

Chapter Title: Towards a Critical Theory of Democracy: The Frankfurt School and Democratic Theory

Book Title: Critical Theory, Democracy, and the Challenge of Neoliberalism

Book Author(s): BRIAN CATERINO and PHILLIP HANSEN

Published by: University of Toronto Press. (2019)

Stable URL: <https://www.jstor.org/stable/10.3138/j.ctvnp0hk9.9>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



This book is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License (CC BY-NC-ND 4.0). To view a copy of this license, visit <https://creativecommons.org/licenses/by-nc-nd/4.0/>.



University of Toronto Press is collaborating with JSTOR to digitize, preserve and extend access to *Critical Theory, Democracy, and the Challenge of Neoliberalism*

Towards a Critical Theory of Democracy: The Frankfurt School and Democratic Theory

In this chapter we build upon our discussion in the previous chapter and attempt to lay out what we believe are central elements of a critical theory of democracy. This raises the obvious question of what such a theory would entail: what elements of critical theory as we explored it in previous chapters; and what kind of democracy for which such elements could provide a solid basis. More specifically, we need to show how to connect (a) a theory that in its focus, structure, and concepts offers a critical diagnosis of the pathologies of the present from the standpoint of a possible future society that secures social freedom and solidarity, with (b) a conception of democracy that emphasizes not just present forms of democratic politics and government, nor even necessary institutional reform, but also the normative requirements of a democratic social order capable of fostering and sustaining an emancipated form of life. As we argued in our first chapter, this would be a radical, developmental democracy within which all individuals would have the equal right and ability to use and develop their distinctively human capacities.

To explore the question of what a radical, developmental democracy would involve, we focus primarily once again on the claims and concepts of Jürgen Habermas, specifically as he developed these in *Between Facts and Norms*, which we discussed in [chapter 1](#), and which represents his most systematic treatment of what he calls a discourse theory of democracy. But we also return to the ideas of the first generation of Frankfurt School critical theorists. We noted in previous chapters that these thinkers, most notably Max Horkheimer, did not systematically explore the idea of democracy, much less work up an explicit theory of it. In part this reflected their belief that liberalism and capitalism were, if not identical, certainly indissolubly linked. But as Albrecht Wellmer has recently reminded us “the very term *critical theory* was coined in a

secret reference to Marx's critique of political economy."¹ The task was to overcome capitalism and its pathologies; issues of politics, including democratic politics, took a back seat. At the very least the theory assumed the possibility, and not just the necessity, of replacing capitalism with socialism. With the transcendence of capitalism, the class antagonisms endemic to bourgeois society, which precluded the achievement of the common will essential to democracy, would be overcome: a classless society would *inter alia* be egalitarian and thus democratic.

Historical developments outwitted such hopes and aspirations. It became clear that the economic base does not determine the political superstructure, and that abolishing private property was not equivalent to establishing a solidary common life, nor did it automatically lead to it. The question of socialism and the issue of democracy had to be treated separately: the political had an autonomy that demanded an autonomous form of political thought.

Yet as necessary as it has been, the turn to political theory and an autonomous theory of democracy has had a paradoxical implication. The reality that politics cannot be reduced to economics has frequently led to a diminished concern with the unified political economy that characterized traditional Marxism, upon whose assumptions Horkheimer had relied even as he recognized the need to revise these assumptions in the face of historical circumstances. The securing of an autonomous political theory raised issues of power, citizenship, and public life that often came to be seen as legal and governmental and that were treated from either a descriptive/institutional or a normative perspective. So-called economic questions were acknowledged as factors influencing the political process and even shaping the policy concerns of governments. However, this approach failed to take on board what classical socialist political economy had understood – that economic and political power and identity were intertwined, even though the political could not be reduced to the economic. As C.B. Macpherson presented it, possessive individualism was an account of agency that manifested itself in all spheres of society, not just the economic or political as these might be narrowly conceived. That political behaviour could not be completely reduced to supposed economic motives and interests did not preclude or eliminate the need to link democratic possibilities to overall social dynamics in a society that remained resolutely capitalist. What Macpherson called the economic penetration of political theory still needed to be acknowledged, even if in a non-reductionist way.

We agree. In this chapter we attempt, through an exploration of the work of the Frankfurt School, both first and subsequent generations, to approach the question of a critical theory of democracy on the basis

that political economy and critical theory must be rejoined. So that there is no misunderstanding, we want to be clear that the necessary turn to political and democratic concerns by critical theory has generated much of continuing value. As should be apparent from our account to this point, we ourselves have been influenced by these currents and believe them to be fundamentally important for a radical, critical democratic theory and practice. Critical theory has no doubt been enriched by second and subsequent generations of thinkers who in different ways have sought to maintain the currency of the paradigm in the face of changing social and historical conditions and challenges. Yet we think that the shift has frequently come with a cost: the failure to provide an adequate analysis of the pathologies of neoliberalism has meant that critical theory has lost some of its broader cultural resonance for a wider audience that the original architects of critical theory hoped would be drawn to their work.²

We continue here to explore the ideas of Jürgen Habermas because he is the thinker whose thought most fully expresses the turn to autonomous political and moral theory, its contributions, but also its limitations. However, to fully grasp the concerns that motivated Habermas, and his approach to critical, democratic theory, we must first examine in some detail the thrust and impact of the first-generation Frankfurt School thinkers and the problems and dilemmas – but also resources – they bequeathed to those who followed. We can then offer an appraisal of Habermas's thought and his legacy, including efforts by theorists such as Axel Honneth to build on this thought while addressing its shortcomings – including the limited place it allows for political economy.

Our account in this chapter is intended to pave the way for the next one, in which we examine various attempts to produce theories of democracy that we believe are at least open to the reconnection of political economy with political theory. These will be developmental and participatory accounts, especially as laid out in the work of C.B. Macpherson, Carol Gould, Carole Pateman, and Axel Honneth. In their respective ways these theorists have attempted to link issues of democratic practice to social critique, political theory to political economy.

What Is Democracy?

The term democracy has had a wide variety of meanings, from minimal and formal to rich and substantive. As noted above, in its broadest sense democracy may be considered a theory of sovereignty in which the power to rule lies ultimately with the people. However, this leaves much room for interpretation and even constriction of the scope of

democratic institutions and practices. In the post-Second World War era, theories of elite democracy, or competitive elitism, saw democracy simply as a method of choosing those elites that would rule. Hannah Pitkin called this conception the “authorization” position. As the central feature of representative democracy, representation is “seen as a grant of authority by the voters to the elected officials.”³ We elect leaders and then authorize them to do anything they wish. Such restrictive notions of representative government often prevail in Western and capitalist democracies; the populace at large plays a limited role. Of course, this view is short on democratic accountability. It does not specify how or why the decisions that are authorized have to be representative of the public or the public interest.

Often this elitist view was combined with a rational choice perspective. As we have seen, rational choice theorists claim that in authorizing those who are to govern them, citizens are “choosers” who have to decide between two or more alternatives. As we have indicated, many rational choice analysts reject any notion of a common will or of the active formation of common goals through deliberative selection.⁴ Politics is seen as fundamentally an aggregation of choices created through a competition for goods – in this case, competition among leaders.

A broader perspective would see democracy as the ability of citizens to influence and “have a direct political impact on the choices and actions of those who govern.”⁵ This is certainly more comprehensive than the first definition, but it too has several drawbacks. It makes democracy a function of the choices and actions of those who govern, not an expression of popular sovereignty. Questions around agenda setting and initiatives from below are not sufficiently clarified. A fuller notion of democracy might include the ability to initiate action, in concert with others, in a wide variety of spheres of public and private life. Of course, acting in concert also means that in the public sphere, democracy involves more than just the power to initiate – it includes as well a public process of discussion and deliberation in which questions of justice, the good, and legitimacy are central.

In the classical notion of politics, democracy was identical to self-governance. Only those individuals who ruled themselves, albeit in concert with others, were considered free. Citizens were full participants in society and were expected to take positions of authority and to engage in deliberations with other citizens. Of course, the Greek *polis* differed from our society in vital ways. In the first place, the freedom of the citizens rested largely on the labour of unfree individuals and groups (i.e., slaves and women). Second, the Greek *polis* was smaller in size than modern democracies, which are both large and diverse. We

cannot always expect to have citizens who share a common world view. Nonetheless, the idea of a democratic politics needs to retain the idea of self-rule through participation to guide its reflections.

Democratic Deficits: The Frankfurt School, Capitalism, and Liberalism

The early Frankfurt School's legacy for political theory is ambiguous. At least in the work of its major figures, Max Horkheimer, Theodor Adorno, and Herbert Marcuse, critical theory often had a "democratic theoretical deficit."⁶ Horkheimer's earlier works were more concerned with the psychological, social, and philosophical aspects of critical theory than with politics. There were, however, several intra-theoretical reasons why Horkheimer did not develop a systematic theory of politics. On the one hand, he seemed to employ a model of politics and political economy derived from Marx. Politics, for him, was a form of antagonistic conflict that would disappear when capitalism was superseded. Thus, if politics was little more than a function of class rule, there was little to be found of the Greek notion of politics and participation. What was important was conflict over control of the economy. To be sure, Horkheimer claimed in his earlier works that an emancipatory social theory would have to replace determination by blind social forces with conscious human direction. But he never moved towards what we could call political theory.

