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Habermas and Public Reason in the Digital Age: Technology and Deliberative Democracy

Asaf Bar-Tura
Loyola University Chicago

LOYOLA UNIVERSITY CHICAGO

HABERMAS AND PUBLIC REASON IN THE DIGITAL AGE:

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ASAF BAR-TURA

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In his essay titled “What Does It Mean to Orient Oneself in Thinking?” Immanuel Kant famously wrote:

> Of course it is said that the freedom to speak or to write could be taken from us by a superior power, but the freedom to think cannot be. Yet how much and how correctly would we think if we did not think as it were in community with others, to whom we communicate our thoughts, and who communicate theirs with us!

Indeed, this dissertation has evolved over a number of years, and thus has benefited from the input and critique of many audiences, readers, and conversational partners. I am indebted to those who have generously given their time and energy to think with me in community.

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INTRODUCTION

Critical theorists of recent decades have presented important contributions to our understanding of technology, challenging philosophical views of technology that have dominated most of the twentieth century. These scholars have not only delineated the political nature of technology, but also its malleability, and the possibility for a more democratic technological society. Indeed, some critical theorists of technology argue that resistance to technical domination is not only possible, but inherent to technology itself. For example, Andrew Feenberg has argued that users of technology ultimately appropriate and redefine technology according to their needs and desires. Thus, he announces the project of critical theory in a technological society as theorizing the democratization of technology. In this dissertation I examine some implications of the endeavor to think technology and its possibilities within a political philosophy of democracy.

With the overwhelming development of digital technology and its consequences, we live in an age in which technology permeates not only scientific investigation, economic apparatuses, and bureaucratic administration, but also the lifeworld and communications in it. Between email, cell phones, instant messaging, online social networks, and so on, these technologies not only shape how we communicate, but also how we think, what we expect, and how we relate to others. Therefore, it is not enough to

examine the possibilities for society to shape technology. We must do so while dialectically addressing the ways in which technology is shaping society.

My main thesis can be construed as advancing three main arguments that build one upon the other:

(T1) Current discussions in critical theory of technology lack a comprehensive political-theoretical framework through which to critique technology and its role in a democratic society.

(T2) Habermas's procedural paradigm of law and democracy, grounded in a discourse-theoretic framework, offers the necessary framework through which to ground a critical theory of technology.

(T3) The Habermasian framework must be reconsidered to account for developments in digital technology and for an expanded understanding of argumentation. Furthermore, relying on a Habermasian public use of reason in democratic deliberation to examine the designs of technologies insofar as they embody values and have political consequences requires examining the role digital technologies and their designs play in facilitating or hindering an open and inclusive democratic public sphere in which these questions can be discussed.

I now turn to lay out the way in which this dissertation demonstrates (T1), (T2) and (T3) in seven chapters.

The Lacuna in Current Discussions in the Field of Critical Theory of Technology

(T1) argues that current discussions in critical theory of technology lack a comprehensive political-theoretical framework through which to critique technology and its role in a democratic society. I begin this discussion by surveying prominent theories of technology

in the last century (Chapter One). This chapter shows that philosophers of technology have suggested varying taxonomies of theories regarding technology. Roughly speaking, these taxonomies aim to identify theories according to answers they provide to certain questions about technology and human praxis.

For our purposes here it is most helpful to identify a theoretical spectrum, with *essentialist* approaches to technology on one end and *constructivist* approaches on the other. While more "essentialist" approaches to technology attribute to technology an essence which cannot be altered (for better or worse), more "constructivist" theories emphasize the social aspects of technology and the ways in which it can be reformed toward socially determined ends.

When discussing the more essentialist theories, Chapter One will focus on the writings of Martin Heidegger, Theodor Adorno, Max Horkheimer, Walter Benjamin, Herbert Marcuse, and Jürgen Habermas. The discussion of more constructivist approaches – in Chapter Two – will begin with Albert Borgmann and Don Ihde (who are largely influenced by Heidegger), and then mostly focus on Andrew Feenberg's approach, which is framed as siding more with Marcuse's thinking in the latter's disagreement with Habermas, while also going beyond Marcuse to develop his own critical theory of technology. Feenberg calls for the democratization of technology, and emphasizes that the issue of how particular design choices are made over other choices is an inherently political question. He argues that technology is "underdetermined" by the criterion of efficiency, and highlights ways in which social choices intervene in the selection of the problem definition and not only its solution.

The latter part of Chapter Two raises concerns regarding Feenberg's critical theory of technology, questioning the validity of Feenberg's confidence in the inherent possibility for citizens' meaningful agency and participation in the democratization of technology. Furthermore, I argue in Chapter Two that not all user-driven transformation of technology has an emancipatory effect or promotes more participatory democratic politics. Therefore, Feenberg's critical theory of technology must be based on a theory of democracy, which would provide normative guidance in analyzing technical systems and transformations.

Habermas's Discourse-Theoretic Paradigm as a Framework for a Critical Theory of Technology

Chapter Two concludes with the argument (T2) that Habermas's discourse theory of democracy, which emerges from his theory of communicative action, could provide a needed foundation for a critical theory of technology. Feenberg, then, is correct in his criticism of Habermas's analysis of technology, but can nevertheless benefit from Habermas's later contributions to political theory (a potential contribution of which Habermas himself may be unaware).

Chapter Three provides an overview of Habermas's discourse-ethical framework, and shows how this framework can provide normative guidance to Feenberg's theory of the democratization of technology. The chapter begins with an outline of the theoretical underpinnings of Habermas discourse-ethical framework (namely, his theory of modernity, his roots in Kantian moral theory, and his theory of moral development). Next, it provides an overview of the basic tenets of Habermas's discourse ethics, first by explaining Habermas's position on the metaethical status of normative claims, and then

explaining how Habermas derives his normative principles of discourse. Then, after raising three common objections to discourse ethics and Habermas's response to them, I explicate how Habermas's discourse-ethics can provide a normative ground to Feenberg's account. This is carried out first by showing how Habermas's principles of discourse lay the groundwork for normatively guiding deliberative social practices, and then showing how a normative framework for guiding these deliberative practices is significant for the concerns laid out in Chapter Two regarding the democratization of technology. The chapter concludes by showing that normatively grounding Feenberg's account of the democratization of technology in discourse ethics results in a tension in which technology is the object of social deliberation while at the same time shaping these deliberations.

While the explication of Habermas's discourse ethics in Chapter Three lays a significant foundation, there are two important ways in which it is not enough to show how it could serve as a framework for a critical theory of technology in a democratic society. First, it does not yet demonstrate how discourse ethics can inform a social political theory of democracy. Second, when we attempt to examine technology and its design processes as the *object* of discourse, we cannot ignore the ways in which technology *mediates* this very discourse. These two lacunas are interconnected, for in order to get at the latter, we must address the former. That is, in order to clearly see the ways in which technology mediates social discourses in the public sphere, we must first lay out Habermas's account of the flow of communication and the circulation of power in the democratic public sphere. Therefore, Chapter Four explains how Habermas derives a discourse-based theory of democracy from his theory of communicative action and his

formal pragmatics. The chapter begins by showing how Habermas moves from a discourse-ethical theory to a discourse theory of law and democracy. In particular, it explains how Habermas conceives of the legal form as central to modern democratic societies, and how he derives his Democracy Principle from his Discourse Principle and the legal form. This is followed by an analysis of Habermas's procedural approach to law and politics, and concludes with an illustration of how Habermas reconstructs the democratic public sphere in light of the normative principles of the procedural paradigm.

Habermas and Public Reason in the Digital Age: Technology and Deliberative Democracy

Chapters Five, Six and Seven are devoted to the third thesis of this dissertation (T3), namely, to reconsidering some aspects of Habermas's framework, and to examining the ways in which particular technology design choices (for products as well as policies) facilitate or hinder an open and inclusive democratic public sphere in which the very questions of the role of technology in society can be discussed. All three chapters demonstrate in different ways the tension between on the one hand offering a framework through which technology design ought to be deliberated democratically, and on the other hand showing how existing designs shape participation in the democratic process.

Chapter Five focuses on a rethinking of Habermas's conception of media power in light of the changes to the public sphere brought about by digital technology since Habermas laid out the tenets of his theory of law and democracy in his work, *Between Facts and Norms*. It asks whether the way in which media power functions has changed – and if so, how – and examines the impact that digital technologies may have on the flow of communication and the circulation of power in the democratic public sphere, including

the implications of these changes for inclusivity in deliberative processes. Hence, this chapter argues that the distribution of access to online participation in processes of democratic opinion and will formation is a result of technological design, and emphasizes that the design of the Internet itself begs a public discussion based on democratic values offered by Habermasian discourse theory. The discussion begins by reviewing claims that digital technologies provide heretofore-marginalized individuals and groups with access to democratic participation that they previously lacked, thereby further democratizing the public sphere. I then show that though the ways in which mass communication is filtered have changed, we can nevertheless identify gatekeepers of information flows in the digital public sphere. Moreover, I show that digital media do not in themselves alleviate socio-economic dynamics, which marginalize the voices of socially disadvantaged individuals and groups in the democratic process of opinion and will formation.

While Chapter Five focuses on access to meaningful public deliberation, Chapter Six shifts the focus to the public deliberation itself and reconsiders some aspects of the Habermasian understanding of argumentation and public reason. In particular, the point of departure for the discussion is a moral concept that is at the center of Habermas's discourse theory, namely, that in ideal speech situations it is the force of the better argument that ought to prevail. On the one hand, the discussion here delineates the concept of rational argumentation, while on the other hand broadening our understanding of argumentation, to include components that are not rational per se. The chapter begins by outlining basic concepts and distinctions related to argumentation, rational persuasion, and reason giving. Then, after discussing forms of discourse that take us beyond rational communication but nonetheless seem important for the flow of communication in a

democratic society, I highlight the social dimensions of arguments by discussing the epistemic and semantic ways in which arguments depend on a social context.

The last section of Chapter Six examines the ways in which arguments draw on social resources and highlights that what is considered the "better" argument often entails components that are not rational per se, including rhetorical devices, social and political power, and the recruitment of other resources that persuade others. The chapter concludes with a discussion of the role of social and political action in public reason, which is brought to some extreme in the case of civil disobedience. Here I suggest that civil disobedience can be understood not as the shutting down of discussion, but rather as the rekindling of a discussion that has been silenced, or that has not yet been had.

