THE ANARCHIST IN THE COFFEE HOUSE: A BRIEF CONSIDERATION OF LOCAL CULTURE, THE FREE CULTURE MOVEMENT, AND PROSPECTS FOR A GLOBAL PUBLIC SPHERE

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The global network-of-networks that President George W. Bush calls "the Internets" represents the first major communicative revolution since the publication in 1962 of Jürgen Habermas' influential historical work, *The Structural Transformation of the Public Sphere*.[1] In that work Habermas describes a moment in the social and political history of Europe in which a rising bourgeoisie was able to gather in salons and cafes to discuss matters of public concern. The public sphere represented a set of sites and conventions in the eighteenth century in which (almost exclusively male) members of the bourgeoisie could forge a third space to mediate between domestic concerns and matters of state. It was a social phenomenon enabled by a communicative revolution: the spread of literacy and the rise of cheap printing in Europe. Habermas asserts that such a space did not exist in Europe in a strong form before the eighteenth century and that by the end of the nineteenth century, it quickly underwent some profound changes. The democratic revolutions in the

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1. JÜRGEN HABERMAS, THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE: AN INQUIRY INTO A CATEGORY OF BOURGEOIS SOCIETY, STUDIES IN CONTEMPORARY GERMAN SOCIAL THOUGHT (1989). I use the word "revolution" cautiously. With only a twenty-year history, it is far too early to assess the effects of the Internet in a balanced and sober manner. Hype and fear still dominate the discussions of the effects of the Internet on culture, societies, politics, and economics. In addition, the Internet hype may have distracted scholars from another revolution: the proliferation of the magnetic cassette tape and player in the 1970s has had a more profound effect on daily life in all corners of the Earth than the Internet has had so far. *See* PETER LAMARCHE MANUEL, CASSETTE CULTURE: POPULAR MUSIC AND TECHNOLOGY IN NORTH INDIA (Philip Bohlman & Bruno Nettl eds., 1993).

United States and France, parliamentary reform efforts in England, and the unsteady lurches toward republics in Germany and other parts of Europe eventually codified many of the democratic aspirations of the public sphere: openness, inclusiveness, and fairness. By the dawn of the twentieth century, the corporatization of communications functions across nation-states had drained the bourgeois public sphere of its deliberative potential and much of its purpose. Habermas left those of us who worry about the health of democratic practice with a nostalgic model of rational discourse with liberatory potential. It has been a powerful and useful model. Since 1962 in Europe and 1989 in the United States (the date of publication for the English translation of *The Structural Transformation of the Public Sphere*) Habermasian standards have influenced media reform efforts and—to a much lesser extent—media policy. Long tired of trying to rebuild the Hellenic Agora, we set about trying to build a better coffee house.[2]

It is no surprise, then, that as soon as the Internet entered public consciousness in the 1990s, cultural and communication theorists started asking whether the Internet would enable the generation of a "global public sphere." Influenced perhaps too much by Marshall McLuhan's model of a "global village," scholars, journalists, and activists drove Habermasian terms into mainstream discussions of Internet policy and the potential of the Internet to influence politics. Some theorists, like Mark Poster and Jodi Dean, are critical of efforts to associate a print-centered nostalgic phenomenon with the cacophony of cultural and political activities in global cyberspace.[3] Others, including Yochai Benkler and Howard Rheingold, see the practice of "peer production" and the emergence of impressive and efficient organizational practices as a sign that Habermas' dream could come true in the form of digital signals and democratic culture.[4]

This article examines one particular Public Sphere experiment—the rise of a global "Free Culture Movement" that aims to limit the spread of strong

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2. JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY (Thomas McCarthy ed., William Rehg trans., MIT Press 1996) (1992). This work extends and revises the work Habermas initiated in the 1960s, before he took his "linguistic turn" into considerations of communicative competence in the 1970s. *See* JÜRGEN HABERMAS, A THEORY OF COMMUNICATIVE ACTION (Thomas McCarthy trans., Beacon Press 1984) (1981); Douglas Kellner, *Habermas, the Public Sphere, and Democracy: A Critical Intervention*, *available at* http://www.gseis.ucla.edu/faculty/papers/habermas.htm (last visited Mar. 27, 2005). For critical perspectives on Habermas and public-sphere theory see HABERMAS AND THE PUBLIC SPHERE (Craig Calhoun ed., 1992); THE PHANTOM PUBLIC SPHERE (Bruce Robbins ed., 1993).