Horkheimer assumed that classical capitalism and liberalism were, if not identical, nonetheless intimately linked. Liberalism was the theory of private property. By the early 1930s, critical theory had developed an account of capitalism according to which it had exited its liberal phase and had entered a new, authoritarian one. Herbert Marcuse in his 1934 essay "The Struggle against Liberalism in the Totalitarian View of the State"⁷ more fully developed this theme and hence illuminated key assumptions about liberalism inherent in the Frankfurt School's view.

Marcuse defined liberalism purely and simply as the defence of private property. As he saw it, the other features of liberalism could be modified based on the constellation of forces:

Liberalism was the social and economic theory of European industrial capitalism in the period when the actual economic bearer of capitalism was the "individual capitalist," the private entrepreneur in the literal sense. Despite structural variations in liberalism and its bearers from one country or period to another, a uniform foundation remains: the individual economic subject's free ownership and control of private property and

the politically and legally guaranteed security of these rights. Around this one stable center, all specific economic and social demands of liberalism can be modified – modified to the point of self-abolition.⁸

Classical liberalism, however, had been superseded by a new stage of capitalism – monopoly capitalism – in which the competition of forces was replaced by a concentration of power in large conglomerates and corporations. While the foundation of liberalism in the centrality of private property was maintained, there was the need for a more holistic conception of society, in terms of which acceptance of authority had to be a core element. The rationalist conception of reason with its stress on the critical power of the individual had to be replaced – a move that anticipated to some extent Habermas's later analysis of the decline of the bourgeois public sphere, whereby free discussion was replaced by an authoritative disclosure of the whole. Marcuse, like Horkheimer, did not draw a sharp distinction between societies that were fascist and those that were corporate but democratic. The liberal democratic nature of the capitalist state was absorbed into the totalitarian formulation.

Horkheimer did not in his earlier work take up the question of the form of the state under monopoly capitalism. He did, however, see political forms as dependent on economic ones in the manner of base and superstructure, an antagonistic relation that would disappear when capitalism was transformed.⁹ In this light, political institutions had no independent function. Later, when Horkheimer was more concerned with the structural changes made by monopoly capitalism, he loosened this analysis somewhat. In late capitalism the political had come to dominate the economic. By this formulation he meant that the state had taken over socialization processes, such as education, previously carried out by the family or civil society. For Horkheimer this meant, as it did for Marcuse, the decline of the independent individual who could at least to a limited extent assess knowledge on his or her own.¹⁰ Here Horkheimer also employed Pollock's analysis of state capitalism.¹¹ Pollock thought that because the state was capable of stabilizing capitalism through intervention and regulation or the co-opting of labour, the crisis tendencies of capitalism had been muted. To be sure, he did not strictly equate democratic and totalitarian variants of this process. But in Horkheimer's analysis the distinction between the two became blurred. This was not so much, however, a problem of an apologetic approach to a post-liberal capitalist society as it was the denial of any crisis tendencies in state capitalist formations.

In *Eclipse of Reason* and *Dialectic of Enlightenment*, Horkheimer to a considerable extent replaced his critique of political economy with a

critique of instrumental reason. Even here, however, he presented liberal theory as a form of subjective reason, exemplified particularly in Lockean liberalism and, later, in pragmatism and positivism. Reason was no longer a critical reflection on the conditions of human life, but a way of calculating means to pre-given ends. In the process, however, lost were any vestiges of liberalism or even republicanism as elements of a political formation capable of criticizing society. Reason for Horkheimer was self-liquidating.¹² The very processes that had led to increases in social rationality had come to undermine that same rationality.

Franz Neumann and Otto Kirchheimer were somewhat outside the main circle of the Frankfurt School. Their early work was influenced by Carl Schmitt's conception of the political and his critique of liberalism.¹³ For Schmitt, recall, parliamentary democracy was ineffectual and impotent. It was rooted in endless and fruitless discussion and deliberation between competing interests and was unable to produce or maintain legitimacy. In his first work, Neumann accepted this criticism of liberal parliamentary government, but he also tried to maintain a socialist theory of the rule of law, which was in his view being impeded by liberal capitalism. Later, he moved in the direction of a social democratic conception of the rule of law that recognized its importance in restraining bureaucratic power.¹⁴

Both Neumann and Kirchheimer felt that Horkheimer's and Pollock's notion of an administered society underestimated the conflict potentials of state capitalist societies. Whereas Horkheimer claimed that the rise of fascism and totalitarianism was a developmental tendency of capitalism that was not affected by events, Neumann took the view that it was historical and contingent and that it could have been averted if the correct actions had been taken. He struggled, rather unsuccessfully, with the task of developing a notion of political freedom and the rule of law that could accommodate the gains of the welfare state. Both he and Kirchheimer were critical of the nascent neoliberal theories of the time associated with thinkers such as Friedrich von Hayek and Milton Friedman and wanted to defend some version of the welfare state.¹⁵ Neumann's attempt suggests some links between his essentially legal theory and a political theory along the lines of that of C.B. Macpherson. A developmental theory based on the exertion of capacities could provide a basis for the social rights of the welfare state as well as a way of identifying those conflict potentials that had not been completely neutralized under late capitalism. It also could provide an alternative theory of freedom that emphasized the organization of society around the protection of social rights and social and economic freedoms.¹⁶

The development of an adequate critical theory of democracy has been one of the central aims of Jürgen Habermas's reformulation of critical theory. He has taken a less orthodox approach to politics than did Horkheimer and Marcuse and has been more sensitive to elements of liberal and republican theory than were his predecessors. Habermas has also located crisis potentials in advanced capitalism that Horkheimer and Adorno failed to find. In what follows, we focus primarily on the first aspect, namely, Habermas's attempt to formulate a radical democratic theory and his attempt to combine it with the rule of law.

The Early Habermas and Radical Democracy

As we have argued, Habermas broke ranks with the first generation of the Frankfurt School – at least with Max Horkheimer, Theodor Adorno, and Herbert Marcuse – in his treatment of the emancipatory possibilities of modern politics and liberalism. Whereas the first-generation theorists saw liberalism as closely, if not internally, linked to capitalism and the reification of social life, Habermas argued that liberalism also contained the idea of a public sphere of free discussion that was not linked to possessive individualism but instead represented a realm of discursive will-formation. Possessive individualism was only one possible outcome of the development of liberalism. To be sure, Habermas did not think that the dominant form of liberalism was sufficient. His notion of the public sphere was not intended to be official liberalism by other means; rather, it drew implicitly upon republican notions of communicative or discursive interaction. However, unlike republican theory, which tends to link discussion to the idea of a single nation, to a body politic unified along a shared dimension, Habermas's conception was tied to a cosmopolitan realm of public discussion. In addition, Habermas, at least early in his career, accepted that capitalism and democracy were contradictory. In what remains one of his most powerful works, *The Structural Transformation of the Public Sphere*, he essentially agreed with the early Frankfurt thinkers that late capitalism had created a mass society with monopoly control of media of communications and the consequent manipulation of public opinion.¹⁷

As Jean Cohen pointed out some time ago, Habermas's subsequent work did not fully develop this insight.¹⁸ Indeed, he did not begin to fully analyse the relation between liberalism and republicanism until he had reformulated his intersubjective perspective in *The Theory of Communicative Action*. But his fullest attempt to work out this relation came in *Between Facts and Norms*. As noted in [chapter 1](#), in that book Habermas lays out a theory of democracy that he believes could bridge the

gap between liberalism and republicanism; in this respect his position demonstrates similarities to Macpherson's attempt to fuse liberalism and socialism.

Habermas's earliest work took up questions of democracy in the context of a Frankfurt Institute study of students' political attitudes. While he found that many students had authoritarian attitudes – which is similar to what earlier Frankfurt School studies on authority had found – he also contributed an introduction to the collection about the concept of political participation that provided a theoretical overview of the problems of democracy. Habermas employed the idea of participatory democracy associated with both the Greek *polis* and the radical democratic movements of the bourgeois era. The basis of democracy was popular sovereignty, not the parliamentary forms of capitalist democracy. Both contemporary parliamentary democracy and the welfare state could be seen as attempts to restrict participation by the populace.¹⁹ Here, as Douglas Kellner notes, Habermas employed, in contrast to parliamentary forms, a notion of strong democracy as found in the work of John Dewey and that of later writers such as Benjamin Barber.²⁰ At the time he wrote his *Habilitation* on the public sphere, Habermas, like Horkheimer and Adorno, saw late capitalism as a closed system that had successfully managed crisis tendencies and muted opposition.

It was in his work on the public sphere that Habermas began to develop a model of radical democracy that went beyond the analysis of the earlier Frankfurt School. Here a radical democracy meant more than simply participation in government. It also involved a separate realm of civil society in which public opinion could be formed. This was a model more adapted to a modern bourgeois society in which, unlike in the Greek world, state and society were separated. The formation of a sphere of public opinion expanded the social elements of democratic theory. Radical democracy also required the democratization of the institutions of civil society.

It is no doubt true that Habermas's formulation of the public sphere has limitations, which he has acknowledged. However, regarding the inclusion of women, minorities, and the working class in the bourgeois public sphere, it retains importance because it identifies structural possibilities for freedom that were not effectively identified by the earlier Frankfurt School. Habermas sees the public sphere as a social realm that resists and is opposed to the imperatives of capitalist rationalization. It represents a counter-sphere of democratic will-formation within capitalist development.