Chapter Six then sets the stage for Chapter Seven, which examines the role of digital technologies in the multi-layered process of public reason described above. In particular, Chapter Seven examines whether and how the designs of digital technologies can expand or contract the political imagination, and whether they provide avenues for challenging the status quo, that enrich the ongoing constitutional project that Habermas envisions. Hence, this final chapter begins by discussing existing challenges to the expansion of the public Sphere in the digital age and considers various ways in which digital technology may close our political minds. I focus in particular on the example of algorithmic regulation and its functions in various spheres of political and social life. Next, I examine various topics that should be the subject of public deliberation, when considering ways in which digital technologies and systems could be designed toward deliberative-democratic ends. This includes topics such as product design, (focusing on "adversarial design" as an example of a design approach that can advance democratic

thinking), the design of the Internet's political economy (questions of ownership), and policy design (the dynamics of transparency, privacy and publicity). The chapter concludes with a note on the function of digital civil disobedience and its role in the contemporary public sphere.

CHAPTER ONE

ESSENTIALIST THEORIES OF TECHNOLOGY

Introduction

In order to ground our discussion and locate its arguments within the appropriate philosophical landscape, I will begin with a brief taxonomy of philosophical approaches to technology as they have developed in the twentieth century. These taxonomies aim to identify theories according to answers they provide to certain questions about technology. Such questions include: Is the development of technology and the trajectory of this development under human control? Is this trajectory predetermined by the very nature of technology? Does technology have a nature (or essence)? If so, what is it? Do technologies inherently dictate values, or are they valueless means to value-laden ends? As mentioned above, it is most helpful to distinguish broadly between *essentialist* and *constructivist* approaches to technology. The former attribute to technology an essence that cannot be altered (for better or worse), while the latter emphasize the social aspects of technology and the ways in which it can be reformed toward socially determined ends.[1]

[1] See for example: David Kaplan, *Readings in the Philosophy of Technology* (especially the "Introduction"); also Andrew Feenberg, *Questioning Technology*. As will be shown in Chapter Two, constructivist theories cannot avoid attributing some essence to technology (otherwise it seems unclear what it would mean to talk about technologies at all). However, constructivists emphasize the social processes that operate beyond this (relatively thinly conceived) essence.

One essentialist approach to technology is the *neutrality* approach, in which a tool is taken to be neutral and can be used for good or bad purposes. Technology is considered to embody a universal rationality that is independent of social forces. In other words, there is no such thing as morally good or bad technology, only good or bad users. The neutrality approach is sometimes referred to as *instrumentalism* since it views technologies as mere instruments for human activities; as value-neutral means to value-laden human ends.[2] As will be discussed below, Habermas's early work can be construed as endorsing this approach to technology.

Another essentialist approach is technological *determinism*. There are a number of variations to this view, but two are most prominent: the first views technology as the driving force of social change. It is technologies, devices and machines rather than human beings who primarily drive and explain changes in society. The second, sometimes referred to as the *autonomy* view of technology, asserts that there is a sense in which technology has gained autonomy vis-à-vis its human makers and users, to the extent that humans no longer control technology. Rather, technology controls human activity, imposing a "technological" or "technicized" way of life on a society. The works of Max Horkheimer, Theodor Adorno and Martin Heidegger will be discussed in this context. I will also examine the work of Herbert Marcuse, and will argue that though it is unclear to what extent both Marcuse and Heidegger deny the possibility of influencing the nature and direction of technology, they see it as highly unlikely, and in any case do not provide any guidelines for a move in that direction.

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[2] David M. Kaplan, "Introduction" in *Readings in the Philosophy of Technology*, ed. David M. Kaplan (Lanham, MD: Rowman and Littlefield, 2009), xvi.

In contrast to essentialist approaches, *constructivist* philosophers of technology advance empirical and historical views of technology, and examine it in its actual uses in social contexts. They argue that society simultaneously shapes technology as technology shapes society. Technology is not neutral, but neither is its nature predetermined. Technology is always underdetermined and always embodies specific values. From this vantage point, human activity, technology, and the natural and human environment are bound up together in a relationship of mutual constitution.[3] Indeed, one of the main efforts of the constructivist approach as a critical theory of technology is to restore the possibility of agency within the technological realm, a possibility that has been placed in serious doubt by many twentieth century thinkers. A number of American philosophers have forcefully advanced the constructivist view in recent decades, including Langdon Winner, Albert Borgmann, Don Ihde and Andrew Feenberg, among others. Feenberg in particular has called for a "democratization of technology." His approach and its problems will be the focus of Chapter Two.

Heidegger on Technology

The three approaches to technology – neutrality, determinism, and autonomy – can all be characterized as "essentialist" positions insofar as they all ascribe a certain essence to technology, one that is inherent to it, part of its very nature. Perhaps the most influential philosopher to have taken such a position is Martin Heidegger.[4] Heidegger argued that the view of technology as a merely neutral instrument does not fully grasp the essence of technology, and misconceives technology as if it were a tool subject to human control. In

[3] Kaplan, "Introduction," xvii–xviii.

[4] The nuanced sense in which Heidegger's position is essentialist will be discussed below.

contrast, he understood technology as a comprehensive framework of our human being in the world. In particular, this technological framework is at the foundation of *modern* society. As Borgmann points out, Heidegger came to distinguish between *technology*, which referred to the technology in the instrumental and anthropological senses, and the *essence of technology*, which referred to technology as a fundamental mode of being.[5] Heidegger's view is "essentialist" in the sense that it denies the idea that the nature of technology is under direct human control. It rejects social constructivist views that understand *technologies* to be a result of social construction as well as views which assign responsibility for technological domination to particular individuals and groups. However, it should be noted that Heidegger's essentialism does not conceive of the essence of technology in ahistorical terms. As noted above, Heidegger conceives of the essence of technology as a modern phenomenon.[6]

Emphasizing the way in which technology is *not* neutral, Heidegger writes: "Everywhere we remain unfree and chained to technology, whether we passionately affirm or deny it. But we are delivered over to it in the worst possible way when we regard it as something neutral; for this conception of it, to which we today particularly like to do homage, makes us utterly blind to the essence of technology."[7] Rather than merely a means or instrument, for Heidegger the essence of technology is a "way of

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[5] Albert Borgmann, "Technology," in *A Companion to Heidegger*, eds. Hubert L. Dreyfus and Mark A. Wrathall (Malden, MA: Blackwell, 2005), 420.

[6] This historical dimension to the ground of being is, arguably, a departure from the effort to uncover a universal structure underlying human being as carried out in Heidegger's *Being and Time*. See: Borgmann, "Technology," 421–422.

[7] Martin Heidegger, "The Question Concerning Technology," in *Martin Heidegger: Basic Writings*, ed. David Farrell Krell (New York: Harper Collins, 1993), 311–312.

revealing," and, to the extent that we have hitherto failed to comprehend that the essence of technology is not its being a thing but rather a way of understanding things, to this extent it is also a way of concealing.[8] To understand the full sense on which technology reveals, we must keep in mind Heidegger's conception of truth as a disclosure, a revealing.[9] For him, the common understanding of technology as a neutral instrument under the control of humans is not *incorrect*, but it is *untrue* insofar as it fails to reveal technology as a grounding framework.[10]

One might ask of *what* is technology a way of revealing and concealing. For Heidegger, as mode of revealing, technology frames human beings' relation to themselves, to their world, and to each other. Modern technology reveals everything as "standing-reserve," as being stored, stacked, and compiled to be used as a resource. As such, "[u]nlocking, transforming, storing, distributing, and switching about are ways of revealing."[11] Heidegger names this all-encompassing way of revealing, "enframing" (*Gestell*).[12] This concept denotes not only human activity, and not only the concrete technologies at hand, but also the gathering together of man and tool in an ordering, in a network of resources and their use which not only provides efficiency but primarily gives meaning to these relations as such.[13] The technological framework also frames man's

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[8] Ibid., 317–319.

[9] Heidegger develops this conception of truth in many writings. See for example his 1930 essay "On the Essence of Truth."

[10] See Borgmann, "Technology," 428.

[11] Heidegger, "The Question Concerning Technology," 322.

[12] Borgmann has suggested that the familiar word "framework" is more apt than the neologism "enframing" (see: Borgmann, "Technology," 428).

[13] Heidegger, "The Question Concerning Technology," 323–329.

attitude toward nature, such that technology is not merely a tool for controlling nature, and science not merely an endeavor to understand it. It is technology as the *zeitgeist*, as the very mode of revealing of being that brings forth nature as an order governed by quantifiable metrics and mathematical laws, and conceals its aesthetic and moral forces.[14]

The extent to which Heidegger holds hope for changing this "technicized" mode of being is debatable. In his essay on *The Question Concerning Technology* (1954) he warns against the danger of technological enframing, cautioning that there may come a point when man himself "will have to be taken as standing-reserve. Meanwhile man, precisely as the one so threatened, exalts himself to the posture of lord of the earth. In this way the impression comes to prevail that everything man encounters exists only insofar as it is his construct."[15] Ultimately, according to Heidegger, the completely enframed man will no longer see the question of revealing as such, and will no longer be capable of envisioning other modes of being.[16] Man's "saving power," it seems, is precisely to think this danger. For Heidegger, if there is hope, it is in anticipating some alternative way of being-with (nature, others and self). It is perhaps in this sense that in his 1966 interview to the *Der Spiegel*, Heidegger famously claimed that in light of the existing technological world, "only a god can still save us."[17]

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[14] See Borgmann, "Technology," 427.

[15] That *danger* is inherent to the technological framework is clear when considering the origin of Heidegger's 1954 essay on technology. The essay is a revised version of a lecture Heidegger gave in Bremmen in 1949. This lecture, titled "The Framework" ("*Das Ge-Stell*,") was the second in a series of four lectures, Heidegger's first public appearances since the end of the Second World War. The lecture that immediately followed the lecture on "The Framework" was titled "The Danger" ("*Die Gefahr*"). See Borgmann, "Technology," 428.

[16] Heidegger, "The Question Concerning Technology," 332–333.

[17] Martin Heidegger, "Only a God Can Save Us: Der Spiegel's Interview with Heidegger," *Philosophy Today* 20, 4 (Winter, 1976): 277. The nature of Heidegger's thinking about technology in relation to

In this interview Heidegger asserts that technology is in its essence something that human beings cannot master of their own accord.[18] He explains that "[e]verything is functioning. This is exactly what is so uncanny, that everything functions and that the functioning drives us more and more to even further functioning, and that technology tears men loose from the earth and uproots them… The only thing we have left is purely technological relationships. This is no longer the earth on which man lives."[19] He asserts that philosophy will not be able to bring about a direct change of the present state of the world (for him this is true not only of philosophy but of all "merely" human meditations and endeavors).