3. *See* Mark Poster, *The Net as a Public Sphere?*, WIRED, Nov. 1995, *available at* http://www.wired.com/wired/archive/3.11/poster.if_pr.html; Jodi Dean, *Cybersalons and Civil Society: Rethinking the Public Sphere in Transnational Technoculture*, 13 PUBLIC CULTURE 243 (2001).

4. *See* YOCHAI BENKLER, THE WEALTH OF NETWORKS (2006); *see also* MANUEL CASTELLS, THE RISE OF THE NETWORK SOCIETY (2d ed. 2000); HOWARD RHEINGOLD, SMART MOBS: THE NEXT SOCIAL REVOLUTION (2002); HOWARD RHEINGOLD, THE VIRTUAL COMMUNITY: HOMESTEADING ON THE ELECTRONIC FRONTIER (MIT Press 2000) (1993); Craig J. Calhoun, *Information Technology and the International Public Sphere*, *in* SHAPING THE NETWORK SOCIETY: THE NEW ROLE OF CIVIL SOCIETY IN CYBERSPACE 229 (2004), *available at* http://www.ssrc.org/programs/calhoun/publications/IT_Int_Public_Sphere.pdf.

intellectual property regimes. It also considers the complications encountered by the Free Culture Movement when it crosses a very different value set at work in global cultural policy debates—the protection of native or local culture exemplified by the Native Culture Movement. Through this case study, I suggest that perhaps the Public Sphere is not the best model to idealize when we think globally and dream democratically. Habermas's Public Sphere is as temporally and geographically specific as Benedict Anderson's notion of "imagined communities" and similarly has been inflated to cover disparate experiences that do not precisely map to the specific historical experience the original work covers.[5]

Those behind the Free Culture Movement hope to deploy, leverage, and spread liberal values into spaces that have been overrun by a proprietarian ideology.[6] Strong in the United States and Western Europe, and getting stronger in Brazil, India, Australia, and other parts of the world, the Free Culture Movement proponents hope to stifle efforts to extend patent protection to computer software and the extension and expansion of copyright protection over cultural works. Rhetorical weapons at work within the Free Culture Movement include "commons talk," a valorization of the un-owned elements of cultural expression. Central to commons talk is the claim that a large and rich "public domain" of published works can lower the cost of production and increase the creative potential for the next generation of cultural producers. The Free Culture Movement is Habermasian. It simulates and encourages "public sphere" happenings around the world. And its early success is a testament to the political potential of public sphere theory.[7]

The Native Culture Movement has very different goals. It has no use for the public domain. In fact, the public domain is a problem for it. This movement represents the interests of long-unrecognized culture groups, many of which have struggled to assert and maintain identities under intense pressure from illiberal, authoritarian, or totalitarian nation-states intent on eliding difference for the sake of a forged and coerced postcolonial nationalism. Under these conditions, many of these culture groups were not able to transmit local traditions openly or teach languages to their young members. Since liberalization and globalization replaced fervent postcolonial nationalism in

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    5. BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (Verso 1991) (1983).

    6. The proprietarian ideology is an expression of market fundamentalism claiming that if some private ownership of culture and information is good, then more must be better.

