Between facts and Utopia: Habermas and Benhabib from deliberative democracy to democratic deficits

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The University of Montana

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Between Facts and Utopia: Habermas and Benhabib from Deliberative Democracy to Democratic Deficits

by

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The thesis proposes to examine two accounts of democratic legitimation and institutionalization within the deliberative democracy tradition of political theory. The normative principles grounding these accounts are derived from discourse ethics. The first section begins by examining the attempt by Jürgen Habermas to ground the validity of moral norms in a neo-Kantian transcendental account of an “ideal speech situation” as well as the rejection of such an account by Seyla Benhabib in a neo-Hegelian critique. The first section then explores the attempts in deliberative democracy by Habermas and Benhabib to ground a procedural account of democratic legitimation in normative principles derived from discourse ethics and their institutionalization in a civic public sphere.

The second section begins by dealing with two of the major traditional criticisms identified by Seyla Benhabib against deliberative democracy, the liberal criticism that such an account cannot adequately guarantee individual rights and autonomy, and the institutional realist critique that the principles of deliberative democracy are not capable of institutionalization in modern, complex societies. In meeting these objections from the broader tradition of modern democratic political theory, both Habermas and Benhabib emphasize the compatibility of deliberative democracy with existing political institutions. I argue that deliberative democracy then risks generating an internal tension between the strong conception of free and equal participation generated by discourse ethics and their own institutional account. The central issue here is that while analytically separating the civil public sphere and its own logic from other social spheres like the cultural or economic, both democratic theorists fail sufficiently to subsequently thematize the public sphere’s relation to other social spheres and the possible intrusions of these spheres into deliberative bodies in such a manner as to constitute democratic deficits. I endorse Nancy Fraser’s work as a more adequate account of deliberative democracy for these reasons. I conclude that deliberative democratic theory should be seen less as an account of the legitimation of existing democratic institutions than as normative grounds for pushing for the further democratization of political, economic, and cultural institutions.
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Section One

DISCOURSE ETHICS TO DELIBERATIVE DEMOCRACY

I propose to examine two accounts of democratic legitimation and institutionalization within the deliberative democracy tradition of political theory. The normative principles grounding these accounts are derived from discourse ethics, the central principle of which is as follows: "Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse." While agreeing on the principal norm of discourse ethics, Jürgen Habermas and Seyla Benhabib disagree on its justification. The first sub-section examines Habermas' neo-Kantian account, which attempts to ground the validity of moral norms in the quasi-transcendental presuppositions that purportedly underlie discursive argumentation, presuppositions that prefigure 'an ideal speech situation.' Benhabib rejects such an account in a neo-Hegelian critique and proposes an alternative justification of communicative ethics as a form of practical rationality that is a world historical and collective achievement, insisting then on both its historical and sociological specificity as well as its claim to a validity that is culture-transcending. The difference in justifications results in different conceptions of the relation of morality to ethics in the communicative paradigm. While Habermas insists on a strict separation, insisting that the function of discourse ethics is to ground universal moral norms, Benhabib includes ethical contents in her conception, proposing to add a community of needs and solidarity to that community of rights envisioned by Habermas.

The second sub-section explores the attempts by Habermas and Benhabib to ground a procedural account of democratic legitimation in principles derived from discourse ethics and to institutionalize them in a civic public sphere. While abandoning his commitment to both a quasi-transcendental justification and a strict separation of the moral and ethical realms, Habermas still formulates his account of democratic legitimation in very Kantian terms. Since in modern societies, the legislators and subjects of law are distinct, in contrast to the Kantian conception of autonomy, the point of political theory, as Habermas sees it, is to again mediate the two in order to develop adequate accounts of both private and public autonomy. In complex, modern societies, Habermas sees this happening primarily in the deliberations of the civil, public sphere. The modern political tradition, typified for Habermas by the liberal and republican conceptions, fails to do justice to public and private autonomy by privileging either one form of autonomy or the other, and thus fails to see their mutual dependence. Only in a procedural account, Habermas argues, can their co-originary status be properly articulated. While sharing Habermas' general formulation of deliberative democracy and its emphasis on the civil public sphere, Benhabib differentiates herself in taking the primary object of public discourse to be not only the administration of power by the state but the norms regulating social action between actors that do not require coercion. In a parallel fashion then to her critique of Habermas' formulation of discourse ethics, Benhabib argues that Habermas' account of deliberative democracy still suffers from a Kantian narrowness, with the overriding concern being now with law instead of morality. Such a conception for Benhabib again unnecessarily and unjustifiably truncates discursive potentials.

The second section begins by dealing with two of the major traditional criticisms identified by Seyla Benhabib against deliberative democracy, the liberal criticism that such an
account cannot adequately guarantee individual rights and autonomy, and the institutional realist critique that the principles of deliberative democracy are not capable of institutionalization in modern, complex societies. In an attempt to meet these objections from the broader tradition of modern democratic political theory, both Habermas and Benhabib emphasize that their deliberative democratic accounts are compatible with existing political institutions. But if this is the case, I argue, deliberative democracy risks generating an internal tension between the strong conception of free and equal participation generated by discourse ethics and their own institutional account. The central issue here is that while analytically separating the civil public sphere and its own logic from other social spheres like the cultural or economic, both democratic theorists fail sufficiently to subsequently thematize the public sphere’s relation to other social spheres and the possible intrusions of these spheres into deliberative bodies in such a manner as to constitute democratic deficits. I conclude that deliberative democratic theory should be seen less as an account of the legitimation of existing democratic institutions than as normative grounds for pushing for the further democratization of political, economic, and cultural institutions.

1.1 Habermas and Benhabib on Discourse Ethics

Both Benhabib’s and Habermas’ projects originate at the same point: the by-now-well familiar impasse of the Frankfurt School. “If the plight of the Enlightenment and of cultural rationalization only reveals the culmination of the identity logic, constitutive of reason, then the theory of the dialectic of Enlightenment, which is carried out with the tools
of this very same reason, perpetuates the very structure of domination it condemns. The reason for this impasse, Habermas argued, was the work-centered philosophy of history the Frankfurt School had inherited from Marx. The irony of the Frankfurt School, however, was to eliminate the progressive and normative implications in a progressive notion of modernity that Marx himself had relied on. The real was rational, but increasing rationalization was only progressive domination. Consequently, in *The Dialectic of Enlightenment*, Horkheimer and Adorno were led to posit an ‘other’ of reason in aesthetic mimesis. But relegated to advanced avant-garde art, such a conception left theoretical critique and emancipatory political praxis without a foundation.

Habermas has over the last forty years attempted the Herculean task of reconstructing critical theory’s social-theoretic and normative foundations around the terms of language and communication. Habermas’ first attempt at the reconstruction of critical theory’s normative foundations took a very self-consciously Kantian form in its emphasis on autonomy and self-legislation. Only those universalizable norms which moral agents will themselves are valid. Habermas’ procedural account though differs from Kant’s in its dialogical character. It is not the moral agent in self-reflection that tests the universalizability of a maxim, but actual moral agents in discussion. This principle Habermas formulates as: “Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.” Habermas’ account then focuses not on the ideal faculties of a moral agent, but on the conditions of moral discourse that would validate the result: a sincere dialogue open to all participants, topics, and demands.

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for justification. Whereas Kant constructed an ideal agent reflecting on his actual reason, Habermas models morality on actual participants in an ‘ideal speech situation.’ The ideal speech situation specifies the “formal properties that discursive argumentations would have to possess if the consensus thus attained were to be distinguished from a mere compromise or an agreement of convenience.” It is less something actual that occurs, or some telos to aim at as an ideal society, than a regulative principle by which to normatively judge actual moral dialogue. It is in this manner that he hopes to evade the traditional Hegelian objections of abstraction and otherworldliness to a Kantian account.

Seyla Benhabib has been a sympathetic fellow traveler in critical theory’s communicative turn, but she has been an equally austere critic of its Kantian formulation. Habermas argues that the constraints on moral discourse envisioned by the “ideal speech situation” are presumed by competent argumentation as such. While accepting the general formulation of discourse ethics—a moral discourse open to all participants who have equal rights (demand for justification, initiation of topics, etc.) within that discourse—Benhabib rejects Habermas’ quasi-transcendental justification. In *Critique, Norm and Utopia*, she systematically outlines her reasons by reformulating Hegelian objections to Kant’s original account. Whereas for Habermas we are bound to respectful and egalitarian moral discourse in so far as we are speech users, Benhabib argues that moral respect and egalitarian reciprocity only have force for a certain kind of speaker, a post-conventional modern one. While this is a contingent fact, it is not an arbitrary one; after the fact of modernity, so to speak, arguments can be given to support respectful and egalitarian dialogue. The

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4 Benhabib. *Critique, Norm, and Utopia*, p. 284
transcendentalist account of discourse ethics can't work, because it either just doesn't follow from a minimal conception of the rules of argumentation or surreptitiously presumes psychological and sociological premises to which it is not entitled:

Either this principle explicates the meaning of rational consent in such a way that nothing new is added to the available explication of the argumentation procedure in practical discourse; or this principle defines the meaning of rational consent in some additional way, but this definition is neither the only one compatible with the accepted rules of argumentation, nor can it be said to follow from the rules of argumentation without the introduction of additional assumptions not belonging to the specified rules of argument.5

While Benhabib’s particular arguments against Habermas’ Kantian formulation of discourse ethics are Hegelian-inspired, they are part of a more general line of inquiry into the tradition of critical theory that is really quite imaginative. Going back to Marx’s Capital, Benhabib distinguishes two contrasting models on social analysis. On the one hand is the intersubjective participants’ perspective, which presents crises as “lived phenomena of alienation, exploitation, and injustice.”6 On the other is the transsubjective, theoretician’s perspective, that of an outside third-person observer outlining the functional systemic necessity of crises. The unfortunate tendency of first-generation critical theory, Benhabib believes, has been to privilege the latter perspective, stemming from its continued reliance on what Benhabib calls the presuppositions of a “philosophy of the subject.”

First, that there is a unitary model of human activity which can be defined as 'objectification' or 'production'; second, that history is constituted by the activities of this one subject — humanity or mankind. Third, that human history presents the unfolding of the capacities of this one subject; and fourth, that emancipation consists in our becoming conscious of and acting in accordance with the knowledge that the constituting and constituted subjects of history – the subject of the past and the subject of the future – are one.7

The collective historical subject is for Benhabib a fiction that comes at the cost of failing to acknowledge human plurality. “[The] shift to the language of an anonymous species-subject preempts the experience of moral and political activity as a consequence of which alone a

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5 Ibid., p. 308  
6 Ibid., p. 123  
7 Ibid., pp. 129-130
genuine 'we' can emerge. A collectivity is not constituted theoretically but is formed out of the moral and political struggles of fighting actors.  

Against his own anti-teleological and anti-metaphysical intentions, Habermas' schema of evolutionary naturalism also falls victim to this trend. While replacing teleology with a developmental logic of cognitive learning potentials aimed at solving problems within historical processes, social actors nonetheless become mere identical bearers of functional imperatives:

Habermas reverts to the discourse of the philosophy of the subject at those points in his theory when the reconstruction of species competencies of an anonymous subject – humanity as such – does not remain merely a fruitful research hypothesis, but assumes the role of a philosophical narrative of the formative history of the subject of history.