While this position gives reason to think that there is no hope of emancipation from this technological enframing, Heidegger makes clear that he does *not* view "the situation of man in the world of global technology as a fate which cannot be escaped or unraveled," and hints that a free relationship to the technological world may be

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concrete historical events in general, and the Nazi regime in particular, is complex. For example, in a parenthetical remark in his *Introduction to Metaphysics* (1953 edition), Heidegger characterizes the Nazi movement as "the encounter between global technology and modern man" (Heidegger, *Introduction to Metaphysics* [New Haven: Yale University Press, 2000], 213); also see: Jürgen Habermas and John McCumber, "Work and Weltanschauung: The Heidegger Controversy from a German Perspective," *Critical Inquiry* 15, 2 (Winter 1989): 451. Heidegger had claimed that this was his position as early as the 1930s, whereas Habermas and others insist that this remark is merely meant to "whitewash" (or retroactively reframe) his stance toward the Nazi movement. See more in Habermas and McCumber's "Work and Weltanschauung."

Heidegger also revised his writing about the role of the essence of the technological framework in the annihilation of the Jews in the holocaust. Borgmann compares Heidegger's remarks on this in his 1949 Bremmen lecture ("The Framework") to his 1954 essay on "The Question Concerning Technology": In the Bremmen lecture Heidegger writes that "Agriculture is now mechanized food industry, essentially the same thing as the production of corpses in gas chambers and annihilation camps, the same thing as the blockade and intentional starvation of countries, the same thing as the production of hydrogen bombs," whereas the same passage in the 1954 essay reads "Agriculture is now a mechanized food industry. Air is positioned to yield nitrogen, the ground to yield ore, the ore to yield, for example, uranium, this to yield nuclear energy that can be released for destruction or peaceful use." See Borgmann, "Technology," 430.

[18] Heidegger, "Only a God Can Save Us," 276.

[19] Ibid., 277.

possible.[20] Others have taken up this aspect of Heidegger's thinking about technology, and have offered a slightly less pessimistic interpretation. According to the latter, we can take Heidegger to be asserting that only some new cultural pillar, which can gather together a community in a new way and give new meaning to its practices (as the Greek temple once did), can bring about this "saving power." However, this pillar cannot simply be erected or brought about in any simple way. Even this less gloomy outlook still understands Heidegger to be saying that human agency vis-à-vis technology is not promised.[21]

Adorno and Horkheimer on Technology

From a different perspective, the first generation of the Frankfurt School was also highly suspicious of technology and its social implications. For Max Horkheimer and Theodor Adorno, technology threatens to diminish thinking. According to their analysis, modern technology reifies human thinking. Better still, it is human thinking in the enlightenment that objectifies itself "to become an automatic, self-activating process; an impersonation of the machine that it produces itself so that ultimately the machine can replace it."[22]

To understand this detrimental "dialectic of enlightenment," one must consider the way in which this position is a response to two influential predecessors, namely, Karl Marx and Max Weber. Marx did not focus explicitly on the nature of technology, but to some extent we can understand his analysis of the production process, and especially the

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[20] Ibid., 280.

[21] More on this question below. For further analysis see also: Hubert L. Dreyfus, "Heidegger on Gaining a Free Relation to Technology," *Technology and the Politics of Knowledge*, eds. Andrew Feenberg and Alastair Hannay (Bloomington: Indiana University Press, 1995), 104–105.

[22] Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment* (New York: Continuum, 1991), 25.

"forces of production," as referring to technology.[23] Famously, Marx asserted that these forces of production, the material technologies that facilitate the production process, determine social relations. In other words, changes in the forces of production bring about changes in social relations. Thus, for Marx, the kind of self-alienation described by Adorno and Horkheimer was a result, not of technology itself, but of the relations it had brought about, whereas for Adorno the technology and the technocracy it produces results in a society and individuals completely dominated by technological relations.[24]

Perhaps the most notable difference between Marx and the Frankfurt School theorists (excluding, as will be discussed, Walter Benjamin) is that they rejected Marx's optimism regarding the emancipatory potential of technological development.[25] While pointing out the disastrous effects of technology when applied within a capitalist economy,[26] Marx saw the very same technology as being a key to a leisurely, creative and productive life in a future communist society. Considering the potential for lesser pressure toward human specialization (supplanted by machines) and hence less pressure toward more division of labor, Marx writes in The German Ideology that "in communist society, where nobody has one exclusive sphere of activity but each can become accomplished in any branch he wishes, society regulates the general production and thus

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[23] Eric L. Krakauer, *The Disposition of the Subject: Reading Adorno's Dialectic of Technology* (Evanston, IL: Northwestern University Press, 1998), 4. See also: Karl Marx, "The German Ideology," in *Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett, 1994).

[24] Krakauer, *The Disposition of the Subject*, 5.

[25] Ibid., 5–6.

[26] See for example Marx's note in *Capital*, Vol. I (in the section titled "The Strife Between Workman and Machinery"), where he quotes India's English Governor General, who reported on the social effect of the introduction of mechanized cotton weaving on traditional weavers in India. The governor reported that "The bones of the cotton-weavers are bleaching the plains of India" (see Karl Marx, *Capital, Vol. I: A Critical Analysis of Capitalist Production* [New York: International Publishers, 2003], 406).

makes it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner…"[27] This sort of optimism is colorfully illustrated in *The Right to Be Lazy*, an essay published in 1883 by Marx's son-in-law, Paul Lafargue. Lafargue ends this essay with the following words: "Our machines, with breath of fire, with limbs of unwearying steel, with fruitfulness wonderful inexhaustible, accomplish by themselves with docility their sacred labour. And nevertheless the genius of the great philosophers of capitalism remains dominated by the prejudices of the wage system, worst of slaveries. They do not yet understand that the machine is the saviour of humanity, the god who shall redeem man from working for hire, the god who shall give him leisure and liberty."[28]

Weber's influence on Adorno and Horkheimer can be seen in their pessimism. Weber analyzed the process of increasing "rationalization" and its effects on modern society and consciousness, an analysis that informed Adorno and Horkheimer's concept of technological rationality.[29] Where Marx saw the continuous development of the forces of production as a rational historical process with emancipatory potential, Adorno contended that insofar as capitalist organizations are guided by principles of efficiency

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[27] Marx, "The German Ideology," 119.

[28] Paul Lafargue, *The Right to Be Lazy and Other Essays* (Chicago: Charles H. Kerr and Company, 1907), 62.

[29] Ingram provides a concise summary of Weber's conception of rationalization: "Rationalization involves the gradual subordination of religious and metaphysical ways of understanding the world to a secular, scientific outlook. The disenchantment of nature as a domain of purposes and ends is coupled with the emergence of market and legal systems that center around contracts and private property. Accompanying this functional change in economy and law is a profound change in the way people understand themselves. People now understand themselves as *individuals* who must be rationally accountable to themselves and others" (David B. Ingram, *Habermas: Introduction and Analysis* [Ithaca, NY: Cornell University Press, 2010], 119). See also: Ibid., 307–316.

and calculability, they embody technological rationality. This form of rationalization bolsters various forms of alienation rather than freedom.[30]

Adorno and Horkheimer draw upon Weber's analysis of the enlightenment as a movement from superstition to knowledge, what he coined the "disenchantment of the world," including the understanding and domination of nature through science and technology.[31] This, in a nutshell, is the dialectic of the enlightenment; that industrial, technologically advanced societies (along with the suffering advanced by these societies in the 20th Century) are the logical result of the enlightenment, and not some unexplained abnormality. Yes, technology does provide the conditions for emancipation through increasing economic productivity (as Marx asserted), but it also facilitates exploitation of humans and of nature.

In line with their analysis of technological domination, Adorno and Horkheimer (contra Marx) expanded their analysis of technology to include not only technology of economy and production, but also technologies of culture (such as film, radio, television, music) and their interface with the mass dissemination of culture through advertising. The "culture industry" is understood, then, as one aspect of the totally technological society, adhering to the strict form of technological rationality (which in this society has become rationality pure and simple).[32]

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[30] Krakauer, *The Disposition of the Subject*, 8.

[31] For more on this see: David B. Ingram, *Critical Theory and Philosophy* (St. Paul, MN: Paragon House, 1990), 48–54.

[32] See: Andreas Huyssen, "Introduction to Adorno," *New German Critique* 6 (Autumn, 1975): 4.

This analysis of the pervasiveness of technological rationality leads Adorno and Horkheimer to rather pessimistic practical conclusions. As Krakauer explains, for Adorno "the culture industry of late capitalism has become adept at disarming any significant protest movement, any large-scale dissent, by absorbing it into itself […]. As a result, Adorno mistrusts all would-be movements or parties of the oppressed."[33] Since action is not a possibility, Horkheimer writes that "[t]he struggle against mass culture can consist only in pointing out its connection with the persistence of social injustice."[34] Hence, the role of the theorist is not to engineer technology differently, but to expose its harms. We may ask, Should we not attempt to "engineer technology differently" because it cannot be done principle, or rather because it is unlikely to be successful under the totalizing conditions of capitalism? Adorno and Horkheimer's answer to this question is not entirely clear, but it seems clear that such an attempt is discouraged for fear it will only reinforce the oppression it seeks to overthrow. As Krakauer explains Adorno's position here, "[o]nly rigorous negation of false emancipation keeps open the possibility of emancipation in the positive sense, a life free from conflict, coercion, want and suffering."[35] Put differently, modern technology as it developed under capitalism stymies the political imagination, and it is the task of critical theory to resist this tendency, holding on to the possibility of a different, emancipated society, even if this society can only be referred to in negative terms, as a place holder for what is yet to be imagined.

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[33] Krakauer, *The Disposition of the Subject*, 7. This may shed some light on Adorno's vexed relationship with the German student movement in the 1960s.

[34] Diane Waldman, "Critical Theory and Film: Adorno and 'The Culture Industry' Revisited," *New German Critique* 12 (Autumn, 1977): 45.

[35] Krakauer, *The Disposition of the Subject*, 6.

This concern for the political imagination is illustrated by Adorno's debate with Walter Benjamin over the role of art in advanced technological societies. Benjamin's most prominent work on this topic can be found in his 1936 essay, "The Work of Art in the Age of Mechanical Reproduction," which focuses on film.[36] In this essay Benjamin argues that the introduction of technologies that enable mechanical reproductions of works of art change how we understand what a work of art is, as well as its function in society. He explains that the value of manually produced works of art depended on the idea of authenticity – that there is value in having the original work present.[37] This significance of originality is taken away by reproduction, and the object is detached from tradition.[38] This may seem to be a loss, and Benjamin concedes this, but he emphasizes its positive implications. Instead of being based in tradition and ritual (the reason for the unique value of the authentic), the reproduced work of art draws its value from a different domain of social practice, namely, politics. Technologically reproduced art, and especially film, necessarily engages the participation of the masses. In this new age of

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[36] It is worth noting that Benjamin reworked this essay twice, giving us three versions altogether. The one translated into English to date is the third version, originally published by the Adornos in their two-volume collection of Benjamin's works. For more on this see: Douglas Brent McBride, "Romantic Phantasms: Benjamin and Adorno on the Subject of Critique," *Monatshefte* 90, 4 (Winter, 1998): 465–466.