    7. *See* LAWRENCE LESSIG, FREE CULTURE: HOW BIG MEDIA USES TECHNOLOGY AND THE LAW TO LOCK DOWN CULTURE AND CONTROL CREATIVITY (2004); s*ee also* JAMES BOYLE, SHAMANS, SOFTWARE, AND SPLEENS: LAW AND THE CONSTRUCTION OF THE INFORMATION SOCIETY (1996); PETER DRAHOS & JOHN BRAITHWAITE, INFORMATION FEUDALISM: WHO OWNS THE KNOWLEDGE ECONOMY? (New Press 2003) (2002); LAWRENCE LESSIG, THE FUTURE OF IDEAS: THE FATE OF THE COMMONS IN A CONNECTED WORLD (2001); SIVA VAIDHYANATHAN, COPYRIGHTS AND COPYWRONGS: THE RISE OF INTELLECTUAL PROPERTY AND HOW IT THREATENS CREATIVITY (2001); Siva Vaidhyanathan, *Remote Control: The Rise of Electronic Cultural Policy*, 597 ANNALS AM. ACAD. POL. & SOC. SCI. 1 (2005).

many places (and just as often in already-liberal states such as Australia and Canada), these culture groups face a new threat: the corporate exploitation of their signs, stories, and cultural practices. For them, a public domain is merely an opportunity for others to cheapen their experiences, traditions, and beliefs by rapid repetition and distribution in new and often insulting contexts.[8]

Both the Native Culture Movement and the Free Culture Movement stand in opposition to "the torrent" of proprietary media images and texts that pour out of multinational corporations via closed networks of satellite, cable, broadcast, and retail outlets.[9] In this opposition, both movements could find common cause. One significant limitation to the prospects of a Free Culture–Native Culture alliance, however, is the tone-deafness of much of the U.S.-based rhetoric that serves as the foundation of the Free Culture Movement. Habermas and John Stuart Mill do not always translate well.

Yet the tension between the very Habermasian Free Culture Movement and the more communitarian Native Culture Movement reveals more than a rhetorical fault in the Free Culture Movement. It exposes the frustrations and limitations of efforts to generate a global public sphere that can wrestle with any issue of global importance: cultural, trade- or health-related, or environmental. First, it is not always clear what entity the global public sphere is serving. The local (or national) public sphere in Habermas's model mediates between the private and the state. But there is rarely a clear state-like supranational body that has effective sovereignty over any particular global issue. Sometimes it might seem to be the World Trade Organization, but that might just be a mask for the interests of a particular nation-state. Other times it might seem to be UNESCO or the World Intellectual Property Organization. But again, such organizations might just be acting as an instrument of policy execution at the behest of a nation-state that demands the illusion of multilateral cover for its will.

Second, public spheres imply, and perhaps require, real spaces for deliberation and debate. The Free Culture Movement has proliferated not merely through the use of e-mail lists and Websites; it has generated energy and strategy through a long series of face-to-face meetings sponsored by foundations, universities, and small groups of activists. These meetings might have been organized through digital-information communication technologies, but free culture activists still feel the need to meet face-to-face to forge

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8. *See* ROSEMARY J. COOMBE, THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW, POST-CONTEMPORARY INTERVENTIONS (1998); Rosemary J. Coombe & Andrew Herman, *Rhetorical Virtues: Property, Speech, and the Commons on the World Wide Web*, 77 ANTHROPOLOGICAL Q. 559 (2004), *available at* http://www-swiss.ai.mit.edu/6095/admin/admin-fall-2005/weeks/coombe_AQ.pdf; Robyn Kamira, Indigenous Peoples: Inclusion in the World Summit for the Information Society, (World Summit on the Information Summit 2002); Ian McDonald, Australian Copyright Council, *UNESCO-WIPO World Forum on the Protection of Folklore: Some Reflections and Reactions*, 1997 COPYRIGHT REP. 1, *available at* www.copyright.org.au/pdf/acc/articles_pdf/A97n21.pdf.