Habermas agrees with the earlier Frankfurt theorists that late capitalism forecloses possibilities for action. However, he does not share their

view that critical reason has been completely supplanted by instrumental reason. He worked out this line of thought over the course of a decade, from his essays in *Theory and Practice* to his rehabilitation of crisis theory in *Legitimation Crisis*. In his earlier work he still adopted a conceptual perspective reminiscent of the early Frankfurt School. This position, however, could not always accommodate his insights into modern democracy – insights that have allowed him to maintain a commitment to radical democracy while taking on and exploring the possibilities of the liberal and republican traditions.

In the essays on the classical doctrine of politics and natural law, Habermas develops a distinction between practical and technical reason. While the latter is a kind of instrumental reason that entails the development of efficient means to achieve selected ends, practical reason refers to consciousness, will, and understanding. At this point in his work he sees the distinction as between control and action, or forms of purposive and communicative action. The classical notion of practice derives from Aristotle's conception of practical philosophy and is opposed to technical control. The former is a notion of practical deliberation about questions of the good.²¹ For Aristotle practical philosophy was *phronesis*. It did not seek theoretical certainty of the order of things but rather practical knowledge of the right thing to do. By contrast, the tradition that starts with Hobbes sees the problems of politics as capable of objective scientific solutions. The laws of politics could be derived axiomatically from first principles. This system of laws derived by the theorist could be applied by the ruler independently of the consent of the governed. The only consent needed was for the original agreement. For Hobbes man was no longer the social animal of Aristotelian thought. Society was an arrangement for ensuring commodious living and the protection and security of citizens. It was the application of scientific knowledge of the mechanisms of social order – mechanisms that are timeless and permanent.²²

We can see this construction in elements of Horkheimer's approach to Cartesianism in "Traditional and Critical Theory," although it also closely connected to the critique of instrumental reason that Horkheimer and Adorno formulated in the 1940s. However, Habermas did not see instrumental reason in the totalizing fashion of his predecessors. He thought that instrumental reason had a role in social action. However, when technical claims take the place of processes of democratic deliberation, instrumental rationality oversteps its bounds. In their attempts to replace the normative orientation of the classical notion of politics with a technical conception, Hobbes and his successors essentially bypassed a politics that featured active citizen participation.

Habermas's notion differs in some other important respects from that of his predecessors. First, it provides a source of non-dominating reason and action. Horkheimer's distinction between objective and subjective reason left little room for a notion of praxis. The concept of mimesis, which Adorno and Horkheimer developed in *Dialectic of Enlightenment* as an alternative, is primarily negative: it does not deal with processes of deliberation, discussion, and consent that are central to the formation of political will.²³ Habermas's use of an independent notion of praxis fills that lacuna. There is an independent capacity for forming a political will that can persist even under the conditions of late capitalism. The notion of practice gives some substance to the capacities identified in the public sphere. The second issue is related to the first. The concept of practice also provides the space in which democracy can take root and grow. The idea of an intersubjective formation of political will – that is, popular sovereignty – requires something like the concept of praxis if it is to have any possible grounding.

As some critics have noted, however, Habermas's conception of practice seems to incorporate an unresolved tension. His use of the Aristotelian model of praxis is based on a world in which the modern distinction between state and society is absent. At the same time, the existence of a viable public sphere requires the separation of state and society, as well as the maintenance of those autonomous institutions of public media and discussion that Habermas emphasizes. He therefore needs a concept of practical reason that more adequately fits modern societies than does the Aristotelian notion. In his essay on the classical conception of politics, he argues along with neo-Aristotelians that Aristotle's notion of practice persisted through the nineteenth century until the rise of positivism and a modern "political science" brought about its final defeat. This neo-Aristotelian version of course stressed virtue as its normative basis, not rights and freedoms.

The problem of natural law is, however, capable of a more radical interpretation. Modern natural law has been uncoupled from its ties to a substantive or material basis in the ethical structures of the good life. In the process, it has become formal. Still, it retains some element of normativity as expressing basic rights that all humans inherently possess. In the rationalism of the modern era, these rights were permanent and often given prior to society. As such they were applied, albeit in different ways, to the revolutions of the modern era, both the American and the French. In Habermas's reading the revolutionary character of these rights was less apparent in the American Revolution because they took the form of an essentially Lockean notion of property. As opposed to Hobbes, Locke saw the basis of self-preservation in the

property-owning individual and the attainment of goods. In the state of nature this was the fundamental right. To recall our earlier discussion, for Locke property was owned when an individual mixed his labour with the resources provided by nature through gathering or, later, farming or craft production. In the state of nature the individual had the right to enforce natural law; a state only became necessary in a market economy, when production allowed us to store and trade beyond our immediate needs. At that point a state was needed to regulate the market order.

Natural law was seen as a "revolution" of property owners, yet it signified no more than the recognition and reclamation of those rights that were already assumed to exist. Even more than Locke, Thomas Paine thought that while it was essential to establish government, such a government needed to be restrained so that individuals who owned private property could peacefully create a successful social order in a market society. In each of these formulations, the bourgeois character of the American Revolution was clear. It was already based on the common sense, the public opinion, of the bourgeois class. Thus, America was far from an ideal public sphere. The public there was limited to one group and the views it held. It fell short of a notion of popular sovereignty.

A very different understanding of the people and popular sovereignty emerged during the French Revolution. In France, revolution meant the construction of a new society that included those who were not part of the propertied order. Here Rousseau was a better guide than Locke or Hobbes.²⁴ Rousseau, too, employed the fiction of a state of nature that led to war; however, he saw the resulting society not as peaceful but as inherently conflictual. Market societies were rife with egoism, greed, and inequality. Thus a social contract could not merely trade the rights of nature for civil rights of the state. It needed to create these rights anew within society. A notion of popular sovereignty was embedded in Locke's and especially Paine's version of revolutionary change; but notwithstanding Paine's nod to the poor, this was largely the sovereignty of the property-owning classes. This was not true for Rousseau, for whom the central problem was the inequality of society, which had to be addressed not transferring rights to society but by reconstructing society and state.

To be sure, Habermas believes that Rousseau's version of the general will is inadequate.²⁵ It is not based on the idea of public opinion formation and discussion, but rather on a common feeling; Habermas calls it "unpublic" opinion. Still, Rousseau's work stands at the inauguration of another conception of rights, a positive conception derived from the new formulation of natural rights as a product of a constitution that forms both state and society.

In revolutionary France, rights were no longer seen as pre-political and as having a purely negative function. The new rights were positive – they were posited by and through the act of constituting the new state and society. These rights included the right to political participation and to equality, not just as a private citizen but also in public life. Individuals also had justified claims to social welfare provisions. As Habermas notes, these rights were by no means developed fully in the revolutionary constitution, which still assumed that they could be protected negatively, but they nonetheless became the basis for the guarantees of the welfare state.²⁶

This second dimension of positive rights is not really integrated into the earlier formulations of critical theory. To be sure, notions of free human development arise frequently in the work of Horkheimer and Marcuse. These derive, however, from Marx and are strongly indebted to his early writings, which were rediscovered in the 1930s. But the main theorists of the Frankfurt School all concurred on the central role of a certain line of development. The liberal order with its assumption of a rational individual consciousness was being replaced by the totalizing state of late capitalism. The welfare state did not represent a new source of rights but was part of a system of intensifying control. However, as earlier noted, the emerging developmental interpretation of natural rights came to include rights to participation and equality that had gone unrecognized in classical notions of individual, negative rights. Here the rights guaranteed by natural law went beyond the protection of bourgeois property and extended to those who could oppose it.

This reading has an explicit as well as an implicit relation to the work of C.B. Macpherson. It is explicit in that Habermas draws on Macpherson's reading of Hobbes and Locke. It is implicit insofar as he anticipates Macpherson's later work on developmental democracy. Habermas in his early writings is more pessimistic about the possibilities of democratization, but he does not fully close off these possibilities. He notes that the concepts of rights formulated in the welfare state still maintain the possibilities of participatory democracy even as the welfare state tends to suppress these claims because of its ability to mute crises.

Transforming the Theory of Democracy: Legitimation Problems and Beyond

Some of the issues raised by the Marxian notion of crisis are given a more sociological – one could say more political-economic – reading in Habermas's account of legitimation crises. This marks a further break from the analyses of the first generation of the Frankfurt School.

Whereas the critical theories of late capitalism held that capitalism had largely succeeded in staving off crises and exerting almost total control over social affairs, Habermas, who wrote in the shadow of the civil rights, antiwar, and student protests of the time, was aware that late capitalism was not as successful in staving off crises as Horkheimer and Adorno had thought. In part this was due to the limits of its inner development as a technical system. Postwar liberals, especially proponents of the American version of the "vital centre," thought that pluralist democracy had put in place the best system of government, which only needed technical refining and correcting to function properly. In short, liberals thought that normative questions had been settled. Thus, as Habermas and others were later to point out, they had little understanding of or sympathy for social movements that raised these normative questions anew. However, standing behind the social and technological assumptions undergirding welfare state democracies were the earlier questions raised in the second version of natural law and developmental democracy, namely, those relating to the demands for greater democratic inclusion and participation linked to the idea of popular sovereignty. No doubt these questions are recast in the welfare state, but they remain available for participants. Rights no longer can have a transcendental basis but must be justified through communicative reason. Protest movements raised questions not only about civil rights but about these positive rights as well. They called into question the ways in which Western democracies understood and justified their own project. Similarly, late capitalist societies were seen to have failed to provide motivations for its citizens not just to participate in society but also to accept the work discipline central to their economies.