[37] One is reminded here of Sherry Turkle's account of her visit to the Museum of Natural History in New York, where she and her fourteen year-old daughter saw rare live giant tortoises. Seeing the tortoise inert, and unimpressed by the tortoise's authenticity, Turkle's daughter remarked: "They could have used a robot." Turkle then describes the reactions of other parents and children as she asked them if the fact that they were real live tortoises made a difference to them. She recounts: "A ten-year-old girl told me that she would prefer a robot turtle because aliveness comes with aesthetic inconvenience: 'Its water looks dirty. Gross.' More usually, votes for the robots echoed my daughter's sentiment that in this setting, aliveness didn't seem worth the trouble. A twelve-year-old girl was adamant: 'For what the turtles do, you didn't have to have the live ones.' Her father looked at her, mystified: 'But the point is that they are real. That's the whole point.'" (Sherry Turkle, *Alone Together: Why We Expect More from Technology and Less from Each Other* [New York: Basic Books, 2011], xxiii-xxv).

[38] Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," in *Illuminations: Essays and Reflections*, ed. Hannah Arendt (New York: Shocken Books, 1985), 218–221.

mass (not to be conflated with class) culture, Fascism, according to Benjamin, seeks the aestheticization of politics; Communism responds with the politicization of art.[39]

Benjamin did not view technology as a tool for *mastering* nature, or other human beings, but rather as a medium through which relations to nature and other human beings are ordered. In his early work *One Way Street* Benjamin writes along these lines:

> The mastery of nature, so the imperialists teach, is the purpose of all technology. But who would trust a cane wielder who proclaimed the mastery of children by adults to be the purpose of education? Is not education above all the indispensible ordering of the relationship between generations and therefore mastery, if we are to use this term, of that relationship and not of children? And likewise technology is not the mastery of nature but of the relation between nature and man.[40]

To understand this better, it is worth considering Benjamin's distinction between "first" and "second" technology. According to Benjamin,[41] second technology comes about in modern society, and in the aesthetic realm in the age of mechanical reproduction. Second technology is a result of a historical process in which man distances himself from nature through the medium of play (*spiel*). This distance allows for the possibility of reconciliation with nature, a possibility that has matured in the medium of film. According to Benjamin, it is first technology that indeed aimed at dominating nature, not

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[39] See especially: Ibid., 224, 241–242; also see Waldman, "Critical Theory and Film," 41–42. More on this follows.

[40] Walter Benjamin, *One Way Street and Other Writings* (London: NLB, 1979), 104. This passage is also quoted, with minor error, in: Helen Denham, "The Cunning of Unreason and Nature's Revolt: Max Horkheimer and William Leiss on the Domination of Nature," *Environment and History* 3, 2 (1997): endnote 97.

[41] This analysis appeared in Benjamin's second draft of his essay on mechanical reproduction, but was omitted in the third draft, the one later translated into English. See: McBride, "Romantic Phantasms," 478–479.

the second. Those that accuse second technology of the faults of the first, have not yet realized the emancipatory potential of second technology.[42]

Reminiscent of Friedrich Schiller's notion of the aesthetic state,[43] Benjamin sees technology as a medium suited for experimental play.[44] What is important for him, however, is that this experience take place in public, since the social interaction is crucial for the change in the individual. It is not, then, that Benjamin envisions a unified mass subject; rather, it is a process of subjectivization that occurs in the public, playful, space.[45] We may better understand the idea that "Communism responds with the politicization of art" when considering a footnote that Benjamin included in his second draft of the essay. McBride explains that "[i]n this footnote, Benjamin claims that the collective that learns to appropriate the second technology will be as different in quality from all previous forms of collectivity as the second technology is from the first."[46] For

[42] McBride, "Romantic Phantasms," p. 478.

[43] See for example Letter 22 in Friedrich Schiller's *On the Aesthetic Education of Man*.

[44] The potential that technology harbors for emancipation through experimental play has also been invoked in recent decades with reference to computers and cyberspace. See especially the following works by Sherry Turkle: Sherry Turkle, "Multiple Subjectivity and Virtual Community at the End of the Freudian Century," *Sociological Inquiry, 67*, 1 (1997): 73–74; Sherry Turkle, "Whither Psychoanalysis in Computer Culture," *Psychoanalytic Psychology*, 21, 1 (2004): 21; Sherry Turkle, "Our Split Screens," in *Community in the Digital Age: Philosophy and Practice*, eds. Andrew Feenberg and Darin Barney (Lanham, MD: Rowman and Littlefield, 2004), 101–117.

[45] On the face of things, one might see the debate between Benjamin and Adorno regarding the potential psychological effect of mass culture as a mirror of the debate between Sigmund Freud and Carl G. Jung regarding individual and collective unconscious. As McBride notes, "in a lengthy letter from 2–4 August 1935, Adorno criticized Benjamin's emphatic notion of collective consciousness for resembling too closely the ideas of C.G. Jung" (McBride, "Romantic Phantasms," 470). However, as I have noted, Benjamin's position need not be read as endorsing a notion of collective subjectivity; only a notion of a collective process of subjectivization.

[46] McBride, "Romantic Phantasms," 479.

Benjamin, then, this new technologically enabled medium of art harbors the potential for a new society.

Adorno agreed with Benjamin's assertion that technologies are changing the meaning of the work of art, as well as its function in society. However, as he made clear in his essay "On Jazz," which appeared in the issue immediately following Benjamin's essay on film in the *Zeitschrift Für Sozialforschung*, Adorno was much more suspicious of this change.[47] According to his analysis, the loss of authenticity that was correctly pointed out by Benjamin entails a loss of autonomy, and a dependency of the work of art on heteronomous social factors for its value. The reproduced work of art must also surrender to the laws and necessities governing the production process itself, and is dependent upon the social conditions that facilitate this process.[48] Though jazz seems to be an art form that breaks with traditional rules and defies rigid restrictions, Adorno nonetheless asserts that "[t]he elements in jazz in which immediacy seems to be present, the seemingly improvisational moments – of which syncopation is designated as its elemental form – are added in their naked externality to the standardized commodity character in order to mask it, without, however, gaining power over it for a second."[49] As

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[47] See this essay in: Theodor Adorno, "On Jazz," in *Essays On Music*, ed. Richard Leppert (Los Angeles: University of California Press, 2002).

[48] That Adorno's position on this has hardly changed is evident in his essay "Culture Industry Reconsidered," first published in 1967, more than three decades after his essay "On Jazz": "[T]he technique of the culture industry is, from the beginning, one of distribution and mechanical reproduction, and therefore always remains external to its object. The culture industry finds ideological support precisely in so far as it carefully shields itself from the full potential of the techniques contained in its products. It lives parasitically from the extra-artistic technique of the material production of goods, without regard for the obligation to the internal artistic whole implied by its functionality (Sachlichkeit), but also without concern for the laws of form demanded by aesthetic autonomy" (Theodor Adorno, "Culture Industry Reconsidered," in *The Culture Industry: Selected Essays on Mass Culture*, ed. J. M. Bernstein [London: Routledge, 1991], 87–88).

[49] Adorno, "On Jazz," 473.

McBride explains, for Adorno the very attributes that seem to position jazz as a medium of artistic liberation (such as syncopation), in fact function to reaffirm a fixed framework of tonal patterns and rhythms. What is more, "[j]azz, which appears to require the creative collaboration of composer, arranger, and improvising musicians, actually depends upon the division of labor."[50] Whereas Benjamin sees the collective experience of art to be potentially emancipatory precisely due to the collective nature of the experience, Adorno views such experiences of art as merely affirming an existing collective state of consciousness. As McBride points out, for Adorno, all popular art, which contributes to socialization, is reactionary.[51]

This condemnation of reproduced art as poison to the imagination is clear in Horkheimer and Adorno's assessment of sound film, the very medium celebrated by Benjamin. They write:

> The sound film, far surpassing the theater of illusion, leaves *no room for imagination or reflection* on the part of the audience, who is unable to respond within the structure of the film, yet deviate from its precise detail without losing the thread of the story. […] *The stunting of the mass-media consumer's powers of imagination* and spontaneity does not have to be traced back to any psychological mechanisms; he must ascribe the loss of those attributes to the objective nature of the products themselves. […] [S]ustained thought is out of the question if the spectator is not to miss the relentless rush of facts. Even though the effort required for his response is semi-automatic, *no scope is left for the imagination*.[52]

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[50] McBride, "Romantic Phantasms," 472.

[51] Ibid., 475.

[52] Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment* (New York: Continuum, 1991), 126–127 (in the chapter titled "The Culture Industry: Enlightenment as Mass Deception") - my italics. Adorno is criticized for not distinguishing between film as it developed under monopoly capitalism and the potential it has for operating differently under alternative economic structures, including the distinction between the prevailing aesthetic forms of film (naturalism) and the potential for other film aesthetics. Adorno provides an important contribution in analyzing the connection between the economic structure and the development of the artistic medium, but his analysis seems to deny the possibility for an alternative form of art under alternative economic circumstances (see Waldman, "Critical Theory and Film," 49–51). For reasons of brevity it is impossible to delve deeper into this critique of Adorno's discussion of film here, but this search for alternative (emancipatory) social practices vis-à-vis technologies motivates the constructivist theorists

The reproduced work of art relies on the social environment, and thus loses its power to negate it, pacifying the mass audience into acceptance of the status quo. With the technologies of reproduction, then, culture becomes an industry in service to domination:

> A technological rationale […] has made the technology of the culture industry no more than the achievement of standardization and mass production, sacrificing whatever involved a distinction between the logic of the work and that of the social system. This is the result not of a low of movement in technology as such but of its function in today's economy.[53]

The extent to which Adorno conflates mechanical reproduction with a capitalist mode of production is arguable. What is clear, however, is that Adorno attributes to the technology of reproduction the necessity of technical standardization.[54] This, in his mind, leads to administrative centralization in any kind of advanced production constellation.[55]

As mentioned earlier, Adorno and Horkheimer see art, and culture more broadly, as only one dimension of the technological totalization in modern societies. Technology is the embodiment of instrumental reason, or "subjective" reason, which understands reason only in terms of regulating means and ends. With the rise of modern science and technology, we no longer regard reason as a tool for understanding our ends, assessing them and determining them. Horkheimer and Adorno consequently warn that in understanding reason as a mere instrument for any given end, we have lost our autonomy,

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of technology, as will be discussed in Chapter 2.

[53] See: Waldman, "Critical Theory and Film," 56.

[54] Adorno, "The Culture Industry Reconsidered," 134.

