitively to the most vocal concerns circulating in civil society as well as those emanating from lobbyists representing “industry and the labor market, health care, traffic, energy, research and development, education” and other “functional subsystems.”⁴⁴ Less inclusive and free, but procedurally fairer, arguments conducted by government officials within institutional settings, Habermas notes, abide by strict courtroom and parliamentary procedures that are designed to ensure that all participating parties have an equal voice in debating policies. But these rules impose rational orderliness by subjecting speakers to severe time limits, legal constraints, and rules of civil decorum that restrict freedom to argue and exclude less mainstream points of view. Intermediary between civil society and the political system is the *mass-mediated sphere of communication*, which is charged with condensing, refining, weighing, and selecting public opinions emanating from civil advocacy groups, special interest lobbyists, and politicians. When properly instituted, with appropriate government regulation ensuring independent, fully representative, and roughly equal access, this arena of the public sphere can counteract shortfalls in discursive rationality that dominate in civil society and government by disseminating opinions more widely and by subjecting already filtered arguments to a second level of public reflection.

Any possibility of democratic process producing rational, viz., legitimate, decisions thus depends on the proper institution of the mass media. Assuming that rational argumentation can have an impact on cooperative learning and political problem-solving, the question arises whether mass media can function as well as face-to-face focus-group discussion in generating rational public-opinion formation conducive to reaching consensus.

42 Habermas, *Europe*, 163. 43 Habermas, *Europe*, 154. 44 Habermas, *Europe*, 163.

Mass Media in the Age of Digital Communication

A new structural transformation of the public sphere driven above all by digital technological revolutions has accelerated and intensified the diversity of information flows. It may seem that the resulting “communicative liquefaction of politics” has made it difficult for any entity to monopolize political communication.⁴⁵ Yet Habermas cites several factors that speak against the prospect that this upsurge in political communication tracks an increase in rational deliberation.

[T]wo deficits in particular immediately stand out: the lack of straightforward, face-to-face interactions, between really (or virtually) present participants, in a shared practice of collective decision-making; and the lack of reciprocity between the roles of speakers and addressees in an egalitarian exchange of opinions and claims. In addition, the dynamics of mass communication betrays relations of power which make a mockery of the presumption of a free play of arguments. The power of the media to select messages and to shape their presentation is as much an intrinsic feature of mass communication as the fact that other actors use their power to influence the agenda, content, and presentation of public issues is typical of the public sphere.⁴⁶

To begin with, mass communication “remains ‘abstract’ insofar as it disregards the actual presence of the more or less passive recipients and ignores the immediateness of the concrete glances, gestures, thoughts, and reactions of those who are present and addressed.”⁴⁷ By not being “open to the game of direct question and answer, the exchange of affirmation and negation, assertion and contradiction,” mass communication detaches the propositional content of opinions from the validity-claim structure of everyday communicative interaction, in which opinions are linked to a process of argumentative challenge and redemption. In this respect it is more like a “price regulated network of transactions between producers and consumers.”⁴⁸

Second, mass communication possesses an “asymmetrical structure,” insofar as it reduces addressees to the status of passive spectators and consumers. Journalists and politicians are like actors on a stage vying for the public’s applause. It is true, of course, that the Internet has provided a censure-free mechanism for political communication in authoritarian regimes that has led to remarkable (if short-lived) democratic victories (as

45 Habermas, *Europe*, 154–155. 46 Habermas, *Europe*, 154. 47 Habermas, *Europe*, 156.

48 Habermas, *Europe*, 156.

witnessed, for example, in the Arab Spring). But in liberal democracies the “chat rooms” that seem to have “revived the historically submerged phenomenon of an egalitarian public of reading and writing conversational partners and correspondents” have largely crystallized around partisan or otherwise parochial niche audiences, thereby belying the globalizing and decentering potential of the Internet and, Habermas adds, fragmenting the public sphere further into entrenched and closed interest groups.⁴⁹