In making this argument, we do not mean to leave out the major revisions that Habermas was making to Marxian theory. We simply mean to highlight some of the assumptions that he carried over from his earlier work. *Legitimation Crisis* both elaborates and modifies the earlier formulations in the context of a new approach to a theory of society. To begin with, Habermas increasingly gives an independent status to normative considerations. This independence was already evident in the role he accorded to practical rationality in his earlier work. This role was not, however, anchored in a theory of society. Now, Habermas conceives of different concepts of social action. Normative questions have an independent logic in that they represent dimensions of social interaction that are basic to all societies. Societies are held together not only by the requirements of an economic order but also by forms of mutual understanding. In Habermas's terms this involves communicative action. Such action is oriented to agreement among the participants.

Habermas sees this kind of action as different from purposive rational action, which like social labour and natural science is oriented to success or the achievement of ends. The logic of norms in the social lifeworld is not simply dependent upon the structure of social labour or purposive action. Of course, while independent, these dimensions are closely related. The economy still plays a dominant steering role in his theory of society. Economic problems are still central to the crises of late capitalism. Writing at the end of the Keynesian era, Habermas has been much more aware of its tensions and limits than were the earlier Frankfurt theorists. He sees Keynesian theory as having failed to solve the accumulation crises of late capitalism, which was presumptively in the process of dissolution.

However, it seems to us that Habermas still provides space for a radical democracy that can steer the economy and provide more widespread participation. The tensions in late capitalism keep these possibilities open. Certainly, Habermas sees contradictory forces at play in the competing spheres of accumulation and legitimation. In seeking legitimation, capitalist societies draw on the reservoir of traditional meanings created in pre-capitalistic social orders. Paradoxically, such traditions have been eroded by capitalist rationalization. Like Weber, Habermas sees traditional meaning as being emptied in modernity. However, in his later work, beginning with *The Theory of Communicative Action* and especially in *Between Facts and Norms*, he argues that modern societies themselves have an independent generative power, a communicative power, that creates an intersubjective will and binding force.

We cannot go into a full-blown analysis of Habermas's discussion here. But central to his claim is the idea that the relations of production are depoliticized in late capitalism. In the liberal capitalist era the state guaranteed the conditions of production but was independent of it. However, as the dysfunctional elements and side effects of the capitalist market become apparent the state has come to assume some of these functions. It is called upon to regulate the economy in various ways through active interventions. For Habermas, as for the earlier Frankfurt theorists, the political comes to predominate over the economic. However, political intervention into the economy leads to new conflicts and problems. The performance of the state in directing and intervening in the economy becomes subject to legitimation questions and open to contestation. It creates needs for legitimacy that Horkheimer and Adorno either did not recognize or did not accept.

Here we must shift focus. Habermas extended his notion of practice as developed in his earliest essays in the direction of the theory of communicative action that we discussed earlier. More broadly, the need for

legitimation derives from his claim that societies are held together by forms of social integration – consensual forms of mutual understanding that bind subjects. Social interaction in his view is oriented towards standards of truth or normative validity. When these agreements break down, individuals need to renew, repair, or replace their understandings if they are to maintain consensus. Of course, we do not have to rely on a notion of complete agreement here; societies can no doubt maintain their integrity with fair amounts of dissensus. But when an institution like the state no longer acts in a way that is consistent with its core values or principles, it can lose the trust of the populace, which no longer gives its consent. We can become alienated from our solidarities and our identities as citizens; or we can engage in resistance. In advanced capitalism the state takes on the burden not only of managing the economy but of providing for basic welfare needs and social equality. These clearly make the state open to claims that it is failing either to properly manage the economy or to fulfil the normative expectations of participants.

What stands behind these legitimation crises are the norms of equality and participation that are central to the developmental view. At the same time, late capitalism attempts to create *de facto* legitimation through mass loyalty. The latter is more a form of administratively created acceptance of authority through exchange for material goods and services. Central to this dynamic is a kind of civic privatism, in which individuals focus on family, private life, and material goods. Habermas also includes parliamentary democracy as a form generating loyalty. It limits the participation of citizens to periodic voting and restricts the accountability of public officials and administrators. And it often reduces political problems to technical ones.

In adopting a systems framework, which for many critics is problematic, Habermas in some respects moves away from the political-economic perspectives that are central to some of his earlier work. He contends that the changes in late capitalism have significantly altered both the way we understand the social system and the kinds of crises that can occur. The exploitation and domination of the working class has been partly mitigated by the welfare state.

Nonetheless Habermas retains some important elements of Marx's analysis. For our purposes one question is important: Are democracy and capitalism compatible? In the full sense of democracy that Habermas employs, they cannot be. The limits of reform within late capitalism are given by this contradiction. Habermas maintained this position up until *The Theory of Communicative Action*. There he wrote: "Between capitalism and democracy there is an indissoluble tension; in them two

opposed principles of social integration compete for primacy."²⁷ He cited Offe's interpretation of this conflict as the contradiction between the drive to privatize the means of production and the countervailing drive in late capitalism to politicize or socialize them. Habermas saw a series of dilemmas in the fact that politicians must simultaneously appeal to investors and to the masses; public opinion is both an expression of the popular will and the product of the engineering of consent.

Whatever we think of this analysis, it showed the changes in Habermas's conception of the possibilities inherent in late capitalism. Instead of a one-dimensional rationalization, which foreclosed possibilities and eliminated contradictions, while class conflict was muted, there had emerged other zones of conflict and other contradictions.

During the period following *The Theory of Communicative Action* and culminating in *Between Facts and Norms*, Habermas largely developed the paradigm of communicative action in the realms of both ethics and political/legal theory, and with this, indirectly, a theory of democracy. This later work essentially expresses the assumptions and commitments he continues to hold. There is far less discussion of political-economic issues and how these bear on democratic theory. On the one hand, Habermas develops his political theory in the light of a lifeworld-based conception of interaction. Ethics and politics are discursive and deliberative. The constitutional state, he contends, is anchored in "the *higher-level* intersubjectivity of communication processes that unfold in the institutionalized in parliamentary bodies, on the one hand, and the informal networks of the public sphere, on the other. Both within and outside parliamentary bodies geared to decision making, these subjectless modes of communication form arenas in which a more or less rational opinion-and will-formation concerning issues and problems affecting society as a whole can take place."²⁸ This idea of the communicative basis of will and authority is meant to serve as a counterweight to the systemic imperatives of the economy and administrative rationality that attempt to insulate political decisions from collective will-formation. The nascent political theory evident in this position still points to a notion of democratic popular sovereignty that underlies his critical theory.

Popular Sovereignty Revisited

However, Habermas has returned to the concerns of the public sphere from his earlier work to ground a communicative alternative to both liberalism and republicanism. He argues that the discourse conception of law is meant to suggest a bridge between the rule of law associated

with liberalism and popular sovereignty. The parliamentary system of democracy needs to be supplemented by a strong public sphere that surrounds metaphorically the parliamentary and bureaucratic processes. This would provide a normative basis for the participation of all in the political process. Citing Ingeborg Maus, Habermas argues that the communicative theory of law entails the mediation of legal institutions and non-institutionalized popular sovereignty: "Here the social substratum for the realization of the system of rights consist neither in spontaneous market forces nor in the deliberate forces of welfare state but in the currents of communication and public opinion that, emerging from civil society and the public sphere, are converted into communicative power through democratic procedures."²⁹ Habermas has in mind here a robust and democratically structured public sphere that includes plebiscites, grassroots party organizing, and open political participation, as well as a democratized media. The idea is that the public sphere is the space in which democratizing impulses are generated.

To be sure, as we have argued, there has been a shift from political economy to political and legal theory over the course of the development of Habermas's thought. Nonetheless, with respect to the idea of a democratic public sphere there is still a strong continuity between Habermas's account as it was formulated in his earliest work and the theory he develops in his later writings. This later treatment upholds the ideas of popular sovereignty and political participation, albeit in a new theoretical framework. The theory of communicative action provides a framework for grasping the consensual nature of social action and the deliberative bases of understanding.

However, it is not clear whether Habermas provides the socio-political resources for such a program. We can get at this issue first by asking why the impulses that originate from below in the communicative substructure of society do not enter further into the structure of the state as such. Because Habermas sees the lifeworld as limited by system imperatives of money and power that structure action non-communicatively, economic and state structures are removed from any forms of mutual accountability. It should not be impossible, however, for participants who are reflexively aware of their own situation to act together in order to put the economy and even the bureaucracy under more democratic direction – or even to take certain types of actions regulated by the market out of market regulation, that is, place more elements of the economy under democratic control.