[55] See for example Adorno's unpublished remarks in Martin Jay's *The Dialectical Imagination* (Boston: Little, Brown and Company, 1973), 193.

and our conceptions of justice, happiness and the good life have lost their intellectual roots.[56]

Technology, according to this view, as the embodiment and practice of instrumental reason, necessarily becomes a powerful means of domination, providing an ever more efficient method for the exploitation of labor. Thus, "[o]n the road to modern science, men renounce any claim to meaning," as calculation and utility become the prevailing and oppressive substitutes.[57]

Interestingly, the later Adorno seems to have left more room for optimism with regards to the agency of individuals vis-à-vis the culture industry. Drawing on the psychoanalytic roots of the Frankfurt School, Adorno finds reason for optimism in the unconscious. In his reconsideration of his writings on the culture industry, when attempting to explain why social protest still occurs, he suggests that "only their deep unconscious mistrust, the last residue of the difference between art and empirical reality in the spiritual makeup of the masses explains why they have not, to a person, long since perceived and accepted the world as it is constructed for them by the culture industry."[58] Adorno even goes further, and a few years later seems to be drawing even on the reasons that gave Marx reason for optimism, namely, the contradictions of capitalism itself. In reaction to a study suggesting that the German public was able to critically assess the social implications of various current events, Adorno asserted in a radio lecture that "the

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[56] Max Horkheimer, "Means and Ends," in *Critical Theory: The Essential Readings*, eds. David Ingram and Julia Simon-Ingram (St. Paul, MN: Paragon House, 1992), 38–42.

[57] Horkheimer and Adorno, *Dialectic of Enlightenment*, 5 (in the chapter titled "The Concept of Enlightenment").

[58] Adorno, "Culture Industry Reconsidered," 91.

integration of consciousness and leisure time is not yet complete after all. The real interests of individuals are still strong enough to resist total manipulation up to a point. This analysis would be in tune with the prognosis that consciousness cannot be totally integrated in a society in which the basic contradictions remain undiminished."[59] This strand of Adorno's later thought, which points to the extra-rational and the unconscious for hope of emancipation, finds a following in Herbert Marcuse's views on technology and society.

Marcuse on Technology

Horkheimer and Adorno's collaborator, Herbert Marcuse, also pointed to the dialectical nature of technical progress. He argued that as technology created conditions of rising standards of living through the concentration of private enterprises in ever more effective and productive corporations, it had made non-conformity or dissent from this system seem socially useless, if not completely irrational.[60] Indeed, thought is confined to what seems practical within the existing framework, and "the movement of thought is stopped at barriers which appear as the limits of Reason itself."[61] According to Marcuse, this results in a "one-dimensional man" whose ideas, possibilities and actions are constantly redefined to fit within the rationality and terms of the system.

Thus, the one-dimensional technological world of advanced industrial societies is for Marcuse an almost closed system:

> By virtue of the way it has organized its technological base, contemporary industrial society tends to be totalitarian… a non-terroristic economical-technical

[59] Huyssen, "Introduction to Adorno," 9–10; see also Waldman, "Critical Theory and Film," 60.

[60] Herbert Marcuse, *One Dimensional Man* (Boston: Beacon Press, 1991), 1–2.

[61] Ibid., 14.

> coordination which operates through the manipulation of needs and vested interests… Today political power asserts itself through its power over the machine process and over the technical organization of the apparatus.[62]

Similar to Heidegger, his former teacher, it was hardly clear to Marcuse that opposition to this force was possible.[63] However, still influenced by Freudian psychoanalysis, Marcuse argued that the reason why a total domination is theoretically impossible rests in the instincts, which at their core remain impenetrable to manipulation.[64] Thus, wary of technology but holding on to some hope, Marcuse called for an alternative science and technology: "in order to become vehicles of freedom, science and technology would have to change their present direction and goals; they would have to be reconstructed in accord with a new sensibility – the demands of the life instincts."[65] This would entail a radical, qualitative shift in our conceptions of progress, in which life would be an end and not a means. However, Marcuse did not specify what such a new sensibility and social organization might concretely entail, and argued that the much needed new modes of realizing a free relation to science and technology can only be indicated in negative terms.[66] What was clear to Marcuse is that "qualitative change also involves a change in the technical basis on which society rests" since this basis is what sustains society's

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[62] Ibid., 2–3. See also Ibid., xlvii.

[63] For more on Heidegger's influence on Marcuse's (especially early) thinking, see: Herbert Marcuse and Martin Heidegger, "An Exchange of Letters," in *The Heidegger Controversy: A Critical Reader*, ed. Richard Wolin (New York: Columbia University Press, 1991). For a more extensive analysis of Heidegger's influence on Marcuse, see: Andrew Feenberg, *Heidegger and Marcuse: The Catastrophe and Redemption of History* (New York: Routledge, 2005).

[64] For more on this see Chapter 5 ("Marcuse and Freud: The Instinctual Basis of Critique") in Ingram, *Critical Theory and Philosophy*, 93–105.

[65] Herbert Marcuse, *An Essay on Liberation* (Boston: Beacon Press, 1969), 19.

[66] Marcuse, *One Dimensional Man*, 3–4.

economic and political institutions.[67] A new science would develop new concepts (of nature, for example) and would thus produce altogether new "facts."[68]

How would such a new science, predicated upon a transformation of the seemingly overwhelming domination of capital-driven technical rationality, come about? Marcuse asserted that art may play a role in bringing about this new science and new technology, and ultimately a new society. Though not completely confident in this possibility ("I often blame myself for perhaps being too romantic in evaluating the liberating, radical power of art"[69]), Marcuse posited that the arts, by which he referred to literature, music and the visual arts[70], "must play a decisive role in changing the human condition and the human experience, […] helping us in envisaging, perceiving, and perhaps even building a better, a free, humane society."[71] But what role can art play in such an ambitious transformation?

To begin to answer this question, it may be helpful to recall Karl Marx's early reference to language. For Marx, as species-beings, all human beings have similar basic needs. Therefore, a truly *human* language would be a language based on needs (not rights, for example). Marx then considers what would happen if a person addressed his

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[67] Ibid., 18.

[68] Ibid., 166–167.

[69] Herbert Marcuse, "Art in the One-Dimensional Society," in *Herbert Marcuse: Art and Liberation; Collected Papers of Herbert Marcuse, Vol. 4*, ed. Douglas Kellner (New York: Routledge, 2007), 113. This essay was first presented as a lecture at the New York School of Visual Arts, March 8, 1967.

[70] Ibid., 113.

[71] Herbert Marcuse, "Commencement Speech to the New England Conservatory of Music," in *Herbert Marcuse: Art and Liberation; Collected Papers of Herbert Marcuse, Vol. 4*, ed. Douglas Kellner (New York: Routledge, 2007), 130–131. Marcuse delivered this speech to the New England Conservatory of Music on June 7, 1968.

fellow person with an expression of his needs, such as "Please, I need X." This human language of needs, Marx asserts, stands in opposition to the material relations (and thus social relations) in society. Therefore, we would not understand such a language. In his comments on James Mill's 1821 work "Elements of Political Economy," Marx explains:

> Our objects in their relation to one another constitute the only intelligible language we use with one another. We would not understand a human language, and it would remain without effect. On the one hand, it would be felt and spoken as a plea, as begging, and as *humiliation* and hence uttered with shame and with a feeling of supplication; on the other hand, it would be heard and rejected as *effrontery* or *madness*. We are so much mutually alienated from human nature that the direct language of this nature is an *injury to human dignity* for us, while the alienated language of objective values appears as justified, self-confident, and self-accepted human dignity.[72]

For Marcuse, the overcoming of the domineering technological, one-dimensional society will inevitably entail "the emergence of qualitatively different needs and satisfactions, of new goals."[73] This new society must be constructed in a new technical and natural environment. It is the role of art to provide new concepts, *a new language*, to imagine and describe this new environment, and the new relations between persons that will consequently arise. Marcuse explains:

> The traditional concepts and the traditional words used to designate a better society, that is, a free society […] are inadequate to convey what man and things are today, and inadequate to convey what man and things can be and ought to be. These traditional concepts pertain to a language which is still that of a pre-technological and pre-totalitarian era in which we no longer live. […] Since the thirties, we see the intensified and methodical search for a new language, for a poetic language as a revolutionary language, for an artistic language as a revolutionary language. This implies the concept of the imagination as a cognitive faculty, capable of transcending and breaking the spell of the Establishment.[74]

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[72] Karl Marx, "Excerpts-Notes from 1844 (Selections)," in *Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett, 1994), 52.

[73] Marcuse, "Art in the One-Dimensional Society," 116.

[74] Ibid., 114. Elsewhere Marcuse explains: ""a new cognitive function of art is contained in this oppositional stance; art is called upon to represent the truth. […] 'Art is a painted or molded critique of

The role of art is not to change society through its own powers. Its role is to provide us with new tools for imagining an emancipated society. In this sense art is an expression of the untainted life instincts, as well as the potential generator of a new consciousness, "and a new unconscious," that breaks individuals free of the established "false, distorted reality."[75]

Though Marcuse ascribes to art the potential for facilitating social transformation, he nevertheless acknowledges the danger to art in the one-dimensional society.[76] With an awareness that social conditions may prevent art from serving the emancipatory function it may be capable of, Marcuse asserts that "In the so-called consumer society, art becomes an article of mass consumption and seems to lose its transcendent, critical, antagonistic function. In this society the consciousness of and instinct for an alternative existence atrophies or seems powerless. All the designs of creative imagination seem to transform themselves today into technological (*technische*) possibilities."[77] What is more, Marcuse warns elsewhere that "much of [art's] most popular manifestation has become part of the Establishment, — is made by and for the market, for sale — branch of the great enterprise of manipulation and social engineering: harmless and enjoyable

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cognition.' […] This statement contains a demand for a new optics, a new perception, a new consciousness, a new language which would bring with it the dissolution of the existing form of perception and its objects. This is a radical break; new possibilities of representing people and things are at stake" (Herbert Marcuse, "Society as a Work of Art," in *Herbert Marcuse: Art and Liberation; Collected Papers of Herbert Marcuse, Vol. 4*, ed. Douglas Kellner [New York: Routledge, 2007], 124).

[75] Marcuse, "Commencement Speech," 132.

[76] See Marcuse, "Society as a Work of Art," 127. This essay was first presented in German at the Third Salzburg *Humanismusgespräch* (Conversation on Humanism) in August 1967.

[77] Ibid., 128.

mobilization of the instincts."[78]

It is worth pointing out the ways in which Marcuse's hope for the role of art in society can be misunderstood. *First*, art may be understood as the "beautiful" a detached medium, removed from praxis. This is not Marcuse's intent. Warning against just such an attitude, he asserts: "In the consciousness of the avant-garde artist, art becomes in this period a more or less beautiful, pleasant decorative background in a world of terror. This luxury function of art must be destroyed."[79] Art as a guide for constructing a new society must be in creative contact with new forms of science and technology, which together can "construct and sustain a new system of life."[80] In other words, art must not be separate from social life. Rather, art must give social life its form.