That said, Habermas insists that these structural deviations from rational discourse do not necessarily mean that mass media fail to contribute to rational deliberation. They contribute by *filtering* inputs from elites within civil society, government, and functional subsystems in the form of *published opinions*, and then reflectively generating *public opinions* (“clusters of controversial issues and inputs to which the parties concerned intuitively attach weights in accordance with their perceptions of the cumulative ‘yes’ and ‘no’ stances of the wider public” as conveyed by a “representative spectrum of pooled opinions reflected in survey data”).⁵⁰ Beyond this, mass media also enable a secondary stage of reflection on public opinion, which generates *considered public opinion*, by which Habermas understands “a pair of contrary, more or less coherent opinions, weighted in accordance with agreement and disagreement, which refer to a relevant issue and express what appears at the time, in light of available information, to be the most plausible or reasoned interpretations of a sufficiently relevant – though generally controversial – issue.”⁵¹ Considered opinions “fix the parameters for the range of possible decisions [made by political elites] which the public of voters would accept as legitimate.” In this way, properly functioning mass media perform two invaluable tasks in democratic deliberation: They return to civil society its own messages of discontent, now reflectively worked up in the form of considered public opinion; and they place such opinion before institutional deliberative bodies, commenting and observing how well such bodies incorporate said opinion into their agendas and debates.⁵²

However, mass media function properly only if the power structures of the public sphere and the dynamics of mass communication permit it. The public sphere is influenced by *political power*, which shapes the legal regulations that constitute the diversity and independence of the mass media. It is influenced by *social power* (especially economic power), which must be exercised in a relatively transparent manner; and it is influenced by *media*

49 Habermas, *Europe*, 158. 50 Habermas, *Europe*, 165. 51 Habermas, *Europe*, 166.

52 Habermas, *Europe*, 162.

power, which shapes the content and formatting of public opinion according to its own professional code of integrity (fairness and independence). Although Habermas concedes that sectorial and government elites have a financial and organizational advantage in shaping public opinion according to their preferences relative to the “weak” and “dispersed” publics that form civil society, he thinks that their strategic interventions can be checked by the reflective counter-responses of well-regulated mass media. Whether this actually happens depends not only on the independence of the media, but also – most importantly – on the “motivational dispositions and cognitive abilities” of average citizens. Citizens, Habermas contends, need not possess a large body of knowledge about politics in order to be knowledgeable in their reasoning about political choices.⁵³

Habermas expresses considerable skepticism about whether these two conditions are in fact met. In addressing the problem of independence, he notes that mass media may be “incompletely differentiated” from their social and government environments. This was the case with the Italian government’s postwar monopoly over the broadcasting system, when each of the three major political parties recruited media personnel from its own ranks. A potentially more sinister instance occurred when the United States’ National Security Agency enlisted such telecommunications and Internet giants as Verizon, Telstra, Google, and Facebook in tracking user data. Lack of independence may also take the form of a “temporary dedifferentiation,” as when media and government collude for mutual advantage (favorable news coverage in exchange for access).⁵⁴

A second pathology manifests itself in citizens’ overly passive and uncritical consumption of public opinion. Consumption is unequally partitioned among the various sectors of society depending on educational achievement, social class, and cultural marginalization.⁵⁵ Apathy, powerlessness, and cynicism, largely in response to the devolution of political campaigns into image-making spectacles and the debasement of news to “infotainment” (the blending of news and entertainment in easily consumed soundbites), also reinforce the passive-consumer mentality of citizens.⁵⁶

53 Habermas, *Europe*, 172–173. 54 Habermas, *Europe*, 174–176.

55 David Ingram and Asaf Bar-Tura, “The Public Sphere as Site of Emancipation and Enlightenment: A Discourse Theoretic Critique of Digital Communication,” in *Re-Imagining Public Space: The Frankfurt School in the 21st Century*, ed. Diana Boros and James M. Glass (New York: Palgrave, 2014), 65–85.