A more radical form of democracy would involve more than the distinction between system integration and social integration, or between

the internal perspective of the participant and the external perspective of a social system. This relation is far more fluid than Habermas argues. Consider, for example, the question of higher wages. Businesses argue from a system point of view that higher wages are a brake on accumulation and affect competitiveness. These are objective requirements. But actors form groups to advocate for change in the public sphere. These could be seen on the one hand as system imperatives for mass loyalty, which in a bureaucratic administrative/corporate social formation promotes labour peace and thus long-term profitability. It is also, however, an element of social integration, that is, it represents a norm derived from the expectation of fair treatment on the part of those who work in the marketplace. Having a decent living standard is an expectation held by of a large part of the citizenry of a democratic country. The point here is that ordinary actors engaging their situations from the internal perspective of the lifeworld are capable of reflexively monitoring and incorporating knowledge of system imperatives. They can assess whether and how they can act in relation to these supposedly objective conditions, those that can be modified by collective action, and others that are resistant to change, at least in current historical and social situations.³⁰ By contrast, the externalist perspective tends to see these system constraints as objective conditions, necessary requirements of the economic and administrative systems in terms of which fundamental change is largely ruled out.³¹

The second question that emerges from a consideration of Habermas's theory of discursive, constitutional democracy, particularly as laid out in *Between Facts and Norms*, is whether and to what extent his proposals could be realized within an essentially capitalist society. In his earlier work, as we have noted, he saw capitalism and democracy as incompatible. Are the proposals for greater equality and participation likely to wreck on the barriers in capitalist societies? Are the barriers high enough to make the kind of robust democratization of public life that Habermas desires beyond reach?

Finally, Habermas bases his theory on a strongly universalist program that is linked to a transnational world and transnational identities. This would seem to entail a socialist or social democratic understanding widespread throughout the larger transnational society that Habermas seeks.

While this ideal is indeed worthy, it needs to be combined with additional, more elaborated analysis of the conditions of the neoliberal constellation. This becomes evident from a closer examination of the key elements of Habermas's theory of democracy, to which we now turn.

Radical Democracy Revisited

Habermas presents his democratic theory as a form of radical democracy. It retains the project of a democratic self-organization in which participants decide on the laws that will govern them. However, this project takes a different shape in contemporary society. It no longer involves the realization of a specific form of life. Rather, it points to an understanding of democracy and socialism as a set of formal qualities that lead to greater emancipation: "If, however, one conceives 'socialism' as the set of necessary conditions for emancipated forms of life about which the participants *themselves* must first reach an understanding, then one will recognize that the democratic self-organization of a legal community constitutes the normative core of this project as well."³²

Here Habermas retains the idea of popular sovereignty but interprets it procedurally through his notion of communicative rationality. Popular sovereignty is embedded in the communicative power of participants in social interaction. It is constituted by the creation of both understanding and the practical will to act in common. There is a necessary discursive and dialogical element of practical reason that is linked to the central elements of political sovereignty through mutual understanding and mutual accountability. These ideas form the core of what Habermas sees as a post-metaphysical notion of democracy. However, he also acknowledges the limits of this model under the conditions of modern societies. These conditions affect what is in many respects a Hegelian/Marxist understanding of democracy. Democracy and democratic society can no longer be considered, at least potentially, as a totality.

Habermas feels that the utopian energies of the Marxian project centred on the emancipation of labour are exhausted. They were always in any case too concrete. In its classical form Marxism provided a holistic notion that interpreted society as a meta-subject or unity. In his view, Marxism took from Aristotle and Rousseau the idea that society was a settled or concrete form of life rather than a set of necessary conditions for freedom and emancipation about which the participants themselves could decide.³³ Thus he finds the notion of revolution untenable. Rather, Habermas sees communicative freedom and power as the repository of any utopian energies left in society: "Instead of the rationality of productive forces, including natural science and technology, I trust in the productive force of communication."³⁴

Habermas's essay on popular sovereignty as procedure revisits the concerns of his earlier work on popular sovereignty and political participation, but now addresses these concerns in the context of his lifeworld/system distinction. At least one of the issues raised by the

French Revolution retains its significance for Habermas: the creation of popular sovereignty through a discursive process of will-formation. The model employed in *Theory and Practice* is continued in one dimension. The notion of radical democracy that combines human rights and popular sovereignty is based upon the idea that both rights and sovereignty are founded within society. We cannot consider basic rights as external to or prior to society.

However, Habermas now rejects several versions of his prior formulation. Specifically, he rejects what he sees as the totalizing elements that characterized traditional ideas of sovereignty. Sovereignty cannot be conceived as a unitary will or the expression of a people. In one sense this is because of the pluralist character of modern societies, which cannot be unified by a pre-existing ethos or will. Habermas is dubious about conceptions of the nation-state that view it as a carrier of a unified will that expresses the spirit of the people.

Nor does he see the idea of revolutionary transformation as necessary in the current constellation. As noted above, the productivist orientation he associates with the French Revolution and the Marxian tradition is exhausted. We can no longer speak of a workers' utopia that will overthrow capitalism in one stroke and bring in a totally emancipated society. To the extent that as with Marxism we could organize a society through rational economic planning and administration, Habermas sees this vision as flawed: economies are crisis-ridden, and administration is often irrational. Instead, he sees human rights and sovereignty as potentially capable of fostering reform, perhaps even radical reform.³⁵ Thus for Habermas the deliberative processes that could engage members of democratic societies implicitly include ideas – and ideals – of popular sovereignty in terms of which citizens can discuss and deliberate about collective decisions. In other words, Habermas is sceptical about notions of national identity as the basis for a revolutionary consciousness.

These claims are linked to a third idea. Habermas does not think the notion of a self-directed society, whereby society is viewed as a collective totalizing subject able to give itself its own norms, is any longer plausible. Rather, he believes that in modern societies elements of the economy and the state are organized in a functional manner. They have been detached from normative moorings and can act independently for essentially instrumental reasons. For example, administrative rationality is concerned with order and the stability of the system and not with its normative functions. For Habermas, both administration and the market have the tendency in modern society to take over or “colonize” more and more elements of social life that need to be norm-governed.

The marketization of elements of social life, such as education, provides good examples of how the lifeworld is colonized. In the circumstances such forms of consensual action and popular control are no longer effectively able to facilitate social integration. In Hannah Arendt's terms the colonization of the lifeworld and the expansion of, and strengthening of, administrative and economic values and practices represents the increasing predominance of behaviour – potentially measurable and predictable responses to the unquestioned demands of hierarchical, authoritarian bureaucratic apparatuses – over action – the capacity to intervene in ongoing social processes by means of new initiatives undertaken in a vibrant public realm that embodies and furthers civic freedom.

Habermas's more formal notion of democracy sees it as placing a limit on the power of economic and bureaucratic imperatives. In contrast to his position in *The Theory of Communicative Action*, in which these system imperatives seem to have greater independence, here he believes that these imperatives should be subordinated to democratic considerations. The aim of radical democracy is to place the economy and bureaucracy under popular control. However, subordinating and controlling the economic and administrative apparatus does not mean transforming society into a unitary entity in which the differentiation of separate spheres would be overcome. Habermas thinks this differentiation means that economic and administrative spheres cannot be structured by forms of mutual understanding. They can only be regulated; they cannot be reintegrated into a social whole. But even if we were to accept Habermas's conception of modernity, it is not clear exactly what form this democratic control of the economy would take.

This issue highlights a key element of Habermas's democratic theory, namely, its incorporation of a strong rights discourse and his adoption of a legal parliamentary model of political will-formation. This has led some to think that Habermas has regressed to a form of liberalism that defends the status quo. But such a view is misleading. If liberalism represents a theory that sees rights as prior to society and as based in self-interest, the task of government in those circumstances is to protect the individual's interests and property from intrusion. Habermas rejects this version of liberalism to the extent that a liberal political theory sees politics as the aggregation of individual interests and the protection of these interests. Habermas's position is more clearly sympathetic to republicanism and its emphasis on popular sovereignty. Republican theory stresses the virtuous citizen who engages in public participation to determine the common good. In the republican view, law does not simply protect the individual, it also expresses the ethos of

the community. Habermas is uncomfortable, however, with the notion of a common ethos or political community. His communicative theory attempts to combine the best elements of both theories. His synthesis is not a return to liberalism but rather an attempt to link the notion of rights to popular sovereignty. We will return to this issue later in this chapter. At this point we wish to focus more explicitly on Habermas's specific understanding of rights.

In one sense Habermas's conception of rights is a new elaboration of his concerns with the dual foundations of democracy as he laid these out in his early essays, although his position on rights is not identical to his earlier perspective. For democracy, including radical democracy, must be built on a foundation of human rights *and* popular sovereignty, in which members of a society take on a form of self-organization. These human rights represent the basic conditions for the institutionalization of discourses in democratic societies. We might extend this argument and say they represent the basic conditions for communicative freedom. In this view, then, rights are not claims that derive from a natural law or moral law prior to society. Rather, they are both internal to society and state basic conditions that transcend partiality and apply to all. Here popular sovereignty and rights are complementary in character and not in conflict. If one accepts democratic rule as a discursive process in which individuals acting in concert decide on and implement rules, policies, and practices through deliberation (what Habermas calls the discourse principle), this requires an institutionalization of basic rights that protect the conditions of communicative freedom of individuals. Only if they are legally free to participate as equals can they discursively determine their shared conditions of political life. These rights associated with communicative freedom and action cannot be just moral rights, as some might argue. They need to be legally enforceable if they are to serve as bulwarks against unjustified coercion and domination.

As we saw with Habermas's earlier reflections on the genesis of modern political theories, the relation between rights and popular sovereignty is not fully clear. This disjunction is more straightforward in a thinker such as Thomas Hobbes, who detaches sovereignty from rule. But of course, the Hobbesian solution is unavailable to Habermas.

Habermas then thinks he can avoid some of the problems of earlier theories. Against Marxism and to some extent the earlier Frankfurt theorists, he believes that rights are not just a creation of capitalism and bourgeois society, expressions of an atomistic individualism. Rather, they are rules and laws that enable social action. He does not envision a society in which all antagonisms are eliminated and all politics is

abolished. A legal constitutional framework is needed to regulate these antagonisms and conflicts.