Second, it would be a mistake to understand Marcuse as suggesting a politicized art in the usual sense, that is, art in the service of a political venture (think of some artistic expressions in the Soviet Union, in service of the Communist Party). Marcuse is not envisioning the subordination of art to politics, not even revolutionary politics. On this he writes: "art can fulfill its inner revolutionary function only if it does not itself become part of any Establishment, including the revolutionary Establishment."[81] To the contrary, he proposes "the subordination of politics to art, to the creative imagination."[82] But in saying this, Marcuse considers society itself to be the work of art. The painting or poem

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[78] Marcuse, "Commencement Speech," 138.

[79] Marcuse, "Society as a Work of Art," 126.

[80] Marcuse, "Art in the One-Dimensional Society," 119.

[81] Marcuse, "Art in the One-Dimensional Society," 115.

[82] Marcuse, "Society as a Work of Art," 124.

is not the end goal. They are the language through which we speak of the ultimate work of art, namely, the free society.

Third, as I have alluded to, one ought not misconstrue Marcuse as suggesting that it is the work of art (or the artist) that could change the social conditions. In fact, Marcuse warns against sublimating repressed instinctual and biological needs "in the unreal, illusory realm of art rather than in the transformation of reality," and immediately adds "a related question: has now perhaps come the time to free art from its confinement to mere art, to an illusion?" Marcuse states clearly that "art by itself could never achieve this transformation, but it could free the perception and sensibility needed for the transformation. And, once a social change has occurred, art, Form of the imagination, could guide the construction of the new society." In what can be taken as a response to these three ways in which he may be misunderstood, Marcuse emphasizes the proper guiding role of art: "We have to remember: the realization of art as principle of social reconstruction presupposes fundamental social change. At stake is not the beautification of that which is, but the total reorientation of life in a new society."[83]

This total reorientation, however, does not come about through some sort of direct effect of art. For Marcuse, "The contents and forms of art are never those of direct action, they are always only the language, images, and sounds of a world not yet in existence."[84] By liberating consciousness and the imagination from the linguistic fetters of the prevailing order, art can function as "the architecture of a free society."[85] But art can go

[83] Marcuse, "Art in the One-Dimensional Society," 118.

[84] Marcuse, "Society as a Work of Art," 129.

[85] Marcuse, "Art in the One-Dimensional Society," 122.

no further: "The realization, the real change which would free men and things, remains the task of political action; the artist participates not as artist."[86]

Finally, it would be a mistake to understand Marcuse's position as ascribing no positive function to technology in society. In a dialectical view that follows Marx, Marcuse maintains that while technical progress has created conditions for domination, it also creates the possible conditions for a truly free society. There are a number of reasons why for Marcuse technology cannot and ought not be dismissed. First, art itself is expressed through various forms of technique. Whether it be instruments (think of music), tools and machinery (think of sculpting), and myriad other means, developments in art are intertwined with technical development. One such glaring example is film. Thus, Marcuse astutely points out that "the internal development of art, music, responds to, and at the same time negates the society for which, and against which it is created."[87]

Second, similar to Marx, Marcuse believed that technical progress has reached a stage where it is able to fulfill an emancipatory promise, which has heretofore been stunted by the lack of knowledge in designing a pacified relation between man and things. He writes:

> The know-how is there. The instruments and the materials are there for the construction of such an environment, social and natural, in which the unsublimated life instincts would redirect the development of human needs and faculties, would redirect technical progress. These pre-conditions are there for the creation of the beautiful not as ornaments, not as surface of the ugly, not as museum piece, but as expression and objective of a new type of man: as biological need in a new system of life.[88]

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[86] Ibid., 122.

[87] Marcuse, "Commencement Speech," 135.

[88] Marcuse, "Art in the One-Dimensional Society," 121.

Marcuse's concerns about the role of technology in society, as well as the hope he holds for art as an emancipatory medium, must no doubt be placed in dialogue with the ideas of his teachers and collaborators mentioned above, especially those of Benjamin, Adorno and Heidegger.

First, Marcuse's idea of a "new technology" is reminiscent of Benjamin's notion of a "second technology." Both Marcuse and Benjamin envisioned a technology qualitatively different from the one operating in late-capitalism, which would co-emerge with a new society, in which the relations among persons, and the relations between persons, things, and nature, would be qualitatively different as well. For both, this transformation is a collective endeavor, which, only if taken in this collective context, has the power to emancipate individuals in turn. What is more, both see the role of art in this social transformation not primarily through its content, but through the effect of its form. Both held that art can transform human sensibility, thus preparing persons for the possibilities yet to be imagined.[89]

Marcuse's ideas also intersect with Adorno's. Adorno seems more pessimistic about the possibility of an alternative technology (which seemed to be a theme in his disagreement with Benjamin as well). However, it does seem that at times Adorno shares a Marcusean tone of optimism. As I have already discussed, in his "Culture Industry Reconsidered," Adorno appeals to the public's "deep unconscious mistrust, the last residue of the difference between art and empirical reality in the spiritual make-up of the masses" as the explanation for the apparent persistence of a resistance to total domination by the culture industry. Though Adorno does not share Marcuse's

[89] McBride, "Romantic Phantasms," 480.

hope for art as providing an alternative social architecture, he does posit, as Marcuse does, that the extra-rational (the unconscious, the instincts), may hold emancipatory potential.

Finally, there is an affinity between Heidegger's thinking and Marcuse's, insofar as they share doubts regarding man's ability to escape the all-encompassing nature of technological domination, doubts that to some extent find potential remedy in art. To see this, we must go back to Heidegger's lecture, published under the title "The Origin of the Work of Art." In this 1935 lecture (repeated again in 1936) on the origin of the work of art, Heidegger seems to suggest that art could be a source for emancipation. In the lectures Heidegger turns directly to the question of how a world is disclosed in a tangible thing. In discussing material objects, the focus here shifts from the tool as described in *Being and Time* to the work of art, such as the Greek temple. As Borgmann explains, in this lecture Heidegger asserts that "[t]he work of art establishes the truth of an epoch, truth not in the formal sense of truth conditions but in the substantive sense of what is eminently and decisively true of a particular time."[90] As shown above, Heidegger later viewed technology as a manifestation of the truth of our modern era. It should not surprise us, then, that Heidegger ends his discussion in "The Question Concerning Technology" with a suggestion that perhaps art could be the source of humanity's "saving power" in a technologically enframed world. One reason for this hope is that art, as *techne,* is both akin to the essence of technology and "fundamentally different" from it.[91] Similar to Marcuse, Heidegger seems ambivalent

[90] Borgmann, "Technology," 429.

[91] Ibid.

about the emancipatory potential of art in modern society. While in the Epilogue to "The Origin of the Work of Art," he agreed with Hegel that it is doubtful whether art can still be the medium through which truth appears in its highest manifestation as it has in the past,[92] he nevertheless posited that it is an open question whether the fine arts can have an altogether different revelatory function.[93]

Habermas on Technology

In his essay "Technology and Science as 'Ideology'" Habermas responds to Marcuse's call for a *new* science which will produce *new forms* of technology. Put succinctly, Habermas argues that liberation cannot be achieved by transforming technology because technology cannot be altered. For Habermas, technology is essentially the unburdening of needs that are rooted in human nature through purposive-rational action and substituting other means for human labor. On a fundamental level, he understood technology as related to the interests of humans in general, and not to the interests of specific groups or classes. These fundamental human needs to which technology as a general form of action responds, come prior to any particular political or ideological interest, and as such are politically neutral. Therefore, to the extent that human nature itself is not fundamentally altered, technology cannot be altered as well.[94] With regards to a new science, Habermas similarly claims that "[t]he idea of a New Science will not stand up to logical scrutiny any more than that of a New Technology, if indeed science is to retain the meaning of

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[92] Heidegger, "The Origin of the Work of Art," 204–205.

[93] See: Heidegger, "The Question Concerning Technology," 337–340.

[94] Jürgen Habermas, "Technology and Science as 'Ideology'," in *Critical Theory: The Essential Readings*, eds. David Ingram and Julia Simon-Ingram (St. Paul, MN: Paragon House, 1992), 120–122; See also, Andrew Feenberg, *Questioning Technology* (New York: Routledge, 1999), 7.

modern science inherently oriented to possible technical control. For this function, as for scientific-technical progress in general, there is no more 'humane' substitute."[95]

Furthermore, Habermas is critical of Marcuse's assertion that the instincts can serve as a ground for critical theory, claiming that such a proposition relied too heavily on speculations about human nature that could not be verified. As an alternative, Habermas suggested that a critical foundation could be found in the very structure of everyday language, a fundamental tenet of Habermas's thought to which I will come back in greater detail later on.[96]

For the purpose of clarifying what Habermas views as the proper function of technology in society, it is helpful to briefly outline his distinction between lifeworld and system, along with his distinction between work and interaction. According to Habermas, advanced-capitalist societies are divided between a lifeworld, which is governed by norms of communicative interaction, and a system governed by "steering imperatives" of money and power. This distinction is meant to capture the communicative practices of everyday life on the one hand, while on the other hand recognizing the systemic forces that operate in society and which, if not controlled, come to colonize or dominate the lifeworld.[97] As Ingram explains, the colonization of the lifeworld "involves substituting

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[95] Habermas, "Technology and Science as 'Ideology'," 122.

[96] See Ingram, *Critical Theory and Philosophy*, 107. Habermas has suggested the turn to language as early as 1968 in "Knowledge and Human Interests."

[97] Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975), 1–8; see also Douglas Kellner, "Habermas, the Public Sphere and Democracy: A Critical Intervention," in *Perspectives on Habermas*, ed. Lewis Edwin Hahn (Chicago: Open Court, 2000), 272. Habermas views Marx's most important contribution to social theory as the "account of social evolution as a separation (abstraction or uncoupling) of a self-regulating legal and economic system from a meaningful lifeworld" (Ingram, *Habermas*, 310). One can easily see this contribution in Habermas's distinction between system and lifeworld. Moreover, Habermas considers this process of differentiation as an achievement of modern societies, as compared with traditional ones.

strategic forms of economic and legal action mediated by money and power for communicative forms of action responsible for socialization, cultural transmission, and social integration."[98] In this distinction the lifeworld has an essential role in the possibility of communicative action (and consequently for critical thinking). A shared lifeworld is crucial for the use of language for coordinating action.[99]

In this Habermasian framework, in modern societies technology properly relates to the level of systems (work and administration) and not the lifeworld. Habermas accepts the autonomy of technical (instrumental) rationality in a limited role of facilitating systems of labor and technical administration, while emphasizing the role of communicative reason in the lifeworld. Therefore, Habermas can be taken to maintain that technology is neutral in its proper sphere, while outside that sphere it causes various social pathologies in modern societies.[100] What is more, for Habermas, one cannot conceive of a different technological interaction with nature in the sphere of work (as opposed to interaction in the lifeworld). Habermas critiques Adorno insofar as he thinks Adorno has only attended to instrumental rationality when considering the dialectic of enlightenment, and has not considered the emancipatory potential in communicative rationality.[101]

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[98] Ingram, *Habermas*, 272. For an analysis and critique of Habermas's lifeworld-system distinction, as well as Habermas's analysis of the "colonization of the lifeworld" see: Bernhard Peters, "On Reconstructive Legal and Political Theory," *Philosophy and Social Criticism*, 20, 4, (1994): 120–126.