56 Habermas, *Europe*, 178–189.

Counterbalancing this gloomy diagnosis, Habermas cites studies showing that citizens' "ascriptive ties between political behavior and social and cultural backgrounds have increasingly loosened." Such loosening suggests a growing "independence of political attitudes from determinants such as place of residence, social class, or religious affiliation." From this Habermas infers that public reason may be gaining the upper hand over parochial prejudice when it comes to thinking about particular issues. The new media-generated interest in participating in multiple "issue publics" centered on immediate (short-term), non-economic concerns has "pluralized" participation in distinct but overlapping publics, thereby weakening monolithic partisan loyalties, ideological antagonisms, and narrow group- and identity-based patterns of political association.⁵⁷

Alternatives to the Deliberative Model of the Public Sphere

Habermas's discourse-theoretic understanding of the public sphere has been challenged from a variety of fronts too numerous to catalog here. I shall focus on three of them that have influenced Habermas's thinking from the very beginning: Luhmann's systems theory, Arendt's phenomenology of spontaneous grass-roots political activism, and Left-Schmittian realism. Although traces of these approaches still remain in his mature philosophy, each taken separately contradicts core tenets of his discourse theory of deliberative democracy.

The Systems-Theoretic Alternative: Niklas Luhmann

Niklas Luhmann (1927–1998) developed a non-normative theory of society whose cybernetic and biological modeling of self-contained and self-creative communication *systems* is important to us because it represents the exact antithesis of a society theorized as *primarily* integrated by personal communication *actions* regulated by universal egalitarian and consensual norms. Luhmann's debate with Habermas in the early seventies and Habermas's ongoing efforts to grapple with the implications of Luhmann's evolving theory of society for legal and political theory were made all the more significant given that both thinkers drew inspiration from Talcott Parsons (Luhmann's former mentor at Harvard) and specifically incorporated into their own theories his mature account of differentiated social systems, which

⁵⁷ Habermas, *Europe*, 178–189.

substitute generalized strategic media (such as money, in the case of the economic system, and power in the case of the legal system) for consensual communication in integrating (or coordinating) social behavior.⁵⁸

In Habermas's social theory, consensual communication normatively anchors the system. By contrast, Luhmann's theory of society (*Gesellschaftstheorie*) makes the continuation of systems-mediated communication the anchor for normative integration. Indeed, his theory demotes individual social agents to relatively insignificant systems of personal meaning ("consciousness") in comparison with the interactive communicative systems which connect them (Luhmann's dismissal of the theory of consciousness as an ontological starting point is one of the very few points on which he and Habermas agree). 'Communication' here is described in the non-normative language of cybernetics: Systems – be they persons, organizations, or functional orders – observe each other as environments whose complex effects they process into information (reduce to 'meaning') for purposes of selection, pursuant to the re-establishment of successful adaptation and internal stability. The successful functional adaptation of a system's social structure to its outer environment along with the subsequent restabilization of its inner identity reinforces a conservative tendency toward maintaining continuity.

Luhmann's theory of society is more than just a theory of social systems.⁵⁹ Like Parsons's (and Habermas's) social theory, it also contains a theory of social evolution and a theory of functional social differentiation.⁶⁰ Over time pre-modern societies develop organizational systems that culminate in an administrative state as supreme coordinator of otherwise chaotic networks of communicative interaction; but, pressured by problems of growth, the unified, hierarchical community (*Gemeinschaft*) such stratified state-centered societies normatively integrate will evolve into a functionally differentiated, decentralized, non-normatively integrated communication network coupling distinct economic, legal, political, familial, educational, and religious subsystems. These functional systems are "autopoietic," or self-contained in their internal generation of meaning; each processes what it has observed from its environment into information using its own unique binary code for selecting inputs. For example, events in the legal system are coded in terms of

58 Jürgen Habermas (with Niklas Luhmann), *Theorie der Gesellschaft oder Sozialtechnologie – Was leistet die Systemforschung?* (Frankfurt: Suhrkamp, 1971); Niklas Luhmann, *A Sociological Theory of Law*, ed. Martin Albrow, trans. Elizabeth King-Utz and Martin Albrow (London: Routledge, 1985); and Habermas, *Between Facts and Norms*.

59 Niklas Luhmann, *Theory of Society*, trans. Rhodes Barrett, 2 vols. (Stanford: Stanford University Press, 2012–2013).

60 See Habermas, *The Theory of Communicative Action, Volume Two*.

whether they are lawful or unlawful, whereas events in the political system are coded in terms of whether they are legitimate or illegitimate; that is to say, whether or not they successfully motivate public compliance with government decision-making.