This perspective is no less apparent in Habermas' discourse ethics. In treating discourse ethics as a sphere of deliberation over norms that can be freely and consensually agreed upon by all concerned, Habermas treats this 'all' as a homogenous, undifferentiated mass, or, in so far as they are individuals, treats those individuals only in terms of their commonality. This leads Habermas to separate the ethical sphere from moral discourse. He excludes the ethical on the grounds that conceptions of the good life cannot be reconciled with the principle of universality. But the history of actual political and moral struggles has not been so exclusive. The fights have been as much over needs and identity as they have been over rights. The collectivity of discourse participants that Habermas would like to exclude from considering the ethical is a product of those very ethical discourses.

Unlike Hegel, however, Benhabib's attempt to incorporate the ethical sphere into discourse ethics does not have a conservative trajectory. She argues instead that it is the Kantian formulation that truncates normative discourse. Contra Hegel, Benhabib is not a

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8 Ibid., p. 331
9 Ibid., p. 330
believer in a homogenous ethical totality, which would only reinstate a reifying, third-person perspective. Her emphasis is instead on the contestation within and between these ethical horizons by particular social actors. By ignoring the particular life histories of these actors, the Kantian perspective misses important ethical distinctions, and perhaps even moral ones. Sensitivity to particularity and differences, and the attendant ethical cognitions such as love or caring, would serve to broaden, not constrict moral discourse. Thus, Benhabib argues, moral discourses should be attuned as much to ‘concrete others’ as to a ‘generalized other.’

It is the perspective of the ‘generalized other’ that has prevented Habermas from making good on his own advance of Kohlberg’s moral theory, an advance that insists on “universalizable need interpretations.” For Habermas, according to Benhabib, in “[d]iscourses in which our needs and the cultural traditions shaping them are thematized, the semantic content of those interpretations defining happiness and the good life, are brought to life, and what is fitting, pleasing, and fulfilling are debated are named . . . ‘aesthetic-expressive ones.”¹⁰ But then Habermas sharply distinguishes such discourses from the moral, because he argues they are dependent on concrete, cultural traditions. Habermas himself, however, implicitly relies on these traditions in his formulation of the ideal speech situation, since such rules about inclusivity and symmetry in moral argumentation do not strictly follow from a pragmatics of language but already have imbedded in them certain presuppositions of fairness and equality. These are presuppositions that Benhabib shares, but she shares them not because one happens to enter into discourse, but because one is already situated in a post-conventional, universalist tradition. These discourses then are not as distinct as Habermas would like. Even in his formulation of discourse ethics, aesthetic-expressive discourses are assumed as given attributes of the participants involved. These

¹⁰ Ibid., p. 338
discourses, however, are not merely given, nor are aesthetic-expressive discourses only within a given cultural tradition. By bracketing these considerations through the perspective of a ‘generalized other’ Habermas robs moral discourse of much of its significance.

For Benhabib, needs and their interpretations are something to be argued about and potentially transformed, not merely as premises on the way to universalizable norms, but along with norms as the central objectives of moral discourse. The consequence of this is not merely to open up considerations of particular life histories in regards to norms, but to \textit{overturn any essentially privatistic and individual conception of needs}. Rather what is fundamentally important for Benhabib is the potential of communication to transform interests and self-interpretations. By making happiness political, and in this Benhabib is self-consciously following the Frankfurt School, she is also reopening an overly juridical and legalistic conception of discourse ethics to deliberation about the good life and the utopian horizon.

Benhabib has argued that the community of rights must be complemented by that of needs and solidarity:

They are the norms of solidarity, friendship, love, and care. Such relations require in various ways what I do, and that you expect me to do in face of your needs, more than would be required of me as a right-bearing person. In treating you in accordance with the norms of solidarity, friendship, love and care, I confirm not only your \textit{humanity} but your human \textit{individuality}.\footnote{ibid., p. 341}

By breaking down the barriers of the traditionally liberal public-private distinction, Benhabib hopes to incorporate virtues previously relegated to the private realm in public life.

Benhabib states herself that “the norms of our interaction are usually private, non-institutional ones.”\footnote{Ibid.} But these virtues may be generally private, not only because the public sphere has been cold but because the private sphere nourishes them with particular warmth.
Intimacy does not stand in a merely fortuitous relation to love and friendship but as its
ground, an intimacy that the public sphere by definition cannot provide. So with Aristotle
against Plato's attempt to make the polis into a family, we might wonder whether such a
totalizing conception of the family might be more damaging to intimacy and these relations
than any benefit the state could gain by them. It's really quite difficult to see then how
Benhabib's conception could be translated into political terms. The issue becomes not
merely political affects but one of participation. To the collective 'generalized other'
Benhabib counterpoises the individual and his or her particular life history. But it is hard to
imagine how everyone's particular life history could be accommodated in the political realm.

If Habermas' moral discourse is too exclusive, Benhabib might seem to stretch the
conditions of its possibility. Between a spartan universality and a maudlin particularity, both
thinkers might be said to have excluded the political as a realm where commonality and
difference are negotiated and where neither strict consensus nor love can provide an
adequate criterion. While it is notable that Benhabib conceives of the community of
solidarity and needs as a complement to, not a replacement of, the community of rights, she
is unable to adequately integrate them. As one eminent critical theorist has stated, what is
needed is a notion of 'collective concrete others.' It is not then surprising that both
theorists turn to politics quite explicitly in their later work, with the turn from discourse
ethics to deliberative democracy.

1.2 Habermas’ Account of Deliberative Democracy

In Habermas’ later work there has been a marked shift from discourse ethics, at least with respect to its particular attention to the ideal speech situation. The ideal speech community and its near otherworldly status have been replaced by a focus on actual liberal democracy. Habermas is renowned for specific engagements with his critics, and while no explicit and published debate the likes of which Habermas had with Gadamer and Luhmann exists with Benhabib, considerations along the likes of her critique have certainly played a role in his emerging thought. Unlike the quasi-transcendental presuppositions of the ideal speech situation, liberal democracy for Habermas is not a theoretical posit but is taken for granted as an historical achievement, while Habermas’ critique becomes a more straightforward and eminent normative critique of democratic deficits, the fullest elaboration of which to date has been his *Between Facts and Norms*.

This is not to say that discourse ethics itself has disappeared, for the best account of democratic legitimacy, Habermas and Benhabib both argue, is to be found in a deliberative account of democracy, an enterprise that draws heavily on the theory of discourse ethics and its idea of unconstrained dialogue among free and equal participants. This is most evident in the articulation of the public sphere. Habermas finds here a discourse with its own built-in ideality. The normative constraints here are not a transcendental, theoretical posit but historically achieved rights; civic rights, political rights, and finally in the twentieth century, social rights all become conditions of free and equal participation. Achieved through political struggle and moral discourse, they are themselves subject to continuing interpretation in the public sphere.
Surrendering the transcendental justification has also opened up Habermas' conception of moral discourse. No longer a specialized discourse, the public sphere finds its epitome in the everyday face-to-face conversation in which specialized discourses intermingle and the theoretician's voice finds no particular privilege.

To be sure, ethical discourses aimed at achieving a collective self-understanding — discourses in which participants attempt to clarify how they understand themselves as members of a particular nation, as members of a community or a state, as inhabitants of a region, etc., which traditions they wish to cultivate, how they should treat each other, minorities, and marginal groups, in what sort of society they want to live — constitute an important part of politics.14

Habermas' new theory is also much more attentive to the notion of "difference" in democratic discourse and the need to include those voices without which formal rights risk perpetuating substantive inequalities.15 Rather than essentializing "difference," Habermas argues that adequate recognition for minorities, or individuals more generally, can only be achieved through a procedural account that integrates both private and public autonomy.

For Habermas, it is as members of civil society that individuals exercise their private autonomy. "As bearers of individual rights, citizens enjoy the protections of the government as long as they pursue their private interests within the boundaries drawn by legal statutes."16 It is as political citizens that individuals exercise their public autonomy. Political rights "guarantee instead the possibility of participating in a common practice, through which the citizens can first make themselves into what they want to be—politically responsible subjects of a community of free and equal citizens."17 In fact, Habermas' account is meant to show that there are no viable private rights without public autonomy, that the equal value of rights cannot be protected without open and public deliberation about what these rights mean and what their (different) effects are upon the populace. "For, in the final analysis, private legal

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15 Habermas takes feminism as his model here.
subjects cannot enjoy even equal individual liberties if they themselves do not jointly exercise their civic autonomy in order to specify clearly which interests and standards are justified, and to agree on the relevant respects that determine when like cases should be treated alike and different cases differently.\textsuperscript{18}

Stemming from his earlier work in discourse ethics, Habermas' central argument for deliberative democracy has been that only a proceduralist account of democracy can do justice to the two fundamental normative intuitions of democratic politics, public and private autonomy. Habermas has explicitly contrasted his account with what he considers the two traditional accounts of democratic legitimation, republicanism and liberalism. While republicanism prioritizes the pole of public autonomy, liberalism privileges private autonomy. Only the proceduralist account, Habermas argues, fully integrates the co-originary nature and interdependence of public and private autonomy. At the institutional level, deliberative democracy attempts to fuse a republican emphasis on direct participation with liberal structures like the market and constitutional state, hoping thereby to balance solidarity and democratic will-formation as a means of steering society with money and administrative power. Habermas' attempt to integrate both the normative impetus and institutional programs of republicanism and liberalism is both ambitious and elegant.

The internal relation between the rule of law and democracy for Habermas begins with the advent of modernity. With the collapse of metaphysical paradigms, positive law must seek legitimacy in the legislation of autonomous subjects. The law in turn

\textsuperscript{16} Ibid., p. 240
\textsuperscript{17} Ibid., p. 241
institutionalizes this autonomy and gives it sanction and protection. Habermas explicitly follows Kant in his conception of both politics and morality, even while giving it a dialogical turn. In political philosophy, however, unlike morality, the legislator and addressee of the law must inevitably be split. Habermas' motivating concern then becomes how the poles of public and private autonomy can be mediated in such a fashion that neither is sacrificed. The way that the democratic tradition has formulated this tension, however, has left it irresolvable.

The political autonomy of citizens is supposed to be embodied in the self-organization of a community that gives itself the laws through the sovereign will of the people. The private autonomy of citizens, on the other hand, is supposed to take the form of basic rights that guarantee the anonymous rule of law. Once the issue is set up in this way, either idea can be upheld only at the expense of the other. The intuitive plausible co-originality of both ideas falls by the wayside.  

Republicanism upholds popular sovereignty at the expense of rights, liberalism rights at the expense of popular sovereignty. Deliberative democracy, on the other hand, recognizes that without popular sovereignty rights can neither achieve their proper articulation nor, under the conditions of a post-metaphysical modernity, receive their adequate legitimation. Similarly, without a system of rights and positive law, the outcomes of democratic deliberations cannot claim legitimacy as the fair exchanges of free and equal participants.