9. MICHAEL F. BROWN, WHO OWNS NATIVE CULTURE? (2003).

consensus and agendas for action. This privileges activists in wealthier places in the world or those with institutional affiliation. Frequent fliers become agenda-setters. The very marginality of the Native Culture Movement—its reason for being—renders it peripheral to global discussions of cultural policy. Only when represented by a friendly and supportive nation-state (again, Canada or Australia) do Native Culture Movement members find their claims considered by policymaking officials. But this is state-driven action. It is not done through the public sphere.[10]

Although traditional public-sphere theory offers little to the Native Culture Movement, civil society, more broadly conceived, offers more. That it does is especially useful because so much Internet-mediated global political action is markedly uncivil. The project should be to encourage civility among all parties without hitching civility to the noxious ideology of "civilizing the uncivilized" parts of the world. More often than not, American and European actors need to be encouraged to behave civilly, whether they are corporations, states, or black bloc anarchists disrupting a meeting of the G-8. On the margins, "Hactivism" and cyber-vandalism have grown into important tools for the disaffected, including members of the Native Culture Movement.[11] The Internet does not in itself provide the social space or norms Habermas describes and prescribes for a healthy public sphere. It is not designed to be a force for civility. Paradoxically, the Internet does a better job of stimulating (or simulating) rational spaces and norms in illiberal contexts, such as when employed by democratic dissident movements.[12]

To understand why uncivil behavior remains important in global politics, we must consider the peculiar role of culture in the postmodern global-market economy. Culture is contentious.[13] On its face, this is a rather mundane claim. But it is a historically important one. Seyla Benhabib argues that "culture" traditionally has been considered central to the maintenance of worldviews of dominant political structures, not a distinct field or locus of symbolic generation and differentiation. The distinction of "culture" as a value outside the regimentation and reification of science, politics, economics, or militarism is a distinctly modern phenomenon, the result of a process that Max Weber called "Wertausdifferenzierung" or "value differentiation."[14] Weber claimed that culture in the modern state and capitalist economy tends to foster oppositional

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10. McDonald, *supra* note 8, at 9–10.

11. Coombe & Herman, *supra* note 8, at 562–63.

12. SIVA VAIDHYANATHAN, THE ANARCHIST IN THE LIBRARY: HOW THE CLASH BETWEEN FREEDOM AND CONTROL IS HACKING THE REAL WORLD AND CRASHING THE SYSTEM (2004); *see also* SHANTHI KALATHIL & TAYLOR C. BOAS, OPEN NETWORKS, CLOSED REGIMES: THE IMPACT OF THE INTERNET ON AUTHORITARIAN REGIMES (2003).

13. THOMAS FRANK, WHAT'S THE MATTER WITH KANSAS?: HOW CONSERVATIVES WON THE HEART OF AMERICA (2004).

14. See Seyla Benhabib, *The Liberal Imagination and the Four Dogmas of Multiculturalism*, 12 YALE J. CRITICISM 401, 401 (1999), for this translation.

poses as much as legitimizing ones.[15] Under the political canopy of the twentieth century industrial and welfare state, cultural politics was merely adjunct to questions of resource distribution. Calling for resource distribution in a neoliberal context seems futile and is dismissed as counterproductive. In recent years, Benhabib explains, cultural groups have been employing political strategies in an effort to assert recognition rather than redistribution (although there can be redistributive consequences of cultural recognition).[16] In a desperate, divided, Darwinian world economy, cultural recognition can seem as important as life itself. Cultural humiliation can be considered cause for mass slaughter.[17]

Attempts at forging a global public sphere discount the importance of cultural recognition in favor of procedural equality—not that there is anything wrong with that. But those who fail to consider the visceral power of specific cultural claims are destined to exclude and alienate much of the postcolonial world.

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15. *Id.*

16. *Id.*

17. PETER L. BERGEN, HOLY WAR, INC.: INSIDE THE SECRET WORLD OF OSAMA BIN LADEN (2001).