Here we see how the background interaction systems that populate the public sphere and generate public opinion play a potentially ambivalent – and by no means critical – role in Luhmann's analysis of the political system.⁶¹ The political system in the modern welfare state understands itself (paradoxically) as a *universal* decision procedure for solving problems that arise from within other functional subsystems. But in reality its power to steer these other systems is limited because it communicates with them in its own language, the 'effects' of which are processed very differently by these other systems in terms of their languages. The possibility of synchronized structural coupling linking different functional systems is thus utterly contingent, leading Luhmann himself to doubt whether inter-systemic integration (e.g., revolutionary political change of the constitutional legal order) is possible (*Steuerungsskeptizismus*). To take an iconic example drawn from the public sphere, a judge cannot but regard a peaceful act of civil disobedience as a form of law-breaking that should be suppressed. For a state that needs law to resolve its own paradox of self-authorizing power, maintenance of constitutional procedure would seem to demand the same course of action. However, from the perspective of the democratic political system which motivates compliance with state authority, elected officials cannot but regard this same event as one – potentially necessary – reflection on (or observation of) the political system's current state of instability. Because the state organizational system must communicate with both legal and political subsystems in order to function successfully, it must unhappily choose between two horns of a dilemma, both of which are guaranteed to produce systemic crisis: tolerate law breaking or suppress politics.

In sum, Luhmann's reduction of the public sphere to a network of cybernetically conceived interactive subsystems that are subsumed under more hegemonic functional systems renders, by his own admission, democracy, representation, and sovereignty inherently paradoxical as meaningful political categories. Equally paradoxical, on his account, is the successful functioning of public opinion as a critical check on organizational and functional political power. Indeed, the political, understood as a distinctive

61 Niklas Luhmann, *Political Theory in the Welfare State* (Berlin: de Gruyter, 1990); and Niklas Luhmann, *Die Politik der Gesellschaft* (Frankfurt: Suhrkamp, 2000).

category of communicative action, appears to have been all but effaced by the technical, understood as a general feature of social administration.

The Neo-anarchist Alternative: Hannah Arendt

Diametrically opposed to techno-scientific descriptions proffered by systems theory are those neo-anarchist interpretations of the public sphere that descend from Hannah Arendt (1906–1975), an existential phenomenologist who, as we saw above, has influenced Habermas's thought from the very beginning. As a former student of Heidegger, Arendt was concerned about rescuing an archaic mode of existence from the oblivion of modern technology. In keeping with the communication-centered *Existenzphilosophie* elaborated by her dissertation supervisor, Karl Jaspers, the mode of existence she sought to recover was not poetic thinking about being as such but political action as a distinctive form of manifesting a world of meaning and individual identity that first – and Arendt seems to suggest, most authentically – appeared in the ancient Greek *polis*.⁶²

Like Habermas, Arendt closely ties political action to the legitimation of power, with some of her accounts of political action resonating with the social-contractarian language favored by Habermas. In discussing the spontaneous act of constituting a shared political space through mutual promising, Arendt seems to postulate voluntary consent as a universal norm of legitimation.⁶³ Her contrast between the 'communicative power' (*Macht*) of public opinion and the 'violence' (*Gewalt*) of coercive legal imposition is later taken up by Habermas in explaining how legitimate exercises of the latter depend upon the former.⁶⁴ Again, in her discussion of Kant's political understanding of judgment (1982), she draws attention to the importance of communication in generating an "enlarged thought" that takes into account the opinions of others.⁶⁵

But some of Arendt's other descriptions of political action deviate so markedly from Habermas's as to constitute a counter-theory to his own. For Arendt, the essence of political action is essentially non-instrumental, not the achievement of this or that end but the public revelation of each actor's

62. Arendt, *The Human Condition*.

63. Hannah Arendt, *On Revolution* (New York: Viking, 1973), 173 and 192–268; and David Ingram, "Novus Ordo Seclorum: The Trial of (Post)Modernity or the Tale of Two Revolutions," in *Hannah Arendt: Twenty Years Later*, ed. Larry May and Jerome Kohn (Cambridge: MIT Press, 1997), 221–250.