Thus, as we have seen, Habermas rejects the idea of a nation or community as unified by a single ethos or sense of moral uniformity. He does this for two distinct reasons. On the one hand he thinks that notions of the good are local, not universal. Conceptions of the moral good cannot by themselves be sufficient to found basic rights or legal order. Since modern societies are inherently pluralistic, we cannot have a purely ethical/moral reading of human rights independent of legality. Otherwise a single understanding of the good would be imposed on others, without discursive redemption. On the other hand, the impulses of human rights are certainly moral. We view infringements of human rights as violations of our moral sense. Nonetheless these moral impulses are insufficient for a constitutional state unless they have a legal foundation.³⁶

The second limit on the idea of a unified moral community involves a theme we discussed earlier: the idea that modern societies are based on the imperatives of money and power, that is, the market and bureaucracy. Modern societies are too large, complex, and pluralistic to be run on the model of direct democracy. However, Habermas argues that despite these features a theory of democracy based in popular sovereignty still has force. Such a theory, however, must accept the reality of a market society and administrative state as well as the conditions of plurality. This sets a difficult task: how is a socialist conception of popular sovereignty to be reconciled to a constitutional state with a market economy?

Rights and the Claims of Welfare: Reconsidering Social and Economic Rights

Another element of Habermas's theory of democracy that is clarified in his work is a conception of the legal status of welfare state norms. A tradition of thought that moves from Weber through the early Frankfurt School, and that undergirds the distinction between formal and material law, has been used to criticize welfare state measures. Legitimate law according to Weber is formal, that is, general. Weber criticized laws that treated different groups or classes unequally, as welfare measures have done. Among the Frankfurt School theorists, Franz Neumann adopted this perspective. The deformalization of law was in this view anti-democratic and a precursor to fascism. Neumann carried this line of thought and influenced Habermas in his earliest work.³⁷ However, Habermas's conception of formal law is not only abstractly formal but

also tied to a discursive procedure of justification. Law is based on communicative power, and it is that, rather than its formal quality, which gives it legitimacy. One could enact welfare state measures that deal with specific groups if they passed the test of reasonable acceptance by all parties.

Habermas believes that rights and popular sovereignty are linked through the discourse principle, and in a similar fashion he thinks that public and private rights are co-originary. Private rights are necessary to protect the autonomy of the individual from interference so that she has the private freedom to say “no” to prevalent social norms and take her own path. This is the source of a context-transcending power that can make possible new forms of mutual understanding. At the same time, rights protect the equal opportunity of all to participate in discourses as free and equal citizens. An individual who lacks the private freedom to say no also lacks the ability to be an independent individual and form his own plans. Moreover, individuals are participants in a larger world. Their private freedom is based on public freedom.

In casting rights in this fashion, Habermas intends to resolve the dilemma found in Kant and Rousseau. Kant saw basic rights as the foundation of a legal political order, but he conceived these as *natural* rights and hence prior to society. Thus he recognized and highlighted the central place of individual autonomy and self-determination but was unable to account for the idea of popular sovereignty that he drew from Rousseau. By contrast, Rousseau saw rights as emerging from processes internal to society, but he also came to view sovereignty only as the creation of a unified order – a conception that was insufficiently attuned to autonomy and plurality. It is Habermas’s claim that his account can do proper justice to both individual autonomy and popular sovereignty.

Habermas develops an alternative to direct democracy in his idea of a two-stage process of democratic deliberation, a process that is meant to preserve in large measure popular sovereignty. He sees the necessity of an open and wide-ranging public sphere in which there is unrestricted discussion and debate of issues. In this public space, new issues are raised, new structures of relevance are created, and new agendas are debated. The public sphere, recall, is intended to incorporate an institutionally unbound process in which “wild” communicative reason is to prevail. This is still, however, seen as a deliberative or quasi-deliberative process in which the force of good reasons prevails. Habermas sees his proposal as the communicative theoretical translation of the idea of popular sovereignty.³⁸

Following once again the ideas of Ingeborg Maus, Habermas views the democratic genesis of law as indeed resting with the ultimate authority of the people to formulate the problems and the direction of society – but only if, and insofar as, popular self-determination is understood not as a single will that can be ascertained, but rather as a web of communicative and action structures that can permit citizens to unite on specific themes, goals, or norms. To be truly feasible, however, this proposal would also require a large-scale democratization of all elements of society – a true social democracy. Habermas does intend his account to represent a “bottom-up” approach to democracy. His approach is broadly pluralistic but is not intended to be simply another variant of interest group liberalism. He sees competing groups not as the centre of a politics oriented strictly towards the contentious quest for power but as a series of decentred processes for forming and discussing of problems, processes that are aimed at reaching agreement on the salience of these issues.

The second stage in this account requires a more formal democratic element involving legislatures and government agencies, formal elections and even courts. Habermas, like many others, recognizes that in societies the size and scope of our own, a direct democracy is impossible and only some form of representative democracy is feasible. He sees these institutions as keyed to a deliberative assessment of proposals and issues formulated from below. Legislators and others are supposed to make such assessments through impartial deliberation about the fairness of legislative proposals; or, in the case of courts, they are supposed to offer reasonable appraisals of the results of legislative enactments.

Habermas thus offers a challenging and thoughtful solution to the problems of popular sovereignty in complex societies. Several questions are yet to be answered, however. There is the matter of formal institutions serving as a translation process that could under certain interpretations become elitist despite the nod to popular sovereignty. The problems and concerns raised in the public sphere cannot simply be handed off to the legislature and left for it to decide. Habermas’s conception of the role of the legislature tends to support the idea that law-making processes are more rational than everyday discussions. This would seem to violate the reciprocal interaction of everyday and expert discourses that Habermas has formulated elsewhere. The transmission process cannot just be one-way. There need to be ways for citizens to criticize these deliberations and participate in them, even if only virtually; and for this to be effective, there need to be strong democratic media through which citizens can be informed about legislative deliberations, and they must have the means to effectively criticize those deliberations.³⁹

Even if we were to accept Habermas's proposal at face value, a second problem arises for its employment as a critical theory of law and justice. Real deliberative processes, especially as conducted in legislatures, hardly qualify as ideal exercises in deliberation. In many respects, legislative deliberation – if indeed it could be called that – is less rational than discourses of the sort one finds in the public sphere. Indeed, where they have been captured by corporate economic interests, as has happened in the United States, state and national legislatures have worked to *restrict* popular input and have thus become reactionary instruments of conservative revolution, not expressions of popular sovereignty.

On these grounds, and understandably so, progressive and radical scholars and thinkers have criticized Habermas's discourse theory of democracy. However, we want to be a little more precise than some critics have been in specifying the nature of our own criticisms. As we noted earlier, many have viewed *Between Facts and Norms* as a surrender of radical principles, especially Marxism, and as an embrace of conventional liberalism. We think this view is mistaken. While Habermas as we noted above clearly rejects the model of revolutionary transformation of society that Marxists have traditionally defended, he nonetheless thinks that radical reform can bring about the realization of the ideals Marx desired, even if in a changed form. Habermas believes, however, in the power of the constitutional state to serve as a vehicle for this radical reform. As Matthew Specter has observed, Habermas's mature work can hardly be characterized as a document of political resignation. In *Between Facts and Norms*, constitutionalism is imagined as capacious enough to absorb the full force and breadth of "the revolutionary project of the French Revolution."⁴⁰ Habermas contends that the constitutional state preserves the ideals of the French Revolution, and of Marx, with regard to freedom, equality, and solidarity. He argues for a notion of constitutional patriotism that is based not on simple loyalty to country but on loyalty to the idea of the realization of the democratic project.

Thus for Habermas the constitution, very much like modernity itself, represents an unfinished project based in a fallible learning process. Certainly, there is some evidence in favour of the idea of radical reform within a constitutional order. In the United States, for example, some have seen three waves of progressive reform in the twentieth century: the Progressive era, the New Deal, and the Kennedy–Johnson Great Society. These periods of reform involved expansion of the democratic franchise and the generation and extension of social rights and freedoms. Yet even these are ambiguous: the Progressive era often looked to an expert culture to reform society, and the New Deal's establishment of

the foundations of the welfare state was largely the creation of an inner circle of bureaucrats. Still and all, the initiatives associated with these two periods in American history *did* represent significant and progressive changes within a constitutional democracy.

These considerations do not invalidate Habermas's achievements in formulating a discourse theory of law and democracy. They do, however, point to its shortcomings as a critical theory. The latter, to recall, is also concerned with the ways in which these popular democratic developments nonetheless proved inadequate to the challenges of a social world still very much in the thrall of domination, unfreedom, and irrationality. In short, Habermas's account, like other theoretical initiatives shaped by its contours and concerns, lacks a thoroughgoing discussion of the pathologies of neoliberal society and its profound threats to the ideals that Habermas holds and defends.

Perhaps this is too much to ask of a work the scope and breadth of *Between Facts and Norms*. Nonetheless the book was published in Germany in 1992, at a time when the spread of neoliberal ideas and practices was already becoming apparent. In the intervening quarter century, Habermas has not really developed or presented a complementary analysis of the pathologies of neoliberalism. In some respects, his recent remarks on Brexit and the rise of Donald Trump in the United States, and on the emergence of right-wing populism more generally, show too much faith in the power of existing liberal democracies to deal with the serious problems of neoliberalism. At least up to now, his focus on the need for transnational institutions of justice has failed to recognize the force of the reaction against existing institutions and practices, and the crises created by neoliberalism. The question is whether the kind of full-scale democratization of society envisioned by Habermas could come about within a capitalist social formation. How far can radical reforms be carried out under capitalism? Is there some point at which a clear shift towards a socialist society becomes necessary? It may be true, for example, that the ideals of freedom and equality are the liberal core of the socialist ideal, but what conditions are conducive to the realization of those ideals?