When citizens judge in the light of the discourse principle whether the law they make is legitimate, they do so under communicative presuppositions that must themselves be legally institutionalized in the form of political civil rights, and for such institutionalization to occur, the legal code as such must be available. But in order to establish this legal code it is necessary to create the status of legal persons who as bearers of individual rights belong to a voluntary association of citizens and when necessary effectively claim their rights. There is no law without the private autonomy of legal persons in general. Consequently, without basic rights that secure the private autonomy of citizens there is also no medium for legally institutionalizing the conditions under which these citizens, as citizens of a state, can make use of their public autonomy. Thus private and public autonomy mutually presuppose each

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19 Jürgen Habermas. “On the Internal Relation between the Rule of Law and Democracy,” p. 258
other in such a way that neither human rights nor popular sovereignty can claim primacy over its counterpart\textsuperscript{20}.

These theoretical, normative considerations are not without political, institutional significance for Habermas. Any attempt to institutionalize one of the poles of autonomy without due integration of the other is not only an incomplete account of democracy for Habermas but a self-undermining one, the welfare state being a case in point. While within the liberal tradition the conception of the conditions for the full exercise of private autonomy has grown to include a conception of economic entitlements, the failure to adequately conceive of the co-originary status of public and private autonomy in the service of facilitating private autonomy has led to the counterproductive regime of welfare state paternalism and normalizing interventions. Rather than underwriting the program of free and equal exercise of individual liberties, welfare recipients' stigmatization and regulatory objectification produces a dependent and dejected population.

The liberal program of equal rights and liberties, lacking the institutionalized means where those affected by the law have a role in its legislation, can end up working against the very equality in whose name the program of the welfare state was carried out.

The individual rights that are meant to guarantee to [citizens] the autonomy to pursue their lives in the private sphere cannot even be adequately formulated unless the affected persons themselves first articulate and justify in public debate those aspects that are relevant to equal or unequal treatment in typical cases. The private autonomy of equally entitled citizens can be secured only insofar as citizens actively exercise their civic autonomy\textsuperscript{21}

A proceduralist account proceeds under the assumption that a program of either public or private autonomy can only be pursued step in step with the other.

\textsuperscript{20} Ibid., p. 260

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Benhabib draws two major contrasts between deliberative democracy and more traditional liberalism, as expounded by Rawls. First, debate in Rawls' account is restricted to constitutional essentials, whereas deliberative democracy doesn't preemptively censor topics of public discussion. Second, Benhabib's conception emphasizes real debates over a kind of ideal debate seen as a regulative principle. One of Benhabib's particular criticisms of Habermas' Kantian discourse ethics was the ambiguous relationship in which it stood to Rawls' theory: focusing at once on both the dialogue's actual participants but then only on what they actually had in common. With deliberative democracy's public sphere, the distinction is more strongly pronounced. While Rawls' theory has expanded as well to include a public sphere, he situates it restrictively within the political system. His model of political and constitutional deliberation is therefore the Supreme Court. Deliberative democracy's public sphere is, by contrast, situated outside the political system in varying strata of civic society: from political parties, to citizen's activist groups to conversations at local coffeehouses.

At this point Habermas and Benhabib certainly look a lot alike, and one might ask whether Habermas has just embraced Benhabib's critique in totality, to which the natural response may be that it only appears so at first because Benhabib has embraced (too?) much of Habermas. To be sure, most of her discussions of deliberative democracy -- the concern with public reason, juridicality, and public institutions -- have predominated over the concerns with friendship, love, and caring that she championed in Critique, Norm and Utopia. One does not detect much utopian rhetoric, or much of an emphasis on 'anticipatory-
utopian critique,' in her latest work, such as *The Claims of Culture*. Have they just split their differences? At first glance the difference between *The Claims of Culture* and *Between Facts and Norms* may seem to be whether deliberative democracy is being applied to the realm of law or to multiculturalism, whether the public sphere is here being developed in terms of its relation to the political system or to a pluralistic society's culture. I would like to argue that deeper theoretical differences remain here, and to do so I would like to take up the line of argument relating to the differences between deliberative democracy and more traditional models of liberalism.

What distinguishes deliberative democracy is the importance it gives the public sphere as a civic institution. For Benhabib, it is this public sphere that allows deliberative democracy to accommodate a reasonable multiculturalism. What is distinctive about Benhabib's account is that it is primarily within the public sphere that multicultural dilemmas are to be resolved. "Deliberative democracy sees the free public sphere of civil society as the principal arena for the articulation, contestation, and resolution of normative discourses." In addition to the two major contrasts that Benhabib draws between her account and Rawls', which are outlined above, there is a third. Deliberative democracy centers its attention on non-coercive resolutions in the civil sphere over the coercive measures stemming from the state. With this third condition, it is perhaps worth concentrating not only on Benhabib's difference from Rawls but what is arguably her difference from Habermas as well. Certainly Rawls sees the public sphere as a political institution whose object is political institutions. While Habermas conceives of the public sphere as a civic institution, the privileged object of its deliberation generally seems to be the political system. While by no means excluding the political system as a topic of debate, the privileged object of deliberation in Benhabib is

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society itself, without the direct intervention in many cases of the political system and legislation. Is Habermas ignoring a crucial dimension of potentially transformative political praxis here, or is Benhabib just being utopian?

Benhabib is still taking a more Hegelian tack on deliberative democracy. When the private-public distinction is blurred, so is the ethical-political. On the one hand, she argues that this opens up horizons of discourse and potential resolutions that a more strictly Kantian conception suppresses. Benhabib reminds us of how many moral and human rights issues, such as women's liberation, start as ethical "for us" issues. "[C]laims and arguments may change their normative status through democratic deliberation in that ethical considerations may become universalizable justice concerns."23 Here universalizability and morality are not prerequisites for entering the public sphere but the result of it. At the same time Benhabib recognizes some Hegelian limitations. Discourse ethics applies, "if and when the democratic will of the participants to do so exists. Let us recall that we engage in discursive practices when moral and political conflicts occur and when everyday normative certainties have lost their governance."24 It is still worth asking whether enough democratic will exists to justify the emphasis that she puts on discursive resolutions to these dilemmas. Benhabib sidesteps the issue, perhaps, by noting that in cases of intense hostility, juridical solutions also have their limitations.

We are now at a point where we may be able to evaluate the continuing and sympathetic dispute in critical theory between Benhabib and Habermas in light of its past.

23Ibid., p. 144
24Ibid., p. 115
Both theorists have undertaken revisions in the move from discourse ethics to deliberative democracy. Yet certain undercurrents and commitments have not changed. To be sure, Habermas has replaced his quasi-transcendentalist normative justification with a much more historicized and immanent critique of bourgeois democracy, which means that the specialized discourse of morality, proceeding in terms regulated by the ideal speech situation, has been replaced by the everyday and unspecialized democratic public sphere. But the underlying objective of Habermas' work, however, has still been to justify universal norms.

The privileged object of discourse in the public sphere for Habermas is the political system. His legalistic conception of morality, with which Benhabib took issue, has ultimately only been replaced by an overriding concern with law. His continuing emphasis then remains on conceptualizing legitimacy through the free and uncoerced discourse of relevant participants about the relatively impersonal order regulating those participants' conduct within a system of articulated individual rights.

Benhabib, in her latest work, has given up the more immediate call for an "anticipatory-utopian critique of the present" that motivated Critique, Norm, and Utopia. Friendship, love, and a more radically individualist posture are not the main focus of her concerns here. Benhabib's emphasis remains on open discourse and normative interactions unrestricted by impersonal systems. She seems to emphasize that the discourse itself should have a binding character on democratic participants; law is a second-rate solution to voluntary compliance. The privileged object of appeal of democratic associations, then, is not the political system but civil society itself. Is this emphasis, though, in her political program any more viable than her seeming previous call for universal human tenderness?
Habermas himself has taken up the issue of utopia more directly. The issue here for him is the exhaustion of utopian energies and their potential renewal. Traditionally, argues Habermas, the notion of utopia has been based on that of social labor. But this conception has exhausted itself in the monetarization and bureaucratisation of the welfare state.

Opposed to these two mediums of steering Habermas juxtaposes that of solidarity. Habermas identifies three arenas: that of political elites, preestablished and propertied groups, and a third arena in which subtle communication flows determine the form of political culture and, with the help of definitions of reality, compete for what Gramsci called cultural hegemony; this is where shifts in the trend of the Zeitgeist take place. The interaction of among these arenas is not easily grasped. Up to now processes in the middle arena seem to have had priority. Wherever the empirical answer turns out to be, our practical problem can in any case be seen more readily now: any project that wants to shift the balance in favor of regulation through solidarity has to mobilize the lower arena against the two upper ones.

Habermas himself certainly seems much closer to Benhabib now. The trouble starts when Habermas does develop something of an ‘empirical answer,’ which perhaps blunts the more radical democratic thrust apparent here.

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Section Two

DEMOCRATIC DEFICITS IN DELIBERATIVE DEMOCRACY

So far my purpose has been to articulate a development within the communicative turn in critical theory between two largely sympathetic thinkers. I would like to turn now more explicitly to criticism of deliberative democracy. In the first sub-section I will deal with two of the major traditional criticisms against deliberative democracy identified by Seyla Benhabib. In identifying the particular responses Seyla Benhabib makes to these criticisms, I will argue that what they have in common, according to deliberative democracy, is a misunderstanding of the institutional trajectory of deliberative democracy, and that the criticisms can be blunted by a more adequate characterization of the institutionalization in deliberative democracy of the norms elucidated by discourse ethics.

Before proceeding, however, it is important to reiterate what the general principles of deliberative democracy derived from discourse ethics are, since it is precisely in light of such principles that questions of deliberative institutions must be arbitrated.

The basic idea behind this model is that only those norms (i.e. general rules of action and institutional arrangements) can be said to be valid (i.e. morally binding), which would be agreed to by all those affected by their consequences, if such agreement were reached as a consequence of a process of deliberation that had the following features: 1) participation in such deliberation is governed by the norms of equality and symmetry; all have the same chance to initiate speech acts, to question, to interrogate, and to open debate; 2) all have the right to question the assigned topics of conversation; and 3) all have the right to initiate reflexive arguments about the very rules of the discourse procedure and the way in which they are applied or carried out.

I will argue that in meeting these objections from the broader tradition of Anglo-American democratic political theory, both Habermas and Benhabib emphasize the compatibility of deliberative democracy with existing political institutions, but that such an

26 Ibid., p. 297
emphasis risks generating an internal tension between the strong conception of free and
equal participation generated by discourse ethics and its own institutional account.

Habermas will be the subject of the first sub-section, Benhabib of the second. In the third
sub-subsection I will consider Nancy Fraser's own work on mediating the recognizeive and
redistributive paradigms of justice, and contrast it with Benhabib's own account, before
concluding in sub-section four with my own recommendations.

The democratic opponents of deliberative democracy for Benhabib come from three
major camps: 28

First, liberal theorists will express concern that such a strong model would lead to the
corrosion of individual liberties and may in fact destabilize the rule of law . . . institutionalists
and realists consider this discourse model hopelessly naïve, maybe even dangerous, its
seeming plebiscitary and anti-institutional implications. 29

These camps raise questions about the institutional implications of deliberative democracy,
which is considered to be either intrusive or anarchically utopian. The liberal worry
expresses a long-standing concern in political theory over the potential tyranny of democracy
and the whim of majoritarian decisions. The rule of the majority risks the transformation of
a stable rule of law into passing fancies and the persecution of minorities in the majoritarian
interest. By contrast, the liberal emphasis on individual rights is intended to protect
individuals and preserve the freedoms of citizens. Democracy for the liberal must proceed
from this bedrock.