64. Habermas, *Between Facts and Norms*, 196.

65. Hannah Arendt, *Lectures on Kant's Political Philosophy*, ed. and trans. Ronald Beiner (Chicago, University of Chicago Press, 1982).

individuality in an agonal exchange of opinions. In keeping with this dramatic notion of political action, Arendt introduces the public space as the cultural arena where public spectators memorialize the fleeting deeds and words of political actors by judging them and, in so doing, narrate their own shared political identity. All of this, Habermas observes, suggests an aesthetic – rather than cognitive–practical – understanding of the public.⁶⁶

The Realist Left-Schmittian Alternative: Chantal Mouffe

Given Habermas's hostility to Carl Schmitt (1888–1985) and his political theology, it may seem strange to claim him as anything more than a passing influence on Habermas's early theorizing of the structural transformation of the public sphere. Stranger still is the very idea that an unrepentant Nazi jurist could find a receptive home in any contemporary left-wing political theory, until we recall the antipathy toward liberalism that many on the left (including his former students Otto Kirchheimer and Franz Neumann, who later affiliated with the Frankfurt School) shared with Schmitt. More recent left-wing revivals of Schmitt's thought have appropriated his incisive observations regarding the impotence of law in relation to its decisive application by executive authority, the theological genealogy of political categories such as sovereignty, the opportunistic manipulation of humanitarian law as subterfuge for imperial aggression, and the need to define politics in terms of implacable partisan opposition rather than compromise.

No other contemporary theorist has done more to revive Schmitt's reputation in this regard than Chantal Mouffe, who, joining with many leftists in the eighties and nineties, felt betrayed by the willingness of socialist parties to compromise their militant platforms for the sake of collaborating with big business in pursuing liberal and neoliberal administrative policies. Like Schmitt, Mouffe objects to liberalism because it privileges individuals as the central actors in political life, which liberalism incoherently conceives as a domain dominated by the pursuit of both rational self-interest and universal morality. More precisely, liberalism overlooks individuals' passionate identification with identity groups such as labor unions, whose very identities are necessarily shaped in an agonal struggle for hegemony in opposition to other identity groups, such as business associations.⁶⁷ The reference to hegemony

66 Jürgen Habermas and Thomas McCarthy, "Hannah Arendt's Communications Concept of Power," *Social Research*, 44(1) (1977), 3–24.

67 Chantal Mouffe, *Agonistics: Thinking the World Politically* (London: Verso, 2013), 4–5 and 137.

underscores Mouffe's disagreement with Arendt and her debt to Gramsci, for whom the acquisition of power serves as the principal aim of politics.⁶⁸

Mouffe parses the theoretical implications of hegemonic power by referencing Schmitt's equation of democracy and unrestricted majoritarian dictatorship. For Schmitt the general will inscribed in democratic rule cannot be universal; it cannot reflect the common interests of humanity, as liberalism claims. An abstract norm such as human rights lacks sufficient concreteness to be the basis for a ruling will. Indeed, this and every other general norm lacks prescriptive force until its precise meaning has been decided. But decision, as an act of will, must be particular and exclusive. If we say, as Schmitt does, that the specific meaning of a general law ultimately depends on the sole discretion of the supreme executive power enforcing it, then we go no further than asserting a Hobbesian identification of legal order with absolute sovereign authority. However, if we insist that sovereign power must be authorized democratically, then we assert something more, namely, that an adversarial struggle must identify the holder of that power as a majority that possesses an exclusive right to decide for a minority.⁶⁹

The exclusive exercise of sovereign political power dictates the adversarial nature of democratic politics. Although Mouffe disagrees with Schmitt's characterization of democratic politics as an antagonistic war uniting friends against foes, she agrees that any such politics will involve partisan groups that view each other as adversaries.⁷⁰ Adversaries respect the legitimacy of each party's right to advance its political agenda. To that extent they can be said to agree on an abstract constitutional framework of equal rights and toleration. But this consensus is grounded not in common reason, but in overlapping comprehensive belief systems (as Rawls puts it) that are irreducibly particular, if not incommensurable. Because these comprehensive belief systems are embedded in emotionally imbued group identities that are maintained only in opposition to other such identities, this consensus will itself take the form of contestation and struggle (what Mouffe calls conflictual consensus and what Rawls would call a *modus vivendi*). Indeed, the very constitutional framework constraining this struggle will also be a site of political contestation.⁷¹