[99] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1998), 22.

[100] Such an interpretation can be found in Feenberg, *Questioning Technology*, 152.

[101] Krakauer, *The Disposition of the Subject*, 12. In this context, Krakauer asserts that Habermas did not take seriously enough Adorno's concerns about a positive program, concerns I have referred to above, within the same culture of domination (Ibid.).

However critical Habermas was of his mentors in the Frankfurt School, it seems he reserved his sharpest and most profound critique for the work of Martin Heidegger. Habermas acknowledges Heidegger's philosophical importance and influence, asserting that "From today's standpoint, Heidegger's new beginning still presents probably the most profound turning point in German philosophy since Hegel."[102] But Habermas quickly turns to his grave concerns about Heidegger's approach; that Heidegger unreflectively perpetuates "an elitist self-understanding of academics, a fetishizing of Geist, idolatry for the mother tongue, contempt for everything social, a complete absence of sociological approaches long developed in France and the United States, a polarization between natural science and the *Geisteswissenschaften*, and so forth."[103]

Habermas's critique of Heidegger will be better understood after Habermas's theory of communicative action is explicated in more detail (Chapter Three). For now, suffice it to say that, in a sense similar to his critique of Adorno (and even Kant), Habermas argues that Heidegger does not pay enough attention to the significance of intersubjectivity, which is essential to Habermas's ethical theory, as well as his conception of truth. For Habermas, since Heidegger's social analysis remains within the limited confine of *mitsein* (being-with-others), he fails to recognize the importance of intersubjective argumentation processes, which include putting forth arguments for critique of others. Similar to Adorno, albeit from a different perspective, Heidegger overlooks communicative rationality as a potentially emancipatory force. Anticipating constructivist philosophers of technology, and in accord with the Frankfurt School

[102] Habermas and McCumber, "Work and Weltanschauung," 434.

[103] Ibid., 438.

methodology, both of whom recognized the importance of the social sciences and empirical analysis, Habermas critiques Heidegger for lacking a more nuanced approach to technology and society. Such an approach would pay more attention to the practical operations of technology in modern societies, and would rely less on ontological, essentialist claims. Habermas writes:

> [A]fter 1935 Heidegger subsumed political and social practice hastily under a few stereotypical code words without even an attempt at a description, to say nothing of empirical analysis. His ontologizing talk of "technology" itself as a destiny that is at once mystery, security, and danger reaches globally, and with strongly essentialistic conceptions, through the foreground domains of the ontical.[104]

Conclusion

In this chapter I have surveyed theories of technology in the Twentieth Century, focusing on those philosophers that have had the greatest impact on Habermas and later on critical theorists of technology (the focus of the next chapter will be on one such critical theorist of technology, namely, Andrew Feenberg). I have discussed these theories within the framework of essentialism; that is, theories that ascribe an essence to technology that reaches far beyond (and also is prior to) its social context.

As this chapter concludes and we look to the discussion ahead, two points are particularly worth keeping in mind. First, as the discussion moves to constructivist theories of technology in the next chapter, the differences between technological essentialists and constructivists will become clear. One theme that has run as a thread throughout the essentialist theories ought not be overlooked, namely, the epistemic theme. For all their disagreements, Adorno, Marcuse and Heidegger (but not Habermas) seemed to share a fundamental sense that not only is their culture detrimentally pervaded

[104] Habermas and McCumber, "Work and Weltanschauung," 445.

by technology, but that for the most part this detriment is unnoticed (or ignored) by the broader society. Consider for example Heidegger's discussion of "Distress" in his *Contributions to Philosophy* (and especially Chapter Five, titled "For the Few and the Rare"), where Heidegger discusses the distress that comes upon the few and the rare who ask the ontological questions of being.[105] Borgmann points out that for Heidegger, "Distress (*die Not*) is one of the key words of the Contributions and more especially the distress at the general incapacity for the recognition of how distressing times really were."[106] This concern for an oppressive force that is not recognized by the masses, that deceives them, no doubt pays homage to Marx's notion of false consciousness, though these theorists do not focus solely on economic structures as the source of this epistemic failure (if this economic source is acknowledged at all). What is important about this epistemic stance is that it raises doubts about the viability of democracy as an emancipatory project. If the masses are deceived, how can they be trusted to make good decisions? Indeed, such an epistemic stance, as we have seen, raises questions about the status of reason, and rational deliberation as such.

As will become clear in the following chapters, both Feenberg and Habermas take on the task of restoring a sense of confidence in reason and in democracy. Habermas will attempt to present alternative forms of rationality, that are inherent to our everyday interaction; Feenberg will attempt to rehabilitate democracy in the face of danger of technological domination, a task he refers to as the democratization of technology itself.

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[105] See: Martin Heidegger, *Contributions to Philosophy (From Enowning)* (Indianapolis: Indiana University Press, 1999), 9–15.

[106] Borgmann, "Technology," 425.

Is there no use then for the contributions made by Adorno, Horkheimer, Benjamin, Marcuse and Heidegger? Hardly. Though this work aims to go beyond their visions of technology and its place in a (democratic) society, there is no doubt that we gain valuable insight from them, insight that will inform the analysis of later chapters. Their concerns will not only remain helpful as a warning against the potential social and personal harms of technology; this study will also draw on these thinkers for conceptual tools. For example, Adorno's distinction between mass culture and the culture industry, or Heidegger's categories of "curiosity" and "idol talk."

CHAPTER TWO

FEENBERG'S CRITICAL THEORY OF TECHNOLOGY AND ITS PROBLEMS

Introduction

Contrary to earlier, essentialist approaches to technology, which tended to emphasize a necessary technological rationality, in recent decades philosophers have begun to construct more empirical and historical views of technology, and to understand it in its actual uses in social contexts. Accordingly, we can track a transition from a discussion about *Technology* to a discussion about *technologies*.[1] This (broadly) *constructivist* approach argues that society simultaneously shapes technology as technology shapes society. Technology is not essentially neutral, but neither is its nature predetermined. Technology is always underdetermined and always embodies specific values. From this vantage point, human activity, technology, and the natural and human environment are bound up together in a relationship of mutual constitution.[2]

A salient difference between constructivist and essentialist approaches to technology is that the former tend to have a more defused picture of the role of technology in society. Essentialists often view technology as leading to centralization (and domination), whereas constructivists tend to view technological power as being

[1] See: Don Ihde, "Forward," in *American Philosophy of Technology: The Empirical Turn*, ed. Hans Achterhuis (Bloomington: Indiana University Press, 2001), viii; also see: Hans Achterhuis, "Introduction: American Philosophers of Technology," in *American Philosophy of Technology: The Empirical Turn*, ed. Hans Achterhuis (Bloomington: Indiana University Press, 2001), 3.

[2] Kaplan, "Introduction," xvii–xviii.

exercised in fragmented ways.[3] One of the main efforts of the constructivist approach as a critical theory of technology is to restore the possibility of agency within the technological realm, a possibility that has been placed in serious doubt by many twentieth century thinkers. However, the defused presence of technology in social life presents its own set of challenges. One such challenge is that the role of technology in our lives is often not obvious, and operates in the background of our everyday lives. One cannot help but think that one of Heidegger's most important influences on the constructivist approaches to technology is that they invoke, in one form or another, the idea that we need to be reminded of the constructed nature of technology; that we "forget" this aspect of technology; that it recedes into the background of consciousness and everyday life.[4]

This chapter will examine anti-essentialist approaches to technology, with an emphasis on the critical theory of technology brought forth by Andrew Feenberg. The discussion in this chapter will be conducted as follows: (1) First, I will provide a brief overview of the approaches of Albert Borgmann and Don Ihde, who were clearly influenced by Heidegger's thinking on technology, and appropriated it toward their own original directions. (2) I then focus on the work done by Andrew Feenberg to develop a critical theory of technology, an approach that is more influenced by the tradition of the Frankfurt School. I frame Feenberg's path as a choice between Habermas and Marcuse in

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[3] See: Martijntje Smits, "Langdon Winner: Technology as a Shadow Constitution," in *American Philosophy of Technology: The Empirical Turn*, ed. Hans Achterhuis (Bloomington: Indiana University Press, 2001), 157.

[4] This is the case in Albert Borgmann's conception of the "device paradigm." Langdon Winner also shares this concern for forgetting, when he writes: "there is a sense in which all technical activity contains an inherent tendency toward forgetfulness" (Langdon Winner, *Autonomous Technology: Technics-Out-Of-Control as a Theme in Political Thought* [Cambridge, MA: MIT Press, 1977], 315–316).

their debate over technology, where, for Feenberg, Marcuse ultimately has the upper hand. (3) After laying out Feenberg's argument for a possible "democratization of technology," I proceed to question this argument, with a special concern for the possibility of agency within this technological social framework. (4) In light of these concerns, I suggest that the potential contribution that Habermas could bring to a critical theory of technology ought to be re-examined.

Anti-Essentialist Appropriations of Heidegger

The discussion of anti-essentialist approaches to technology begins with Don Ihde and Albert Borgmann, two philosophers who have aimed to appropriate Heidegger's insights concerning technology toward more socially situated accounts. To begin understanding Albert Borgmann's philosophy of technology, one must begin with his distinction between "focal things" and "devices."[5] Focal things are material artifacts that "knit together" small and large communities engaged in a constellation of practices and materials (means) required to obtain the ends of the particular material artifact. Contrary to focal things, devices are material artifacts in which the means and ends are radically separated so that users can obtain a commodity without understanding or engaging with the means of producing that commodity.[6] For example, a central air heating system provides the commodity of heat to a building's occupants without requiring any engagement with the underlying machinery that generates that heat.[7] Devices, then, are

[5] Albert Borgmann, *Technology and the Character of Contemporary Life* (Chicago: University of Chicago Press, 1984), 40–48.

[6] Ibid., 43.

[7] Ibid., 42.

contextless technological means, while focal things are socially embedded artifacts or practices (in contrast to the central air heating system, think of a hearth at the center of a home – which requires maintenance, as well as a household division of labor – as a focal thing).[8] Modern technology shows the device responsible for the product, but the whole "machinery" that makes this product possible "recedes into the background."[9]

Borgmann argues that the tendency in modern societies (not only in concrete technological designs, but also in our relation to nature and to others) is toward the "device paradigm." He notes that this move from a focal thing to a device – say, from the traditional hearth to the central air heating system – is not only a technological shift, but a shift in a complex social process.[10] It is precisely the changes in human social relations and relations with the world brought about by the device character of technologies that concerns Borgmann most.