The Problem of Administrative Rationality

A major issue raised in debates over the radical potential of *Between Fact and Norm* is the relation between public spheres and administrative systems. Some critics think that, despite his commitment to radical democracy, Habermas assigns too great a role to administrative rationality and not enough to democracy. He does not, it is argued, allow sufficient

scope for popular control of administrative decisions. He holds that administrative decisions often require a level of technical expertise that ordinary citizens do not have – for example, in areas of medicine or science, or economics. For that reason, expert professionals in such areas must be granted a certain scope and autonomy. However, this does not mean that administrative decisions are completely insulated from public opinion or debate. Ordinary citizens as well as legislatures and other formal deliberative bodies must have normative and even legal control over the direction of policy. The average citizen is not going to be able to carry out tests to decide on the safety of a new drug or medical device, but they could – as the case of HIV/AIDS research shows – exert pressure to bring new drugs to ill individuals more quickly. Individual citizens may not have the technical expertise to assess research on climate change, for example, but once aware of its effects, the public has a crucial role to play in the direction of policy.

Habermas argues that with the exception of specialized functions, technical problems are not independent of the public sphere. Members of the public are sufficiently cognizant of their own health and of the environment that they might play a role in guiding decisions. In matters like these, problems arise less with expert opinion and more with a public sphere that may come to be dominated by corporate interests that are able to apply their own money and influence to shape and restrict public discussion.

To differentiate among organized bodies of opinion formation and exchange, Habermas writes of strong and weak publics. Although the term is somewhat misleading, Habermas defines weak publics as informal public spheres such as private associations and the mass media as well as, it seems, sites where citizens in their everyday lives come together to discuss ideas. As the first stage or, as it were, “ground floor” of discussion, these weak publics are most sensitive to emerging issues and problems in society. They have the burden of creating and renewing the normative frameworks within which problems are defined outside of and prior to their treatment in a bureaucratic/administrative legislative context. By contrast, strong publics are formal bodies such as parliaments, legislatures, executives, and courts. These institutions possess the ultimate decision-making power in society and are also responsible for applying formal standards.

If Habermas were to give extensive authority to bureaucratic and administrative rationality, it would not be consistent with some of his earlier positions. In addition to defending the public sphere, he inveighed against the dominance of politics and society by technological reason, which is exercised independently of the reflective capacity

of subjects. Most important for our purposes is Habermas's view on the reciprocity of participants and observers in social inquiry, an issue we discussed earlier. We have argued that this formulation leads to a dialogue between participants and observers. But in these reciprocal processes, participants and experts are capable of mutual critique. Claims of expertise are never justified in advance and can in fact be criticized. And as we have become aware, the social function of expertise can be challenged. Medicine provides a good example of this. In recent years, the model of the doctor or medical professional as the ultimate authority in all decisions has been ceded to the patient or the family. Often, the model of the patient as simply a physical body to be diagnosed and treated by the doctor has given way to alternatives that allow more scope for the human factor.

Similarly, the role of expertise in administration and bureaucracy, as well as the scope of parliamentary authority, must be carefully limited. The idea that parliaments are filters that can judge laws and policies in ways that take greater account of fairness and equality seems to represent a rather idealized picture. In the current climate, legislative decision-making often does not always create greater fairness or equal treatment; indeed, it very often produces the opposite. Habermas assumes a set of conditions that, while desirable, require more specification. We must ask what kinds of arrangements and cultural conditions are required to achieve the types of deliberation Habermas defends as essential for democracy in the present day.

However, even under these conditions there needs to be a more reciprocal relation between weak publics and strong ones. Ordinary citizens have the capacity to pass judgment on legislative deliberations and to criticize them while they are happening. They have the reflective capacities to make judgments about such policies and legislative processes. They need to have a vital role in shaping these deliberations in a reciprocal way. It is not outside the scope of ordinary understanding to make sense of major legislative initiatives. And it is the responsibility of the media and government leaders to make information available to the public and ensure it is widely disseminated.

Habermas's idea of weak publics would seem to require a widespread democratization of all aspects of society. Citizens who have extensive experience with participating in deliberation at all levels of society are more likely to have developed their reflective capacities where there have been efforts to democratize the family, educational institutions, and workplaces, just to name a few.

Habermas does not treat property extensively in *Between Facts and Norms*. He does speak of collective goods, though not in a way that

helps clarify his views. We can infer, however, from his conception of basic rights that he does conceive of a notion of rights that would limit private property. This can be seen in his commitment to the protection of civil rights, but also and especially in his defence of the right of all to participate as equals in meaningful processes of democratic will-formation, which, as Habermas indicates, requires social rights in the form of social and economic security. These latter rights are what C.B. Macpherson and others might call developmental rights. They would secure those conditions that allow individuals to realize their purposes and form their identities. Habermas also recognizes self-development and self-realization as central to the development and protection of social rights and thus democratic deliberation. Conceptions of both can be and have been used to critically assess social and economic conditions, such as inequality and exploitation.⁴¹

If rights have a developmental component then the line between negative and positive, civil and developmental, rights is not hard and fast. Just as Habermas sees the co-priority of public and private rights, questions of self-determination and self-realization are connected. Being truly free to make one's own choices means that one has the resources and capacities to make those choices and to form one's own identity. These in turn no doubt require at least some minimal notions of a decent life. Gross levels of inequality, of political and social domination or oppression, of cultural invasion and colonization seem incompatible with Habermas's conception of rights. Habermas does not think that the welfare state satisfies these considerations, nor does the state socialist version of the legal state. But neither does he advocate a return to a free market.

Between Liberalism and Republicanism: Deliberative Democracy in a Wider Perspective

If our analysis to this point is correct, it is in the context of both the aspirations Habermas holds for his account and the challenges posed by the neoliberal constellation that his appraisal of alternative forms of democracy must be understood. For Habermas, liberalism and republicanism represent two models of democracy, neither of which is sufficient by itself.⁴² Liberalism starts from the model of a market-like competition of interests for the control of state power. On this model, political power is seen primarily as administrative or strategic power, which is then employed to achieve politically chosen goals. Subjects are viewed as independent bearers of rights protected by the state. This is the classic understanding of negative freedom or liberty. Political choices are

essentially an aggregation of individual private choices. These in turn shape the use and direction of political power.

By contrast, republicanism develops a theory of popular sovereignty. Politics and ethics are fused. Politics is not an aggregation of private interests; rather, it takes form around a collective ethos that possesses a quasi-objective character. Citizens of good character are formed through political participation, and in this respect republicanism bears affinities to the developmental liberalism of thinkers such as John Stuart Mill.

The form of ethical life specific to each community creates elements of political solidarity. Through sharing this ethos, individuals become aware of one another as citizens, as free and equal co-participants in the shared life of a common world. Citizens are primarily public persons whose rights of communication and participation are prior to private rights. Politics is not primarily administrative or strategic, but a way of acting in concert whereby the deliberations of citizens determine the aims of politics.

While liberalism largely lacks any sense of the solidarity that republican political thought emphasizes, and hence has a limited notion of the social world, republican conceptions fail to recognize the independence of rights claims from a specific ethos and tend to underestimate the role of administrative power. Liberalism employs an exclusive notion of private interests; republicanism holds an exclusive notion of public freedom. For Habermas, like Macpherson, an adequate theory of democracy must recognize the co-priority of private and public freedom.

Habermas's conception of deliberative, or discursive, democracy is meant to provide the basis for such a theory. Deliberation is here conceived as a structural property of human interaction and justice is seen in the first instance as procedural. Deliberation and its possibilities emerge from the basic structure of mutual understanding prior to any specific human rights or concrete sense of community. Our basic capacities for deliberation and action are derived not from a particular content but rather from our ability to deliberate together to reach understanding and to act in concert.⁴³ Thus basic rights to equality, freedom, and communication are drawn from the core conditions of mutual recognition and not from isolated individuals.

Because Habermas formulated the intersubjective bases of communicative rationality and its notion of mutual recognition, he could employ this analysis to show the relation between public and private freedom that liberals and republicans had failed to achieve. He argues that this "reciprocal relation is expressed by the idea that legal persons can be autonomous only insofar as they can understand themselves as authors of just those rights which they are supposed to obey as addressees."⁴⁴

For Habermas, human rights are required to ground the universal public right of reason. They need to be institutionalized if public reason is to be free and accessible to all. At the same time, the public use of reason, and republican freedoms, require the assumption that there are independent individuals who are free to accept, reject, or modify these rights. They have a context-breaking and not just a context-dependent quality.

And this capacity can only develop intersubjectively and dialogically, in relation to others. Thus Habermas's specific procedural conception of democratic will-formation distinguishes his position from that of, for example, John Rawls or Immanuel Kant. In contrast to the original position of Rawls's or Kant's transcendental subject whereby individuals are fundamentally unconnected to one another, Habermas's intersubjective starting point interprets human rights and discourse as requiring a higher level of solidarity – a solidarity with others.