The institutional realist extends this critique, arguing that deliberative democracy
risks not only democratic tyranny but anarchy. Such a strong normative conception would

27 Seyla Benhabib. "Toward a Deliberative Model of Democratic Legitimacy," Democracy and Difference:
Contesting the Boundaries of the Political, (Princeton, Princeton University Press, 1996), p. 70
28 The third major camp for Benhabib is the feminist charge that the universalist and rationalist public
sphere which is the province of white males excludes alternative modes of "situated" discourse such as
storytelling and greeting, and therefore marginalizes women and other minorities. Many of the subsequent
points are sympathetic to this position, but I leave the issue aside for another time.
29 Seyla Benhabib. "Toward a Deliberative Model of Democratic Legitimacy," , p. 74
rule out any of the prevailing democratic institutions and normatively undermine them, without being able to propose an alternative that could meet the demands of modern, complex societies. One is left, in other words, with an abstract rejection of existing democratic institutions based on an unrealizable utopian longing for a universal town hall.

Habermas himself has repeatedly warned against taking discourse theoretic principles too literally as a model for their institutionalization in deliberative democracy. The model is not one of consensus-based decision making among a small, assembled group, as one might assume from the ideal speech situation. But the ideal speech situation for Habermas itself was never meant to be taken too literally as a schema by which to organize deliberations but rather as a regulative ideal against which proposed norms could be measured and criticized. The model for deliberative democracy then is not that of a free-for-all in a sort of mass assembly. Far from endorsing a classical model of the forum in contrast to the complexity of modern societies, Habermas argues that only the procedural model is adequate to the task of legitimating democracy in such complex, differentiated societies in which the ruled and rulers can be neither immediately identified nor strictly separated. So perhaps then the best means by which to retort to the previously outlined criticism of deliberative democracy in this introduction would be to return to Habermas' elaboration of the relation of public to private autonomy as he sets it out in the tradition of modern democratic political theory. But Habermas' account, I argue in turn, while responding to his critics opens up tensions with his own normative commitments.
2.1 Democratic Deficits in Habermas

The role of the democratic process in liberal and republican conceptions differs markedly. For the liberal conception, the state is considered subordinate to a civil society for which it serves the function of mediating private interests through a neutral public administration. For the republican, the state is a higher, reflective form of substantive ethical life through which solidarity and political communication, uncoupled from the economy, serve as the primary forms of societal integration and steering. This for Habermas has consequences in terms of how each conceives of the role of the citizen, the law, and finally the political process.

The citizen for the liberal is primarily a private person whose "individual rights are negative rights that guarantee a domain of freedom of choice within which legal persons are freed from external coercion."30 The rights of the republican citizen by contrast are positive rights to participate in a common practice of self-definition. "The state's raison d'être does not lie primarily in the protection of equal individual rights but in the guarantee of an inclusive process of opinion- and will-formation in which free and equal citizens reach an understanding on which goals and norms lie in the equal interest of all."31 In terms of the legal order, while for the liberal individual rights are prior to discursive will formation, for the republican such rights owe their existence to such discourse. For Habermas, "the republican conception at least points in the direction of a concept of law that accords equal weight to both the integrity of the individual and the integrity of the community in which persons as both individuals and members can first accord one another reciprocal

31 Ibid.
Finally, while for the liberal the political process is conceived in primarily strategic terms in the competition for administrative power, for the republican the logic of the political process is governed by "the obstinate structures of a public communication oriented to mutual understanding." While these positions are ones Habermas is ascribing to the republican conception, it is language elsewhere, perhaps verbatim, that he often uses to articulate his own position.

The emphasis on public communication, however, for Habermas does not come at the expense of individual rights. The liberal criticism of deliberative democracy then confuses deliberative democracy strictly with a republican or agonistic scheme. Habermas though argues for the co-originary status of public and private autonomy. A fair public dialogue among free and equal participants requires the integrity of those individual participants, and thus an institutionalization of deliberative democratic principles requires a system of individual rights. Rights conceived by deliberative democracy, furthermore, are more tightly integrated with the democratic polity than under a liberal notion. Rather than being the result of some pre-established fact as per liberalism, rights are not only the condition of democratic discourse but through the interpretation in deliberative procedures take a more articulate form, become reaffirmed by the polity, and gain further democratic legitimation.

Still, some confusion on the part of liberal critics may have been generated in part by the fact that Habermas seems to side tentatively more with the republican than liberal conceptions at a normative level. What is unclear is whether Habermas is ascribing to the republican conception an understanding of the interdependence of public and private autonomy he denies to it elsewhere or whether -- contrary to Habermas' expressed

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32 Ibid., p. 242
intentions — there is implicit in his own theory a certain priority of public autonomy, stemming from his earlier work in discourse ethics. Whatever privilege Habermas gives to individual rights is primarily a matter of exercising these rights not in civil society but in the political sphere. While rights in the civil sphere above and beyond those needed to participate as free and equal individuals in the public sphere may be legitimated by public discourse, they have only a derivative and not co-originary status. In a certain sense it is private political autonomy.

Habermas still attempts to distinguish himself from the republican conception. "It makes the democratic process dependent on the virtues of citizens devoted to the public weal. For politics is not concerned in the first place with questions of ethical self-understanding. The mistake of the republican view consists in an ethical foreshortening of political discourse." At the same time, while not submitting all political discourse to this conception, on basic questions of political discourse, not to mention the legitimation of the democratic process itself, Habermas seems to side on these normative fundamentals squarely in the republican camp with their priority on public autonomy.

The issue that Habermas does take with the republican conception's ethical burden, however, becomes one of the primary determinants for his model of what institutional form democracy must take.

Under conditions of cultural and social pluralism, behind relevant goals there often lie interests and value-orientations that are by no means constitutive of the identity of the political community as a whole, that is, for the totality of an intersubjectively shared form of life. These interests and value-orientations, which conflict with one another within the same polity without any prospect of consensual resolution, need to be counterbalanced in a way that cannot be effected by ethical discourse, even though the results of this nondiscursive counterbalancing are subject to the proviso that they must not violate the basic values of a

33 Ibid., p. 243
34 Ibid., p. 244
culture. The balancing of interests takes the form of reaching a compromise between parties who rely on their power and ability to sanction.  

Certainly Habermas here is no anti-institutionalist. In fact, he criticizes the republican conception for a certain political naïveté, particularly under modern conditions of pluralism. The fact of pluralism is most certainly something that any contemporary political philosophy must confront, lest it backslide into wistful and ultimately irrelevant pining for ethical homogeneity. The single, reflexive institution of the state of a singular ethical life in the republican conception on the deliberative model is replaced by a plurality of modes of association.

What seems surprising though, given the basic normative commitments he previously outlined, is how suddenly and completely, beyond the civil public sphere, Habermas accepts the basic liberal institutional structure of bureaucratic administration, elections, and a market economy as the only possible institutional means with which to confront the fact of pluralism democratically. “The sole presupposition is a public administration of the kind that emerged in the early modern period together with the European state system and in functional interconnection with a capitalist economic system.” The ethical foreshortening of political discourse by the republican conception leads for Habermas to a liberal foreshortening of political discourse about basic institutional arrangements for a democratic society, for in attempting to accommodate an ethical pluralism that republicanism cannot tolerate, Habermas is led into assuming a liberal institutional structure that may not in turn be able to accommodate the vibrant individual political participation of a republicanism he attempts to sublate into his own conception of deliberative democracy. Can such an arrangement really preserve the “radical democratic

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35 Ibid., pp. 244-5
meaning of a society that organizes itself through the communicatively united citizens” that Habermas endorses?

Habermas attempts to mediate his commitments to popular sovereignty and liberal institutions by adding to the liberal scheme a civil public sphere that through various channels and sluices influences the public debate within the political sphere outside of the election cycle. The direct participation of the republican model is replaced by various levels in the public sphere which ‘filter’ participation in discursive opinion and will formation.

It is through the interlocking set of these multiple forms of associations, networks, and organizations that an anonymous “public conversation” results. It is central to the model of deliberative democracy that it privileges such a public sphere of interlocking and overlapping networks and associations of deliberation, contestation, and argumentation. The fiction of a general deliberative assembly in which the united people expressed their will belongs to the early history of democratic theory; today our guiding model has to be that of a medium of loosely associated, multiple foci of opinion formation and dissemination, which affect one another in free and spontaneous processes of communication.37

It is in view of the public sphere and its indirect influence on political debate that the addressees of the law are meant to see themselves at the same time as participating in its legislation. The public sphere’s sluices are also meant to be the means by which money and administrative power are balanced by solidarity as forms of social steering.

It is highly questionable, however, to what extent Habermas’ schema can be considered an adequate balance, and thus to what extent public autonomy as a conception of free and equal participants in legislation can be done justice to, under such a schema. In such a conception, solidarity is by no means an equal partner to money and power. While the latter two act directly on civil society, solidarity through the public sphere only pressures the political debate concerning the use of administrative sanction, and thus acts only indirectly.

36 Ibid., pp. 246-7
37 Seyla Benhabib. “Toward a Deliberative Model of Democratic Legitimacy,” pp. 73-74
Only the political system can 'act.' It is a subsystem specialized for collectively binding decisions, whereas the communicative structures of the public sphere comprise a far-flung network of sensors that respond to the pressure of society-wide problems and stimulate influential opinions. The public opinion which is worked up via democratic procedures cannot itself 'rule' but can only channel the use of administrative power in certain directions.38

Even if this is true, Habermas hardly argues that this is a limit to society as such rather than an historical limitation of our present institutional arrangements. Is the relative muscle of the political subsystem a feature of politics as such, or rather a feature of bureaucratized political subsystems operating in conjunction with a privatized civil sphere and market economy?

While considering the indirect influence of solidarity on the administrative use of power and thus solidarity's indirect influence on economic power, Habermas fails to thematize the influence of administrative power and money on the processes of discursive will formation and, in particular, to what extent sluices are undergirded or steered by the very uses of administrative and economic power they are supposed to counterbalance.

Furthermore, while considering the relation of political discourse to a widely dispersed, organized, and energized public in terms of sluices and channels of influence, Habermas fails to adequately consider the filters and sluices through which topics of debate enter the influential level of political discourse. The influence of money and power on these filters is especially pernicious precisely because it is far less likely to be seen as an exercise of money or power since the concerns are less articulated and the debate less visible. The more subterranean the level of discourse the more difficult it is for the procedures of discourse themselves to become articulated and receive a public airing. The exclusion of marginalized individuals or groups by contrast is at the same time an exclusion of their claims of exclusion.

The issue then is not simply that with money or power a Rupert Murdoch has a competitive advantage to set the agenda of public policy (not even direct participation could as it were give everyone their ‘fifteen minutes’); rather it is the degree to which social marginalization denies a full and fair hearing to claims about the rules and procedures by which the public and political discourse proceeds, considerations among which would surely be the influence of money and power in setting the political agenda. If one cannot receive due consideration of their claim to be excluded from public discourse because of his or her marginalized social position, then this is a violation of public autonomy because it is a procedural exclusion. Such an individual is not simply losing a battle in the war of ideas but is excluded from the full exercise of his or her public autonomy in the basic normative political discourse about constitutional fundamentals, including discourse about the very exercise of public autonomy. Since the “private autonomy of equally entitled citizens can be secured only insofar as citizens actively exercise their civic autonomy,” such individuals’ private autonomy also cannot be guaranteed.