The fault lines separating Mouffe and Habermas are not as clearly demarcated as those separating Schmitt and Habermas, but they are sharp nonetheless. Both Habermas and Mouffe identify the public space of democratic

68 Mouffe, *Agonistics*, 9–11 and 73–75. 69 Mouffe, *Agonistics*, 5–6.

70 Mouffe, *Agonistics*, 7 and 137–139. 71 Mouffe, *Agonistics*, 8–9.

political life with a plurality of voices that are free to criticize and contest. But their understanding of the mutual respect that constrains political opponents is different. For Habermas respect for someone implies a willingness to offer her reasons that she could in principle accept. If we now follow Mouffe in discarding the rational premises underlying Habermas's notion of consent, then respect for the other resides in acknowledging that the adversary is like oneself in her passionate attachment to an emotionally compelling political worldview and, as such, should be given the freedom to contest, if not the freedom to share in political rule. But this weak legitimation of democratic order – that all are free to contest – is qualified by the fact that the composition of the 'all' is itself a political issue that those in power must decide. Should all groups – no matter how threatening to the hegemonic order (as seen by those in power) be free to contest as respected adversaries? Where do we (the dominant majority) draw the line between 'enemies of the state' and adversaries whose worldviews strike us as deeply corrosive of society? For Mouffe, there is no way to decide this question rationally.

Habermas and Mouffe both view the public sphere as fitting into a circulation of power that culminates in a decision to exercise legal coercion, and in this respect their understanding of the political differs from Arendt's. But Habermas sees the primary function of politics as deliberation centered around collaborative and *rational* problem-solving, whereas Mouffe sees it as a *non-rational*, agonistic struggle oriented toward achieving hegemonic power for one's group. In essence, they depart from conflicting phenomenologies of political experience that have distinctive affinities with social class. Habermas does not deny the emotional identification underlying group loyalty, but he can point to empirical evidence showing that more educated citizens who are guided by enlightened self-interest identify less strongly with ideological groups and show more independence in their political preferences than do their less educated counterparts.

Globalizing the Public Sphere

Since the late nineties globalization has overwhelmed the state's capacity to manage its borders, defend against internal and external security risks, regulate its economy, and guarantee public services. Meanwhile, the parallel expansion of transnational systems of governance has increasingly limited what states can do to advance their subjects' well-being.

If society must be conceived as *world* society, as Luhmann argues, then we would naturally expect to find it structured by various functional systems,

including a global political system, that would supersede and connect its state-centered segments. Luhmann's surprising silence on this possibility – and his neglect of international relations in general – is only now drawing a response from systems theorists, such as Günther Teubner (1944–), who, using Luhmann's model of autopoietic systems, has argued that globalization has effectively detached constitutional law from public law and from the nation state.⁷² International law has increasingly migrated from the domain of public law (dealing with humanitarian crimes, for example) to the plural domains of private law. International law has become fragmented into heterogeneous, autopoietic (self-constituting), transnational legal subsystems (of copyright, trade, and so on) that compete with international public law. Neoliberal trade regulations effectively prohibit states from performing welfare functions that institutionalize human rights. Accordingly, social movements have now switched from criticizing states to protesting against non-state organizations, such as the World Trade Organization (WTO) and the various systems of private law within which it operates. But as the targets of protest constantly shift and fragment, so do the protesting publics. The self-referential paradoxes of self-creating systems diagnosed by Luhmann at the level of the welfare state become more intense globally, as legal and political systems become increasingly decoupled and fragmented.

Habermas and other critical theorists express ambivalence regarding this development, at once bemoaning the decline of *local* democratic control while remaining guardedly hopeful that *global* democratic control can reassert itself against legal and political fragmentation and steer supranational government toward more effective and fair cosmopolitan humanitarian policies aimed at mitigating civil conflict, human rights violations, poverty, inequality, and climate change. Here they look to an emerging global public sphere, anchored largely by NGOs, popular social movements, and similar “players” within a global civil society. The public opinion generated by these voices is leveraged against outlaw states and other human rights violators as well as democratically unaccountable global economic multilaterals, such as the WTO and the World Bank, whose trade and lending policies are widely believed to benefit richer nations (and richer individuals) to the detriment of the poor.⁷³

72 Günther Teubner and Peter Korth, “Two Kinds of Legal Pluralism: Collision of Transnational Regimes in the Double Fragmentation of World Society,” in *Regime Interaction in International Law: Facing Fragmentation*, ed. Margaret A. Young (Cambridge: Cambridge University Press, 2010), 23–54.