This understanding of solidarity indicates that while it is generally seen as Kantian, even by himself, Habermas's account nonetheless has a significant if latent Hegelian quality – a point we emphasized in [chapter 1](#). To remind, *Between Facts and Norms* has an architectonic structure reminiscent of Hegel's *Philosophy of Right*. In place of Hegel's account of abstract right, morality, and ethical life, Habermas presents the system of rights, the constitutional state, and procedural (deliberative) democracy as a system of public opinion and will-formation. Instead of absolute spirit by which a substantial ethical life is realized as objective spirit, there is communicative reason (the discourse principle) by which an inner connection between the system of rights and the constitutional state, the rule of law and popular sovereignty, is secured. And a similar basis for the critique of the *Philosophy of Right* of the kind offered by Marx can be established for *Between Fact and Norms*: just as Marx argued that in reality the state as a concrete ethical community was subordinated to civil society and its class-based antagonisms, so it could be argued that communicative rationality is subordinated to instrumental rationality via the spread of relations that convert moral/practical into technical questions (to use Habermas's earlier formulations), which are posed in such a way that their inescapable moral/practical dimension is occluded.

Habermas intends his ideas to represent a critical diagnosis of the present in a post-Frankfurt School, post-Marxist, post-socialist context. Specifically at issue is the nature of a viable democracy that retains a connection with the normative/egalitarian impulses of classical democratic theory and classical socialist doctrine, while acknowledging the

realities of societal complexity and a pluralism that generates multiple concrete life plans and motives.

At one level, this account targets various self-declared realist theories of democracy that dismiss the possibility of any substantive conception of popular will-formation. Such theories are rooted in the recognition of the evident asymmetries of power in society, on the one hand, and the existence of social complexity, which makes discursive will-formation and normative direction by self-conscious, acting individuals unrealistic, on the other. Habermas wants to challenge such "realism" while acknowledging the significance of issues it raises. (We more fully examine realist theories of democracy in the next chapter.)

Thus, at another level, Habermas is attempting to distinguish his view from "classical" Marxist and social democratic conceptions of the state, as well as from the neoliberal revival of classical liberal accounts of the relation of the state to (free market) society, a revival that shares ground with the realist position. The cornerstone of his argument here is his account of the legal paradigms he identifies with alternative conceptions of democracy: formal liberal, material welfare state, proceduralist. This argument too exhibits a Hegelian structure: the relation Hegel drew between abstract right, morality, and ethical life is here recast in terms of the relations among these three paradigms, with the proceduralist paradigm performing the role of ethical life. It does so because it embodies the claims of communicative freedom in the same way that ethical life embodied those of objective spirit. Of course, communicative freedom is not the equivalent of objective spirit, nor can it be. Spirit takes on its distinctive characteristics only within the framework of a philosophy of consciousness whereby as a totalizing power it "makes" society. No longer tenable, the philosophy of consciousness needs to give way to an account of intersubjectivity *qua* communication and communicative rationality: the procedural legal paradigm is the "spirit" of a plural universe in which the mutual recognition of subjects guaranteed by Hegel only at the level of the fully realized universal reason of ethical life now takes the form of legal guarantees of private and public autonomy as a system of rights among equal legal consociates who must order their relations under the framework of this-worldly positive law. The "spirit" of proceduralist law informs and rationalizes the institutions of political opinion and will-formation in light of the securing of a functional separation of powers "which, at a different level of abstraction, governs the availability of various sorts of reasons and how these are dealt with.

This logic requires the institutionalization of various discourses and corresponding forms of communication that, *regardless in which local context*, open up possibilities of access to the corresponding sorts of reasons."⁴⁵

Hence "the social substratum for the realization of the system of rights consists neither in spontaneous market forces [i.e., formal liberal law *qua* abstract right] nor in the deliberative measures of the welfare state [i.e., material welfare state law *qua* morality] but in the currents of communication and public opinion, emerging from civil society and the public sphere, that are converted into communicative power through democratic procedures [i.e., proceduralist law *qua* ethical life, here understood as establishing the identity of the modern democratic constitutional state in terms of which there is a necessary inner connection between private and public autonomy, justice and popular sovereignty]."⁴⁶

Habermas's conception of the interpenetration of private and public freedom provides a starting point for a critical theory of democracy, one that, as noted in [chapter 1](#), has considerable similarities to the developmental democratic theory of C.B. Macpherson. This relation again entails going beyond the Kantian notion of critique as the illustration of the limits of knowledge to a conception that links concrete forms of life that are historical and social in nature to the pathologies of late-modern forms of capitalist globalization – that is, towards the key concerns of Frankfurt School critical theory. As Macpherson and others have pointed out – and, to a considerable extent, as Habermas accepts – the liberal idea of basic rights is both atomistic and easily transformed into possessive individualism. It fails to account for the impediments to public freedom generated by an exclusive reliance on the market model. This model significantly restricts the public realization of freedom because it generates deep inequalities of power and money. Unequal power leads to unequal public freedom – a key insight that informed Macpherson's conception of the net transfer of powers. The achievement of equal private rights requires equal public freedoms and social rights. Habermas argues, however, that public freedom requires not just the interventions of the social welfare state, which can in isolation lead to welfare paternalism, but also appropriate and supportive cultural conditions. Such conditions must incorporate a radical egalitarianism. While Habermas has not fully developed this idea, particularly in his more recent work on human rights, it points to the need for an extensive network of public and private spaces that could in turn enable a much more robust participatory democratic politics.

Radical Democracy and Democratic Autonomy

Habermas's theory, in other words, points in the direction of a radical democracy that requires a wide variety of well-developed public spheres within civil society that can sustain a democratic autonomy. So understood, autonomy is a complex process that interweaves self-interpretation, self-development, and self-determination with a robust freedom of communication in an intersubjective context. A network of public spheres would provide more than simply a means of organizing private interests to influence state power. Such spheres would also facilitate active participation whereby citizens could form themselves through their involvements in the world. According to Habermas, this would be possible only in a radically egalitarian society.

Habermas's conception of a radical egalitarian society could thus suggest important elements of a critical theory of democracy. Unfortunately, as noted at the beginning of this chapter, in his more recent writings on global cosmopolitanism, neoliberal globalization, and the contemporary crisis of the European Union, he does not adequately develop these elements in his own work.⁴⁷ But a more developed version of Habermas's insights could provide a powerful critique of the barriers that limit the emergence of egalitarian global justice. The unregulated expansion of global capital has led to increased exploitation and the passing on of social risks to subaltern and even middle classes. Capitalist globalization increases the vulnerability of life plans and forms of life. It generates ever more massive inequalities and a greater concentration of wealth and power. While undermining some of the achievements of the social democratic welfare state, it creates new forms of socio-cultural colonization that restrict the cultural freedom and integrity of exploited groups.

This is another way of making the point we highlighted in the introduction to this chapter: that critical theory needs to re-engage with critical political economy if it is to be faithful to its own insights. The strengths, possibilities, and limitations of Habermas's position highlight this need.

Nonetheless, Habermas's attempt to reformulate the grounds of moral and political theory in response to the challenges of neoliberalism, neoconservatism, and postmodernism raises important themes. These include of course his substantive theoretical principles and commitments. But there are also methodological issues important for our own analysis in that they suggest a basis for a plausible radical and developmental theory of democracy, one that would meet the criticisms

usually levelled against developmental theories in general. We would identify these issues with an intersubjective perspective that draws on Habermas, while hopefully going beyond the limitations of his position. The core of our perspective in this respect includes the following claims:

- Neoliberal and rational choice theories revive a form of methodological individualism based on an economic conception of rationality. The individual is seen as a strategic actor who aims to maximize happiness, wealth, or some other utility. Here, social order is achieved through the coordination of choices in the market. The problem of individual consent is reduced to the aggregation of such choices to create a social equilibrium.
- Republican or communitarian accounts see social order as an ethos or tradition that exists prior to individual preferences or freedom – that is, it has a quasi-objective quality. While many communitarian thinkers share a republican outlook compatible with developmental theories, they employ strong notions of context that limit the scope of community.
- Ironically, many post-structuralist theories recapitulate certain elements of communitarian thinking. Post-structuralist theorists posit social order as a unitary structure that discloses prior to the individual conceptions of truth, reality, and selfhood by means of which these individuals find themselves defined. Power-interpretative theories argue that order is not a function of reason or tradition; rather, it is established through a will to power. Because of its capacity to define situations, interpretation is a mechanism for dominating others. By contrast, other interpretative theorists hold that social forms are a given, or represent a dispensation, but are never completely produced by anonymous force. None of these theories captures the dialectic between individuals who take on rules and the social order into which they are born.

This somewhat circuitous route into questions of social order is necessary to illustrate the context in which we can rethink developmental theories. As self-interpreters who take up, renew, and sometimes transform the world, we come to be accountable for the ideas we accept as valid. Here self-determination means that we can choose among alternatives and formulate our own purposes, and beyond this, construct through these purposes a core of our own identity, our sense of place in the world, and our projects within it. In this context, self-understanding refers not just to an individual who externalizes and

realizes an inherent *telos* or goal but also to social processes through which we form a sense of the world. Thus, developmental theories need not posit fixed individual ends or a fixed human nature. Rather, in a way that recalls Jean-Paul Sartre, it is a matter of making oneself, and in the course of doing so renewing humanity. This should be at the core of a contemporary critical theory of democracy that is both radical and developmental.