Certainly Habermas is no simple apologist for the status quo as his theory certainly emphasizes the participation of those that the status quo largely excludes. What is unclear is what institutional means Habermas has to respond to these sorts of objections. Of particular concern may be the exclusion not just of participation as such but the operations of power on the logic of the criteria by which discourses are settled and the ‘force of the better argument’ decided. With Foucault one might wonder whether even within a “panoptical” society, the conditions of an ideal speech situation might not be fulfilled, and whether Habermas ultimately has adequately addressed the potential for systematic discursive distortions within the public sphere.

39 These concerns are only amplified for those social actors whose potential claims have yet to be articulated in
For Habermas, at either a normative or institutional level, public and private autonomy presuppose one another. Similarly, both republicanism and liberalism prove inadequate as a foundation for both democratic theory and practice in so far as each privileges one pole of the relation at the expense of the other. Habermas’ theory, however, is less smoothly integrated than Habermas himself pictures it, especially when his attempt to integrate public and private autonomy at the normative and theoretical level proceeds to the institutional level. While claiming a co-originary status for both public and private autonomy, the strong and emphatic normative characterization Habermas wants to give the deliberative democracy model (stemming from discourse ethics) emphasizes public autonomy in his normative foundations, giving this theoretical level a certain republican cast. In responding to liberal and realist concerns, at the level of articulating appropriate democratic institutions, by contrast, Habermas largely follows a liberal model. This is a tension that Habermas’ account of the public sphere and its sluices of solidaristic power does not resolve, and rather than sublating the republican and liberal moments Habermas is left splitting the difference. While attempting to bridge this tension in the institutionalization of solidarity through the public sphere and its sluices, Habermas’ own undertheorization of the relation between forms of social power leaves his conception in danger of becoming a democratically normative gloss on the prevailing institutionalization of private autonomy, and thus by Habermas’ own standard of interdependence, an inadequate conception of private autonomy as well. The account of deliberative democracy then, even in terms of its own normative, ‘radical democratic’ ambitions, floats somewhere between an anemic republicanism and only slightly more robust liberalism.

even a subterranean level of the public sphere.
2.2 Democratic Deficits in Benhabib

Although she took the communicative turn in critical theory with Habermas, Seyla Benhabib was highly critical of his neo-Kantian formulation of discourse ethics. She has become significantly less critical of Habermas after having followed him in the turn to deliberative democracy. Foremost for both thinkers has been a defense of practical rationality in the public realm stemming from principles derived from discourse ethics. "The approach I follow is consonant with what John Rawls has called 'Kantian constructivism' and what Jürgen Habermas refers to as 'reconstruction.' In this context, the differences in methodology are less significant than their shared assumptions that the institutions of liberal democracies embody the idealized content of a form of practical reason."\(^4\) Contra Rawls but with Habermas she characterizes this form of practical reasons in terms of a civil public sphere.

Such processes have a claim to rationality because they increase and make available necessary information, because they allow the expression of arguments in light of which opinions and beliefs need to be revised, and because they lead to the formulation of conclusions that can be challenged publicly for good reasons. . . . The chief institutional correlate of such a model of deliberative democracy is a multiple, anonymous, heterogeneous network of many publics and private conversations.\(^4\)

As I have argued previously, however, there are good reasons to believe that Habermas has failed in his articulation of the public sphere as a means to do justice to those discourse theoretic normative principles in complex, modern societies. Does Benhabib's reformulated orientation in discourse ethics then blunt the criticisms elucidated above against Habermas, since those criticisms took aim primarily at the Kantian orientation of his work?

\(^4\) Seyla Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," p. 68
\(^4\) Ibid., p. 87
While continuing to operate in the paradigm of communicative ethics, Benhabib's version has had a different orientation from the start. Benhabib rejected Habermas' neo-Kantian transcendental justification of discourse ethics on self-consciously Hegelian grounds. This had the further consequence of rejecting Habermas' strict distinction between moral and ethical discourses, which led Benhabib to posit a complementary sphere of solidarity and needs to that of rights. In Benhabib's move to deliberative democracy, while the shared assumption of practical reason with figures like Rawls and Habermas takes on an increasingly Kantian character, its grounding remains Hegelian.

This form of practical reason has become the collective and anonymous property of cultures, institutions, and traditions as the result of the experiments and experiences, both ancient and modern, with democratic rule over the course of human history... When one thinks through the form of practical rationality at the core of democratic rule, Hegel's concept of 'objective Spirit' (objektiver Geist) appears to me particularly appropriate... without [the] metaphor of the subject implicitly governing it, the term 'objective spirit' would refer to those anonymous yet intelligible collective rules, procedures, and practices that form a way of life.42

While Habermas himself has largely abandoned in deliberative democracy the project of transcendentalist justifications in favor of an appeal to the historically situated requirements of a post-metaphysical modernity, a Kantian legacy still runs strongly through much of his work: the differentiation of value spheres, a legal focus, and a statist orientation. These orientations, I have argued previously, contribute significantly to the tensions in Habermas' conception of deliberative democracy. While abandoning the supersubject of Hegel and its instantiation in the state as the highest form of ethical life, Benhabib has maintained, in her move to deliberative democracy, an interest in the dialectic between justice and ethical self-definition, and an interest in a robust (though not homogenous) ethical life as a feature of public life and political deliberation.

42 Ibid., p. 69
The most concrete difference between Habermas and Benhabib in terms of deliberative democracy has been over what the proper object of public sphere deliberation is. For Rawls the public sphere is located within the modern state. While the public sphere for Habermas is civil, its object primarily is the legislative bodies that control the bureaucratic administrative apparatuses of the modern state. For Benhabib, much of the work of the civil public sphere is on civil society itself. "Opinion-making publics, as found in social movements, for example, can lead us to reconsider and rethink very controversial issues about privacy, sexuality, and intimacy, but this does not imply that the only or even most desirable consequence of such processes of public deliberation should be general legislation." Two other significant consequences then follow in the organization of the public sphere. First, while Habermas has emphasized a multivocal, layered public sphere, Benhabib, in her more elaborate work on feminism, multiculturalism, and the politics of difference, has characterized some of these associations, following Nancy Fraser, as 'subaltern counterpublics': spaces for minorities to articulate and argue over the distinction between public and private, the state and the public sphere, and layers in the public sphere itself. Second, Benhabib has taken a more decided interest in alternative institutional organization "to question seriously and investigate the institutional possibilities of realizing a democracy centered on a procedure of free, public deliberation."

Habermas' entire political project is still rooted in the Kantian problematic of attempting to mediate the addressers and addressees of modern law. This stems from the assumption that in modern, complex societies the givers and receivers of law are removed in the first instance, since the political system is differentiated from civil society and the organization of society is assumed to proceed primarily from the political apparatus. While

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43 Ibid., p. 84
not agreeing with Marx that a true democracy entails abolishing the state, Benhabib does de-center the state as an apparatus of social steering, and elevates democratic discourse. The civil public sphere under this conception gains a certain relative autonomy; the norms garnered by political discourse have their own binding effect without mediation from the state. Even without its emphasis on the state with a higher-order reflective life, Benhabib comes closer to a republican conception of a self-regulating sphere of political autonomy.

Habermas, in endorsing parliamentary politics and emphasizing the role of the state as a subsystem which ‘acts,’ also structurally privileges those areas of the public sphere from which the sluices that affect the political system emanate. Since the object of public autonomy primarily concerns that of the state, it also primarily concerns those regions of the public sphere that have influence in deliberations within the state. The consequence is a conception of public autonomy that moves steadily upwards from everyday informal conversations to increasingly higher levels of organization aimed at public policy. In essence, Habermas, in setting up the problematic of modern sovereignty in terms of those who make the law and those who receive it, fails in the addition of his conception of a civil public sphere to articulate a real community of free and equal participants. Vast segments of the population do not exercise their political autonomy any more robustly than they would in a liberal electoral system, which is in no small part why Benhabib takes issue with Habermas’ account.

Benhabib de-centers the state as an essential mediator of social power. When the issue is reformulated then not as an issue of law but of prevailing norms, the tension is formulated not just between a legal system and a populace but between a civil public sphere and a civil society. The distance between the addressers and addressees of social norms is

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44 Ibid., p. 85

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significantly reduced. The idea that we are at once makers and subjects of the ‘law’ gains increasing plausibility to the extent that it is the effect of free and equal discourse rather than the product of filtered discourses upon a system with its own internal logic, though capable of permeation by democratic discourses.

So while Habermas endorses a differentiated public sphere, the movement in a sense always extends upwards. Simultaneously, however, the reflexive moment in discourse ethics is institutionalized upwards, and so thus, at the level where it matters and at which public autonomy is actually exercised, the capability to enter into second-order dialogue about the rules of procedure and claims of exclusion is adjudicated at higher-order levels of the public sphere. Tongue-in-cheek, this can be referred to as the ‘David Horowitz effect’, in which only those positions already backed by money and power are able to make the claim of exclusion in an ‘official’ discourse. The risk then is an exclusion of claims of exclusion by those members of the democratic polity who are, in fact, lacking the recognition of moneyed and powered interests.

It is to address such problems that Benhabib endorses the notion of a heterogeneous, dispersed network of ‘sub-altern counter-publics.’

Subaltern Counterpublic Theory . . . proposes that marginalized groups, including Hispanics, are restricted in the general Public by dominant structures in academic and political institutions. The best means of combating this restriction is the development of Counterpublics, spaces in which the marginalized groups becomes the homogenous majority. Within these Counterpublics, the marginalized group is able to introduce, deliberate, circulate, and perfect thoughts, actions and strategies, without the restrictions or limitations imposed by dominant structures. These new thoughts and actions might then be brought to the larger Public for further circulation and deliberation.46

45 David Horowitz is a conservative pundit whose organization focuses on highlighting alleged liberal biases in the media and academia. His various political stunts only filter through the public sphere on account of a well-financed organization with powerful connections in the media and politics, thus making his claims of muzzling and censorship at the very least, deeply ironic.

Counter-publics, operating in the broader civil public sphere, follow the logic of an oppositional party at the parliamentary level, increasing the rationality of public discourse by raising the level of general information and countering generally popular assumptions with public arguments. The particular importance of 'sub-altern' public spheres, as contrasted from other civil associations, is to provide an arena to highlight and contest the public/private distinction. For Habermas, solidarity coagulates at those levels of the public sphere emphasizing general legislation, as do the steering mechanisms of money and power. Benhabib instead emphasizes the importance of counter-publics negotiating the intricacies of such issues. Such counter-publics, operating as a counterweight, become the bases of operations from which claims of exclusion from the general public sphere can be made, which would otherwise be adjudicated on the terms of the dominant public discourse.

If Habermas, perhaps even against his own best intentions, becomes a conservative in terms of democratic civil institutions in the public sphere, it is because he thinks that in complex, modern societies bureaucratic public administrations and market capitalism are given. Because solidarity 'acts' only through public administration, the internal organization of associations in the public sphere becomes dominated by their attempt to influence bureaucratic public policy, by either lobbying the state more directly or by the ability to create a popular sense of crisis among the citizenry. For Benhabib, it is precisely when the uninstitutionalized everyday discourses and the norms emanating from them become the object of political action that the effect of such discourses becomes more nebulous and immeasurable, if only because the consequences are less intended as instrumental effects than as mutual understandings.