73 Habermas, *Europe*, 125.

Contemporary political theorists in the European tradition by no means agree on whether this emerging site of global public *opinion* constitutes a global public *sphere*. If we depart from critical theory's standard understanding of the public sphere as essentially connected to the legitimation of political power as distinct from occasional protestation of its exercise, then any talk of a global public sphere would seem to presuppose the existence of a relatively unified global opinion capable of influencing the deliberation and decision-making of international agencies possessing global legislative powers. It is far from clear whether such agencies currently exist (or even could exist) and what form they might possibly take in the future. What is clear is that without them it would make no sense to talk about a global public sphere functioning in a way analogous to a domestic public sphere. Furthermore, the existence of such international legislative bodies tells us little about the possibility of a global public opinion that might direct their deliberation and decision-making. Absent global legislative agencies that are susceptible to democratic structuration and a global civil society capable of generating global opinions influencing their deliberation and decision-making, one might at best speak of a global public sphere whose functioning would be very different from the domestic model.

The possibility of a global public sphere analogous in functioning to a domestic public sphere depends on the coherence of democratic global governance. No critical theorist believes that such a system of global governance currently exists, but Habermas and other theorists such as Brunkhorst and Benhabib, who interpret the post-World War II development of humanitarian law as a process of constitutionalization, see it as an emerging fact, centered on a reformed UN.⁷⁴ Such a government would not replace nation states, which would still be responsible for enforcing and interpreting international and cosmopolitan law. But its laws and regulations, to the degree that they were coercively enforced, would require democratic legitimation. *International* legislation could be legitimated through national and regional public spheres as is now the case, but *cosmopolitan* legislation affecting human rights and other forms of humanitarianism would likely be carried out by a constitutionally re-founded General Assembly whose legitimate functioning would depend on public opinion generated by a global public sphere.

74 Seyla Benhabib, *Another Cosmopolitanism: Hospitality, Sovereignty and Democratic Iterations*, ed. Robert Post (Oxford: Oxford University Press, 2006); and Hauke Brunkhorst, *Critical Theory of Legal Revolutions: Evolutionary Perspectives* (London: Bloomsbury, 2014).

Many critical theorists have questioned the legitimacy of the current state system that anchors international law. If discourse ethics demands that all who are affected by governance have some say in shaping it, then no municipal policy possessing global impact can rely on national public opinion alone for its legitimation. The determination of whose voice should count in shaping national immigration, energy, and trade policy cannot be determined by simple appeal to a nationally bounded public sphere. The determination of this matter would instead lie with some supranational (but not necessarily global) public.⁷⁵

If international treaty law cannot rely on the bounded publics of its constituent parties for democratic legitimation without begging the meta-political question regarding the legitimacy of those very publics, then its true scope will have to be reconceived as transnational, if not cosmopolitan. Some critical theorists challenge the idea of such a transnational (or cosmopolitan) public sphere.⁷⁶ The scope and diversity of such a public would likely undermine any possibility of generating a relatively unified global opinion capable of guiding global legislators. However, in the absence of a centralized, hierarchically structured global government – whose monopoly over the creation and interpretation of cosmopolitan law many critical theorists fear – the need for such a global sphere analogous to the domestic type seems rather superfluous. If we then continue to speak of a global public sphere, it would be in terms of a structurally transformed public sphere. The kind of global public sphere appropriate to a decentered system of global governance linking overlapping *demoi* would be neither strong nor weak but distributive, enhancing deliberation across *demoi*. Whether this decentered model of global governance, with its modest conditions for democratic legitimation, can compel hegemonic superpowers to effectively and fairly address our current humanitarian crises remains to be seen.

75 Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009).

76 James Bohman, "Democracy, Solidarity and Global Exclusion," *Philosophy and Social Criticism*, 32(7) (2006), 809–817.