Freed from the singular political objective of influencing bureaucratic public policy, associations in the public sphere are now given the opportunity to extend the participation
of citizens generally excluded from political discourse. The deliberative democratic ideal of self-governance is increasingly made possible by the communicative progress of institutional design. Benhabib attempts to open the door to a real balance of solidarity as a social steering mechanism with bureaucratic administration and money in two ways: first by opening the doors to participation in the broader normative governance of society by associations not directly mediated by the state, and, second, by opening participation in such institutions to broader segments of society, aided in due part by the demand of inclusion by 'sub-altern counter-publics.'

In terms of a more self-regulating public sphere and an emphasis on sub-altern counter-publics, Benhabib has worked to alleviate some of the democratic deficits in Habermas' conception. Her work has continued to extend the deliberative principle beyond the limits posited by Habermas, in turn making those limits into more fluid boundaries. She has extended discourse ethics from rights to questions of solidarity, from morality to questions of ethics, and finally from law to forms of non-legal social steering. Her focus on the public sphere and the institutions within it, however, may not be enough to realize 'the radical meaning of democracy' that deliberative democracy espouses, given a remaining conservative trajectory concerning the relation of the public sphere to social sub-systems outside it. So while Benhabib's model of a civil public sphere is broader and more participatory than Habermas', and may thus serve to strengthen solidarity as a form of social steering, her relative lack of attention to the mediations of the civil public sphere by other steering mechanisms such as money and power may undermine her attempt to provide a more robust model of democracy. That is to say, money and power invariably introduce elements of coercion even into a more vigorous or inclusive public sphere.
For Habermas the virtue of the republican conception was its emphasis on "the obstinate structures of a public communication oriented to mutual understanding." At the same time it places too much of a burden on the public weal of citizens and contracts political discourse to ethics.

Under conditions of cultural and social pluralism, behind politically relevant goals there are often interests and value-orientations that are by no means constitutive of the identity of the political community as a whole, that is, for the totality of an intersubjectively shared form of life. These interests and value-orientations, which conflict with one another within the same polity without any prospect of consensual resolution, need to be counterbalanced in a way that cannot be effected by ethical discourse . . . the balancing of interests takes the form of reaching a compromise between parties who rely on their power and ability to sanction. Although she abandons the homogenous ethical life of the republican conception, has Benhabib, in elevating such discourses to bring solidarity more in balance with money and power, placed too much of an unrealistic communicative burden on actors in the public sphere, especially under conditions of value pluralism? Benhabib has in some sense taken discourses about needs and identity that occur in the republican conception of the state and added them to the civil public sphere. This is not to remove ethical discourse from the political sphere nor is it to contract political discourses and the inevitable compromises issuing from governing a society of diverse values and interests. For Benhabib, rather, what constitutes a legislative issue, and what burden of political participation is placed on the citizenry, should be decided through deliberations ranging from the civil public sphere to the state. Habermas, by contrast, foreshortens just these kinds of discourses by positing the state simply as the privileged object of the public sphere. The limits of a republican conception under conditions of cultural and social pluralism for Habermas are to be transcended by a deliberative proceduralism. Because, however, the object of political

47 Habermas, "Three Normative Models of Democracy," p. 243
48 Ibid., pp. 244-5
discourse is the state for Habermas, this proceduralism winds up tending towards forms of liberal, "neutral" compromise that solidify the public/private distinction.

Sub-altern counter-publics have a certain privileged place in Benhabib's scheme in drawing the public/private distinction, further institutionalizing the reflexive commitments of deliberative democracy in opening democratic procedures to further discussion and rearticulation. Benhabib's answer to cultural and value pluralism is not then to emphasize deliberatively fair, liberal compromises, but further ethical reflexivity. In contrast to traditional republicanism, Benhabib's model emphasizes contestation and rearticulation rather than articulation and affirmation. Sub-altern counter-publics give a place to minority voices and potential claims of exclusion that might otherwise be silenced in Habermas' more general and legally oriented public sphere. The rejection of a univocal public sphere in deliberative democracy, however, while answering the charges of naive utopianism, opens up the problem of a "free and equal" communication between these varying networks.

While the broader public must be complemented by counter-publics in order to be more truly representative, counter-publics in turn must be complemented by the broader public in order to be effective. In so far as the ethical self-definitions occurring in such spheres are to become universalizable justice concerns, they need the recognition of the public sphere. This recognition in late capitalist societies does not proceed by recognition of the better argument alone. Better placed, organized, and financed groups in the public sphere with access to molding the operations of bureaucratic power have a good deal of ability to define who their opposition is. A difficulty detected in Habermas then reappears, in that claims of exclusion from unrecognized counter-publics are potentially excluded.

Oppositional groups improve the rationality of deliberative processes by improving information flows and opening arguments to dispute. Such processes may be less than
ideally rational, however, by still limiting deliberation to dominant, albeit competitive, parties. What needs to be interrogated is not only the relation of counter-publics to the state and broader regions of the public sphere but also their relation to unformalized, everyday interactions and conversations. How then do conversations become associations? This is a particularly important question because even while the public sphere as an institution carries the normative weight for deliberative theorists, it is precisely these informal everyday interactions that for deliberative democratic theorists give the public sphere its normative weight, for they best capture the open-ended, participatory dialogues among unprivileged parties envisioned by discourse ethics. The associations emanating from these conversations represent the power of solidarity as a form of social steering.

How effectively solidarity is channeled is in one respect a matter of institutional design, and Benhabib has been open to such questions in order to strengthen solidarity as a form of social steering. What Benhabib rejects, however, is the attempt to formalize, or otherwise institutionalize, those everyday conversations that are the root of democracy. On the one hand, such an attempt would be simply unworkable. On the other hand, such a formalization would begin to erode just those features of everyday conversation oriented to mutual understanding that align themselves so closely with discourse ethics. The danger though becomes a certain idealization of informal discourse on the part of deliberative democracy in failing to realize the extent to which such conversations are already structured by social steering mechanisms like power and money – for example, in the demarcation of public and private zones of social intercourse, urban infrastructures, and the organization of work. Benhabib at one point asks explicitly a question that has been implicitly guiding much of this interrogation of deliberative democracy.

Since its inception with the Greeks the question of the most adequate socioeconomic order most compatible with democratic rule has been intensely debated. Rousseau's own wisdom
on the matter was that only in a society in which no one was poor enough to have to sell himself and no one rich enough to buy another could be democratic. Since the nineteenth century, the question of the compatibility between democracy and capitalism has been on the agenda. For this reason the relationship between deliberative democracy and social complexity needs to be posed otherwise: what are the forms of association and modes of organization, at the economic, social, cultural spheres, that bear an 'elective affinity' with the principles of deliberative democracy at the political sphere?49

Benhabib's less-than-adequate answer, after articulating some general theoretical considerations, is to privilege new institutional possibilities in the design of civil, political institutions, and she singles out environmental groups, "in which the practice of discursive design enable efficiency and success through voluntary compliance, consciousness raising, and decentralized problem solving."50 Such institutional considerations begin to address Habermas' concern that civil public associations are not up to the task of social steering without state intervention. Moreover, the question of adequate economic, social, and cultural institutions must be dealt with in a democratic manner. An account of adequately democratic political institutions, then, would be conceptually prior, since such institutions would legitimate the norms by which economic, social, and cultural institutions would be judged. Along with Habermas, however, what Benhabib fails to address here, is that achieving an adequate balance of solidarity, money, and power in complex societies is not just a question of augmenting solidaristic institutions so that they can function as mechanisms of social steering and thus help regulate the influences of money and power, but also a question of the influence of money and power in the formation of common concerns and political associations in the public sphere.

Similarly, the emphasis on environmental groups highlights the internal organization of such associations and their impact on society without interrogating either the influence of

49 Ibid., p. 85
society on such organizations or how the democratic and unorganized wellspring of conversations oriented to mutual understanding work their way up into such organizations. The general social composition of environmental groups, for instance, is well known and reflects the disparities in 'associational capital' of civil society more largely. The question of adequate socioeconomic arrangements might well be a question that can only be answered democratically, but it is also one whose democratic legitimacy depends on it being an inclusive deliberation among free and equal participants. This legitimacy is at risk to the extent to which associational capital is dependent on cultural and economic capital. So then, while Habermas, in taking the existing institutionalization of money and power for granted, is unable to articulate a public sphere able to do justice to his normative commitments, it is unclear whether Benhabib in articulating a more robust civil public sphere more consonant with the principles of deliberative democracy still fails to adequately relate such a conception to the mediations of social subsystems. Benhabib's most explicit treatment to date of the question of the relation of deliberative democracy to economic considerations occurs in the context of The Claims of Culture, particularly in the context of the political and philosophical debate over cognitive and redistributive paradigms of justice. Benhabib self-consciously owes her own formulation of the problematic to Nancy Fraser. The framework that she adopts from Fraser in order to accommodate economic concerns, I will argue in the next sub-section, ultimately belies her own deliberative democratic framework.

50 Ibid., p. 87
2.3 Fraser and Benhabib on Recognition and Redistribution

Fraser sets up her interrogation in the historical context of what she terms the “postsocialist condition.”

The ‘postsocialist condition’ concerns a shift in the grammar of political claims-making. Claims for the recognition of group difference have become increasingly salient in the recent period, at times eclipsing claims for social equality. This phenomenon can be observed at two levels. Empirically, of course, we have seen the rise of ‘identity politics,’ the decentering of class, and, until very recently, the corresponding decline of social democracy. More deeply, however, we are witnessing an apparent shift in the political imaginary, especially in the way in which justice is imagined . . . The result is a decoupling of cultural politics from social politics and the relative eclipse of the latter by the former.51

Fraser’s work is by no means an apologia for the old class politics. She recognizes that there are dimensions of injustice that cannot be reduced to class or remedied simply by redistributive measures. She notes equally, however, that identity politics emerges in an historical context of economic globalization and increasing socio-economic inequality, and that the emphasis on recognition carries with it certain political dangers. To the extent to which it displaces concerns about economic redistribution, it can help to exacerbate socio-economic inequality. The politics of cultural identity as well can easily slip into a reification of group identities, undermining individual autonomy and sanctioning intra-group domination in the form of gender inequalities or the silencing of minority dissent. Thus, Fraser argues, it is crucial to conceive of injustice as having both redistributive and cognitive dimensions that are intertwined and interdependent.

Redistribution is a familiar concept from liberal political philosophy. “The term ‘recognition,’ by contrast, comes from Hegelian philosophy, specifically the phenomenology of consciousness. In this tradition, recognition designates an ideal reciprocal relation between subjects in which each sees the other as its equal and also as separate from it. This
relation is deemed constitutive for subjectivity; one becomes an individual only in virtue of recognizing, and being recognized by, another subject.”52 The interdependency of the redistributive and recognitive paradigms of justice leads to a particular dilemma for Fraser. Injustices in each paradigm reinforce one another and become a vicious circle.

Discriminatory cultural norms become socio-economic institutions, apartheid perhaps being the most egregious example. Socio-economic inequalities impede participation in social institutions that generate cultural codes, leading to inadequate recognition of minority identities. For Fraser, however, the crux of the dilemma is that while injustices in the redistributive and recognitive paradigms reinforce each other, the remedies for such injustices seem to be at odds. Redistribution seems to undermine group differentiations; to accede to working-class demands is in essence to put them out of business as a group. Demands for remedies to a lack of recognition, however, generally seek the valorization of formerly despised identities, such as homosexuals; such remedies thus support or reinforce group differentiation.

The redistributive-recognitive dilemma may seem, however, only to be a conceptual one in so far as that, for practical purposes, remedies in each paradigm can be separated in targeting specific groups. For instance, the answer to the problem of the working class is primarily redistributive. The group needs to be de-differentiated, not recognized. Similarly, the answer to injustices perpetrated against gays is primarily recognitive. Homosexuals do not need redistribution primarily; they need increased valorization of their sexual orientation. This conceptual dilemma becomes politically relevant, however, when we start talking about ‘bivalent collectivities.’ For bivalent collectivities, of which gender and race are Fraser’s

52 Ibid., p. 10
prime examples, injustice has roots both in the division of labor and hierarchal cultural codings. "Two-dimensionally subordinated groups suffer both maldistribution and misrecognition in forms where neither of these injustices is an indirect effect of the other, but where both are primary and co-original."\(^5\) Rather than decoupling cultural from social justice and classifying groups accordingly, Fraser proposes locating groups on a continuum between the varying poles of redistribution and recognition. Groups like the working class and homosexuals lean towards the redistributive and recognitive poles respectively, while bivalent collectivities are placed more towards the middle.

It is in terms of bivalent collectivities that the redistributive-recognitive dilemma is most apparent. While recognitive and redistributive injustices tend to reinforce one another, attempts at remedying these injustices can have ambivalent consequences. Recognitive remedies can lead to exacerbating distributive inequalities. "Proposals to redress androcentric evaluative patterns, for example, have economic implications, which can work to the detriment of the intended beneficiaries. For example, campaigns to suppress prostitution and pornography for the sake of enhancing women's status may have negative effects on the economic position of sex workers."\(^5\)\(^4\) Redistributive remedies can likewise exacerbate misrecognition. "Means-tested benefits aimed specifically at the poor are the most directly redistributive form of social welfare. Yet such benefits tend to stigmatize recipients, casting them as deviants and scroungers and invidiously distinguishing them from 'wage-earners' and 'taxpayers' who 'pay their own way.'"\(^5\)\(^5\) Crucial to Fraser's conception of the dilemma of redistribution and recognition is the key role that increasing group differentiation plays. It is not surprising then the extent to which Fraser emphasizes group de-differentiation as a

\(^5\) Ibid., p. 19  
\(^4\) Ibid., p. 65  
\(^5\) Ibid., pp. 64-5
solution to this apparent dilemma. Fraser’s conception of de-differentiation, however, is not one of the assimilation of minorities or liberal neutrality, but of active political intervention in overcoming hierarchies and undermining cultural binaries. In addition to overcoming the potential pitfalls of cultural stigmatization and economic ghettoization, group de-differentiation holds open the possibility of building larger collective solidarities across groups, which resonates with Benhabib’s overall project. After discussing Benhabib’s relation to Fraser’s contemporary work, I will return to the question as to what Fraser’s conception of active political intervention ultimately entails.

Benhabib’s most recent work centers on the attempt to accommodate the concerns of multiculturalism within a deliberative democratic framework. She contrasts this approach with the politics of identity.

The emphasis as well as the ordering of our principles are different. Most democratic theorists welcome and support struggles for recognition and identity/difference movements to the degree to which they are movements for democratic inclusion, greater social and political justice, and cultural fluidity. But movements for maintaining the purity or distinctiveness of cultures seem to me irreconcilable with both democratic and more basic epistemological considerations. Philosophically, I do not believe in the purity of cultures, or even in the possibility of identifying them as meaningful discrete wholes. I think of cultures as complex human practices of signification and representation, of organization and attribution, which are internally riven by conflicting narratives.56

In the Claims of Culture Benhabib cites Fraser’s work for three particularly notable reasons. First, Fraser has added to the debate over recognition empirical content and sociological dynamics, “which had been missing in rather vague references to acknowledgement of the other, self-realization, self-affirmation, and the like.”57 Second, Fraser has emphasized the particular interdependence of redistribution and recognition. Third, and most importantly for Benhabib, Fraser is suspicious of identity politics and she supports a politics of cultural

56 Benhabib. The Claims of Culture, p. ix
57 Ibid., p. 69
dialogue over that of preservation. In fact, part of what Benhabib aims to do in *The Claims of Culture* is to “expand Fraser’s framework in a more historical and institutional direction.”

Benhabib’s “expansion of Fraser’s framework” becomes clearer when viewed through the lens of her example concerning the allocation of distributive benefits in the United States. Benefit programs in the United States are divided between those that are universalistic in scope, such as social security, and those that are often more particularistic in scope, such as housing and educational subsidies. Given Benhabib’s endorsement of Fraser, it is not surprising that she is suspicious of these more particularistic benefits. Instead, she endorses a more universalistic perspective in the distribution of benefits, in particular raising the minimum wage.

> It would undoubtedly affect workers who are members of minority cultural groups — like blacks, Hispanics, and Asian immigrants — perhaps more disproportionately than it would white workers; but since everyone who looks for a job or who becomes unemployed can potentially face a minimum-wage job one day, there would be greater societal solidarity for such a measure than for job programs targeted at specific minority groups only.”

In Benhabib’s emphasis on group de-differentiation and cultural dialogues, her extension of Fraser is at first seemingly apt. In her own empirical policy proposals, Fraser has emphasized a more universalistic scheme in redistribution and a more “deconstructive” approach in cultural politics. Benhabib’s expansion of Fraser, however, misses a conceptual distinction that is crucial to Fraser’s own analysis, one that actually makes Benhabib’s position closer to that of Habermas’ more democratically porous welfare state than Fraser’s own position.

This distinction is between that of affirmative and transformative solutions.

Affirmative solutions for Fraser aim at altering outcomes. Transformative solutions aim at altering the underlying structures that produce such outcomes. The distinction is crucial to Fraser’s analysis because of the role it plays in the cognitive-redistributive

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58 Ibid., p. 71
59 Ibid., p. 76
dilemma. The ambivalences in remedies to injustice result from affirmative solutions. This is because they solidify group differentiation. “When applied to misrecognition, affirmative remedies tend to reify group identities. Valorizing group identity along a single axis, they drastically simplify people’s self-understandings . . . such approaches tend to pressure individuals to conform to the group type . . . applied to maldistribution, they often provoke a backlash of misrecognition.”\textsuperscript{60} Transformative solutions, by contrast, tend to undermine group differentiation and hold up the potential for intergroup solidarity.

In the recognitive paradigm, affirmative solutions valorize the subordinated term in a binary such as masculine/feminine while transformative solutions attempt to undermine the hierarchy and dichotomy. “This second approach would redress status subordination by deconstructing the symbolic oppositions that underlie currently institutionalized patterns of cultural value. Far from simply raising the self-esteem of the misrecognized, it would destabilize existing status differentiation and change everyone’s self-identity”\textsuperscript{61} Fraser gives queer theory as an example of a transformative solution that, rather than seeking to codify and valorize a gay identity, questions the stability of sexual orientation in general and seeks a continuum of fluid, shifting difference in self (ascribed)-identities. Such continuums undermine monolithic conceptions of groups altogether, thus alleviating the stigmatizations of groups that result in misrecognition. To this extent, Benhabib implicitly endorses a transformative model of recognition.

In the redistributive paradigm, however, Fraser identifies the welfare state as the affirmative solution and socialism as the transformative solution, while Benhabib herself continues to operate within the contours of the welfare state. Contemporary politics aiming at social justice is defined for Fraser by affirmative solutions in both paradigms, leading to

\textsuperscript{60} Nancy Fraser. \textit{Redistribution or Recognition?}, p. 76
what Fraser calls “identity politics liberalism.” A transformative account in both paradigms, and one Fraser thinks is necessary to overcome the redistributive/recognitive dilemma, would be a “deconstructive socialism.” Benhabib, according to this schema, occupies the unusual position of “deconstructive liberalism.” If Fraser is right about how deeply intertwined recognition and redistribution are, however, then there is reason to question the potential coherence of Benhabib’s account, and whether it can ultimately deliver the sort of increased democratic inclusion she wants from the account.

Would an increase in the minimum wage, then, really make a significant difference in recognitive and redistributive justice? Would it lead to more general social solidarity?

Certainly it would alleviate some economic injustice and relieve some kinds of specific social stigmatization that are associated with benefit programs targeted at specific groups. Most prominently perhaps, it would alleviate the politics between minority groups over scarce benefits that can tend to produce reified political blocs. That is to say, it holds real potential to increase the social solidarity between rival minority groups and among the economically disadvantaged more generally. But while it is ultimately an empirical question, the assumption Benhabib makes that grounds her societal solidarity thesis, namely that everyone who works is confronted with the possibility of minimum wage work, I find somewhat dubious. Sociologically, I suspect that the upper strata of American society do not actually confront minimum wage work; the percentage that do not psychologically confront the possibility — in a largely optimistic population that emphasizes upward social mobility — I would hypothesize is probably even larger. So the raise in the minimum wage, while raising the bar, and potentially increasing the solidarity of those beneath it, is unlikely to make that bar much more fluid. In terms of associational capital — money, time, and social connections

61 Ibid., p. 75
the bottom strata remain relatively disadvantaged, and so it hard to see how large inroads in democratic inclusion are being made here. At best, large gains would be more likely to result intergenerationally than intragenerationally, and these perhaps made more in terms of individual social mobility than general social equality and participation. It also unclear what effect such a redistributive schema would have on cognitive injustices. While compensations are more equalized, "demeaning" kinds of work and those populations generally subject to it are left in place. Such populations are likely to remain stigmatized. More generally, while Benhabib's scheme aims to de-differentiate and transform minorities, it still tends to affirm the majority, questioning neither the relative economic hierarchy nor privileged identities. The burden of democratic inclusion, then, in terms of political participation and cultural fluidity, is ironically placed largely on the excluded. Deconstructive liberalism, then, turns out to be far more liberal than deconstructive, and thus much more affirmative than transformative.

Deconstructive socialism, however, is no less problematic. Fraser is unable to give an institutional account of socialism. In the wake of "really existing socialism" grave worries abound as to whether such an account can be given. Moreover, a political constituency for socialism seems to be lacking. But is there really any more of a political constituency for deconstruction? Both, as Fraser recognizes, are experientially remote from the concerns of victims of both misrecognition and maldistribution. "More generally, transformative strategies are highly vulnerable to collective action problems. In their pure form, at least, they become feasible only under unusual circumstances, when events conspire to wean many people simultaneously from current constructions of their interests and identities."

While lacking the more substantial gains in democratic participation that *in principle* socialism would
foster, Benhabib’s *politically practicable* deconstructive liberalism would at least alleviate some injustices, while avoiding the particularly pernicious ambivalences of remedial accounts emphasizing group differentiation. In the “postsocialist” condition, is not this a better strategy than a conceptually unproblematic political impotence?

The dilemma of affirmative and transformative strategies for Fraser though is no more intractable than that between the recognitive and redistributive paradigms. What is needed are affirmative and transformative strategies that reinforce one another. “Reforms that appear affirmative in the abstract can have transformative effects in some contexts, provided they are radically and consistently pursued.” Fraser terms such strategies “non-reformist reform.” Strategically, this means that outcome-oriented shifts alleviating injustice are pursued in the short run that at the same time alter the balance of power in such a fashion that over the long term the prognosis of transformative solutions improves. The primary example that Fraser gives of non-reformist reform is that of the Unconditional Basic Income.

At first glance, such a proposal might seem substantially similar to Benhabib’s proposal for an increase in the minimum wage. In the short term, both are affirmative solutions that raise the bar on the most unfortunate. The potential long-term consequences are, however, miles apart; an Unconditional Basic Income can alter the underlying social structures in a way that the minimum wage does not, in that it redistributes not only income but bargaining power in the general conflict between capital and labor, removing the traditional advantage of surplus labor that the capitalist has in wage negotiations. Under the Unconditional Basic Income, there would no longer be an imperative to enter the labor

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63 Ibid.
market. This would not only be an incentive to raise wages, since basic needs could be met alternatively, but an incentive to change the nature of labor in order attract workers.

Recognitively, an Unconditional Basic Income blurs the status bar in two directions. By not only pressuring changes in remuneration but in the structure of work — for instance by increasing self-determination and flexibility — the Unconditional Basic Income could blur the boundaries between previously high status and low status work for a previously lower strata of workers. Similarly, such a policy would not only encourage a previously lower strata of workers to “tune in,” it would encourage a previously higher strata of workers to “drop out” and pursue alternative forms of self-identity. The boundaries of social and economic status, which a minimum wage proposal would leave largely intact, could become blurred under a radically and consistently pursued policy of Unconditional Basic Income. The consequences of this are not only redistributive and recognitive, but participatory as well. The private-public distinction in Habermas and Benhabib, while formally a continuing topic of debate in the civil public sphere, endorses existing liberal capitalism and the welfare state, thus largely allowing capital to define the boundary by allowing it to structure both the nature of work and leisure. Proposals such as the Unconditional Basic Income, by contrast, provide the material conditions under which such democratic deliberations about the boundaries of public and private, as well as about cultural codings and schemes of distribution, could become efficacious.

2.4 Concluding Reflections

While giving solidarity and practical reason an eminent position in discourse, Habermas hedges on its role in the social regulation of action. “The public opinion which is
worked up via democratic procedures cannot itself 'rule' but can only channel the use of administrative power in specific directions.\textsuperscript{64} With Benhabib we may counter that this should not be for the theoretician but the participants themselves to decide. But Benhabib perhaps overestimates the current institutionalization of rational dialogue and the commitments of social actors to it to a degree that may not justify her emphasis on cultural dialogues over judicial actions, even given Benhabib's relative consideration of alternative institutional designs. But this is a social fact, not a natural property of practical reason. If Benhabib perhaps overestimates the current historically transformative power of moral dialogue, Habermas in his crisis theory of deliberative democracy normalizes and normativizes its increasingly anemic character. Both thinkers in their more mature work surrender to the 'facts' prematurely in foreclosing the 'anticipatory-utopian critique of the present.'

The full force of Habermas' own normative theory ultimately can only be adequately expressed in institutions very different from the liberal status quo. Habermas has attempted to blunt these concerns by denying the thesis of the culture industry, upon which so much of the focus of the first-generation critical theorists centered. Habermas has stated in \textit{Between Facts and Norms} that the thesis of a totally administered society simply lacks empirical confirmation. Habermas seems oddly insensitive, however, to the concern that much of what would stop short of the \textit{total} administration of culture would constitute \textit{democratic deficits}. Public and private autonomy are by no means guaranteed simply because we have not (yet) reached the point of the direct administration of consciousness. What the thesis of the culture industry suggests at the very least is that the integrity of everyday communication should not be taken for granted, and that the discursive public sphere itself, as well as the

\textsuperscript{64} Habermas. "Three Normative Models of Democracy," p. 250
arena of social action, should be a topic of critical discourse. What is needed then is an 'anticipatory-utopian critique' of the present public sphere.

The risk in proposing such an anticipatory-utopian critique is that it may well fall into a utopianism in the pejorative sense. It is against such charges that Benhabib defended deliberative democracy against institutional realists. More specifically, any conception oriented by Benhabib's earlier work runs the utopian risk of calling for an ultra-individualistic public sphere that, while calling for the accommodation of individual life-histories and the norms of friendship and solidarity, simply cannot be accommodated in complex, modern societies. Indeed, this was precisely the charge that Nancy Fraser made against *Critique, Norm, and Utopia* at the time of its publication. While concurring with Benhabib's critique of Habermas' "generalized other," Fraser at that time also took issue with Benhabib's notion of "concrete others," arguing that as a concept it lacked any political import. Rather, Fraser replaced Benhabib's individualistic "concrete others" with an associational "collective concrete others." Norms such as solidarity and relevant considerations, such as life histories, are to be accommodated in discourse then through politically constituted, concrete collectivities.

It may then seem a little ironic to propose Nancy Fraser's current theoretical work as a model of anticipatory-utopian critique in and of the public sphere. If, according to Fraser, Benhabib's early work was too utopian, the implicit claim in Fraser's more recent work is that Benhabib is not being utopian enough. The apparent irony, however, is dispelled when we remember that in moving to questions of politics and institutionalization in her deliberative democratic account, questions that *Critique, Norm, and Utopia* failed to answer, Benhabib adopted significantly more of the Habermasian framework than she had in her earlier work. The inclusion of "concrete others" in the deliberative democratic account then
proceeded largely through existing democratic institutions in the state and civil society. The over-normativization of the civil public sphere I argued was accompanied by a reification of existing monetary and bureaucratic institutions as the “natural” complements of the public sphere in modern societies. Fraser’s work, by contrast, has not exhibited such a large theoretical shift of emphasis. Rather Fraser’s work can be seen as a continued working-out of the basic structure of Benhabib’s early work, mediating such concepts like the politics of transfiguration and fulfillment, in both their harmonies and tensions. The real irony then might be that Fraser has stayed the course and developed the program outlined in *Critique, Norm, and Utopia* in a more consistent manner than Benhabib herself, who in the end adopts much of the conservative and juridical Habermasian program that *Critique, Norm, and Utopia* had originally set out to criticize.

Much of the criticism contained herein is itself consonant with Habermas’ own positions at the level of normative theory. Habermas himself seems to retreat suddenly from such an application in the face of the fact of pluralism, with which he concludes only liberal institutions can contend. Habermas’ bracketing though of socio-economic considerations prevents him from a full consideration of the issues, in particular the degree to which the very institutions Habermas endorses to contend with pluralism mediate and help to engender the particular, seemingly intractable form of that cultural pluralism. Habermas does not consider the extent to which strategic and antagonistic political and economic spheres might exacerbate a seemingly ‘intractable’ pluralism. An antagonistic cultural pluralism cannot simply be used then to justify the very arrangements that help constitute that very antagonism and might take on very different, perhaps non-antagonistic, forms under different social arrangements. The ‘radical democratic meaning of society’ of which
Habermas approves may itself only be able to take root in a more radical institutional arrangement. The public sphere of deliberation is not a natural process; it is made by us. The question then becomes whether or not it gets made deliberately. Under (radically?) different but practicable historical conditions with social actors thinking through different social categories, the 'force of the better argument' may be more binding than simple legal conformity or fear of prosecution is today.

While calling for an expanded autonomous sphere of solidarity, Habermas' insistence that the sluices of legitimate influence run only from the public sphere to the political system makes the call unfortunately timid; its historical end point is a reflective welfare state. Habermas then remains caught in what Benhabib previously called the "politics of fulfillment."65

The politics of fulfillment envisages that the society of the future attains more adequately what present society has left unaccomplished. It is the culmination of the implicit logic of the present. The politics of transfiguration emphasizes the emergence of qualitatively new needs, and modes of association, which burst open the utopian potential of the old. Within a critical social theory the articulation of norms continues the universalist promise of bourgeois revolutions – justice, equality, civil rights, democracy, and publicity – while the articulation of utopia continues the tradition of early socialist, communitarian, and anarchist movements – the formation of a community of needs and solidarity, and qualitatively transformed relations to inner and outer nature. In short, while norms have the task of articulating the demands of justice and human worthiness, utopias portray modes of friendship, solidarity, and human happiness. Despite their essential tension, a critical social theory is only rich enough to address us in the present, insofar as it can do justice to both moments. 66

Is deliberative democracy then a critical theory of society? In Habermas' continuing Kantian trajectory, the answer decidedly seems to be no. In the case of Benhabib, the answer is more complex. In her own early formulations of discourse ethics, she certainly tried to do justice to both the politics of fulfillment and the politics of transformation. Since deliberative

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66 Benhabib. *Critique, Norm and Utopia*, p. 13
democracy is grounded in discourse ethics, this suggests a possible account of deliberative
democracy that would also try to do justice to both moments. In fact, as I suggested in my
discussion of Habermas' account of the democratic tradition, deliberative democracy's
abandonment of liberalism's private and fixed conception of individual needs and rights, as
well as republicanism's conservative and substantive ethical totalities, in favor of free-
wheeling deliberation between equal participants, suggests even a particular 'elective affinity'
of deliberative democracy with a politics of transformation. Such potentials are obscured by
Habermas' hitching of such a conception to the issue of the legitimation of law in a
democratic and capitalist sociopolitical order. Benhabib herself did not follow up Critique,
Norm, and Utopia with a critical theory of deliberative democracy. While remnants remain in
the concepts of a more self-regulating social order and flexibility in the institutional
arrangement of associations, these liberalizations of Habermas' ultimately 'liberal' theory of
deliberative democracy are still aimed at norms rather than utopia. Deliberative democracy
self-consciously is conceived as an account of existing democratic institutions and remains
therefore caught in the conceptions of bourgeois revolutions and the 'politics of fulfillment.'

The reason may be in part that while, more abstractly, democracy offers tremendous
transformative possibilities — as for Marx when true democracy started history really began —
the critical theoretic tradition, running from Hegel to Marx to the Frankfurt School, offered
few resources for a concrete democratic theory. This would make the liberal, Anglo-
American tradition inviting. By making liberalism its primary interlocutor and opponent,
however, deliberative democracy perhaps let it set too many of the terms of the debate and
wound up absorbing much of its framework, in particular its institutional account. In
addition, there has been the transformation of an analytic distinction between
communicative and instrumental action, which opened up the possibility of providing both

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stronger and more coherent normative foundations for critical theory, as well as tools for more cogent social analysis, into institutional distinctions like that between the public sphere and bureaucratic mechanisms or market society. This institutional identification has blunted a potentially critical theory of deliberative democracy by giving spheres a certain normative inviolability from interference, even while in reality they are heavily mediated. A critical theory of deliberative democracy would start then not with a normative idealization of the public sphere, but with a combination of practical philosophy and social science in order to show how the promise of a vigorous public sphere is continually broken by cultural, political, and economic hierarchies. This would be an ‘anticipatory-utopian critique of the present public sphere.’