Heidegger's work – such as his 1935 essay on "The Origin of the Work of Art" – has a clear influence on Borgmann's conception of "focal things." For example, in this essay Heidegger discusses the question of how a world is disclosed and centered in a tangible thing (he proposes the Greek temple as one example).[11] But while Heidegger ultimately says that "only a god can still save us,"[12] Borgmann's analysis of the device

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[8] Pieter Tijmes, "Albert Borgmann: Technology and the Character of Everyday Life," in *American Philosophy of Technology: The Empirical Turn*, ed. Hans Achterhuis (Bloomington: Indiana University Press, 2001), 16.

[9] Ibid., 13.

[10] Ibid., 16.

[11] See: Heidegger, "The Origin of the Work of Art," 167–170.

[12] Heidegger, "Only a God Can Save Us," 277.

paradigm in technological design is meant to provide a path toward possible reform. Borgmann's vision for reform is not based on logical argument, but rather on what he refers to as a plea for assent. This kind of discourse (what Borgmann calls "deictic discourse") aims at pointing to "a new engagement with things" and "respects the other's integrity and feelings."[13] This reform program privileges focal things and practices, and calls for technological designs that promote focal participation. As Peter Tijmes points out, Borgmann puts forth a vision of the good life as focal praxis.[14] Thus, for Borgmann decisions about technological designs are in effect assertions about the good life.

Don Ihde has also appropriated Heideggerian themes in his philosophy of technology, most importantly his study of technologies in the phenomenological tradition.[15] In a shift from a phenomenology of Technology to a phenomenology of technologies, Ihde asks "what form of world-disclosure is *made possible by* technological artifacts."[16] That is, he analyzes the structure of our experience with technology.[17] Though both Ihde and Borgmann reject Heidegger's essentialist notion of technological enframing, they do share similar analyses of the way in which certain technologies recede into the background of experience (Ihde refers to such a relation to technology as "background relations," or, a technology's transparency): "They are present and absent at

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[13] Tijmes, "Albert Borgmann: Technology and the Character of Everyday Life," 21.

[14] Ibid., 25.

[15] Peter-Paul Verbeek, "Don Ihde: The Technological Lifeworld," in *American Philosophy of Technology: The Empirical Turn*, ed. Hans Achterhuis (Bloomington: Indiana University Press, 2001), 119.

[16] Ibid., 123.

[17] Ihde describes three kinds of relations to technology: mediation, alterity, and background. For more see: Verbeek, "Don Ihde: The Technological Lifeworld," 123–124.

the same time: without us noticing them, they give form to our experience by shaping context for it."[18]

Borgmann's and Idhe's anti-essentialist insights will continue to bear fruits throughout this work. We will see how Borgmann's endorsement of focal practices, as well as Ihde's concern for the way technologies shape our understanding of the world, will inform the reconceiving of deliberative democratic politics. However, the focus of this chapter will be on the critical philosophy of technology developed by Andrew Feenberg. While Borgmann and Ihde are clearly influenced by Heidegger's philosophy, Feenberg is more influenced by the Frankfurt School's critical theory, and situates his philosophy of technology within a social theory of democracy.[19] In a way reminiscent of Habermas, Feenberg attempts to offer a positive, more optimistic, program for critical theory in modern democracies. He writes, "I hope to find… the elements of a new theory of democracy in technologically advanced societies."[20] It is this explicit concern for theorizing democracy in technological societies that makes him the focus of this chapter's discussion.

Feenberg's Critical Theory of Technology

As an heir of the tradition of critical theory, and as a theorist who believes in the possibility of a democratic technological society, Feenberg frames his path forward

[18] Ibid., 132.

[19] Though Feenberg is strongly influenced by Marx, Adorno, Horkheimer, and Marcuse, he is also clearly influenced by French thinkers such as Latour and Foucault.

[20] Andrew Feenberg, "Modernity, Technology and the Forms of Rationality," *Philosophy Compass* 6, 12 (2011): 865.

through the debate between Habermas and Marcuse regarding technology.[21] Feenberg is attracted to Habermas and Marcuse insofar as they both offer more optimistic pictures than other critical theorists, especially Horkheimer and Adorno.[22] It is therefore worth beginning the discussion of Feenberg by understanding his relation to Habermas and Marcuse's thinking.

One of Feenberg's most significant attractions to Habermas is the latter's attempt to rehabilitate the prospect of a rational, democratic, emancipated society – a prospect placed in serious doubt by Adorno and Horkheimer. Although Habermas argued that the rationality inherent to science and technology cannot be altered, he nonetheless asserted that his Frankfurt School mentors have overlooked a kind of rationality different from instrumental rationality, namely, communicative rationality, which refers to the process of reaching intersubjective understanding (as mentioned in Chapter One).[23] Feenberg, then, is inspired by Habermas's insistence on carrying forward the project of an emancipated democratic society that nonetheless does not eschew a rational ideal. While Habermas develops his notion of communicative rationality, Feenberg develops a notion of a democratic rationality of technology.[24] As we will see, Feenberg adopts Habermas's conception of the democratic community as the context within which emancipatory technological design and usage choices can emerge.[25]

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[21] See the discussion about this debate in Chapter One.

[22] Feenberg, "Modernity, Technology and the Forms of Rationality," 868.

[23] More on Habermas's theory of communicative action (and communicative rationality) in Chapter Three.

[24] Feenberg, "Modernity, Technology and the Forms of Rationality," 868.

[25] Tyler Veak, "Whose Technology? Whose Modernity? Questioning Feenberg's Questioning Technology," *Science, Technology, & Human Values*, 25, 2 (Spring, 2000): 228.

However, Feenberg's thinking quickly diverges from Habermas's. While Habermas segregates technology (and instrumental rationality) to the realm of the system, and argues for an emancipatory (communicative) rationality in the lifeworld, Feenberg aims to bring the emancipatory dimension of rationality into technology itself. His main critique of Habermas has to do with Habermas's notion of "differentiation," according to which well-functioning (non-pathological) modern societies can maintain a healthy differentiation between the system (which would include technology and its inherent instrumental rationality) and the lifeworld (characterized by uninhibited communication). Feenberg asserts that Habermas underestimates the extent to which the problems technology is meant to solve, and the technological solutions offered, are shaped by social interests (which would be communicatively considered in the lifeworld), and are not simply a result of neutral instrumental action.[26]

This is where Feenberg turns to Marcuse. Feenberg aims to recover Marcuse's notion (which Habermas dismissed) that an altogether new technology can be imagined under alternative social conditions.[27] According to Feenberg, "Marcuse's position is unique among critics of modernity in that he recognizes the flexibility of technology, [i.e.] its potential for reconfiguration under different social conditions."[28] That said, Feenberg sees a need to go beyond Marcuse. Feenberg agrees with Habermas's criticism of Marcuse's vision in that Marcuse appeals to "a romantic myth" of some outside actors

[26] Feenberg, "Modernity, Technology and the Forms of Rationality," 869.

[27] Another endorsement of Marcuse against Habermas in this debate can be found in: Ben Agger, "Marcuse and Habermas on New Science," *Polity* 9, 2 (1976): 158–181.

[28] Feenberg, "Modernity, Technology and the Forms of Rationality," 870.

as the basis for transforming society.[29] If Habermas rejected the possibility of an alternative technology, one not guided by the principles of instrumental action, Feenberg embraces this possibility but presses for a more empirically based approach that would provide guidelines for reform. He eschews relying on some radical transformation of society in order to imagine a more democratically oriented technological rationality.[30]

After situating Feenberg's thought within the framework of the Marcuse-Habermas debate over technology and his critical endorsement of Marcuse, I now turn to illustrating how Feenberg develops his theory of technology within and beyond Marcuse's vision. I will conclude the chapter by arguing that Feenberg's theory is still lacking, and that he overlooks the important contribution that Habermas's thought may bring to his project.

Like Borgmann and Ihde, Feenberg aims to get away from essentialist theories that "are too indiscriminate in their condemnation of technology to guide efforts to reform it."[31] For him, views of technology as neutral, as well as views of technology as having an essence, both miss an important aspect of technology. Claiming that Marcuse was correct to argue that technology is to a large extent socially shaped and that the form technology takes on is a political choice, Feenberg emphasizes that the issue of how

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[29] Feenberg, *Questioning Technology*, 155. On Feenberg's more charitable interpretation of Marcuse, see: Ingram, *Habermas*, 43–44.

[30] Feenberg's theory has evolved from an explicitly socialist theory in his early book *Critical Theory of Technology*, to a more reform-oriented approach that is not necessarily tied to a socialist (or even anti-capitalist) vision.

[31] Feenberg, *Questioning Technology*, 152.

particular design choices are made over other choices is an inherently political question.[32] Following Karl Marx – who famously wrote that though philosophers have always interpreted the world, the point nevertheless is to change it[33] – Feenberg is not calling only for a new interpretation of technology, but for changing it. Namely, he is calling for a democratization of technology.[34]

Feenberg refers to social constructivist accounts of technology to make his case. What he finds helpful in these accounts is that they challenge the differentiation of spheres in modern societies (as described by Habermas) by arguing that the development of technology always includes technical, political, economic, and other social concerns.[35] Such empirical studies and approaches allow a critical philosophy of technology to demystify the claims to rational necessity and universality of technical decisions, by insisting that technological development does not follow only technological imperatives.[36] Social choices intervene in the selection of the problem definition as well as its solution.

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[32] As discussed below, Feenberg qualifies this Marcusean view about the socially determined nature of technology by distinguishing between primary and secondary levels of instrumentalization of objects (the primary level is essential to technology while the secondary level is socially shaped).

[33] Karl Marx, "Theses on Feuerbach," in *Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett, 1994), 101.

[34] More on the notion of "democratizing" technology follows.

[35] For example, Feenberg is influenced by the studies of Bruno Latour (see Hans Achterhuis, "Andrew Feenberg: Farewell to Dystopia," in *American Philosophy of Technology: The Empirical Turn*, ed. Hans Achterhuis [Bloomington: Indiana University Press, 2001], 72–75).

[36] Feenberg, *Questioning Technology*, 79.

An illustration of this point can be found in the use of Geographic Information Systems (GIS) in environmental surveying and planning.[37] GIS can be defined here as a means of integrating spatial and non-spatial information into a single computer system for analysis and graphic display (think of Google Maps as a popular example). It has been argued that the use of GIS for policy-making is less likely to favor special interests in cases where what is surveyed is a physical environment, since there is little room for value judgment. However, as one study asserts, even here concerns of justice emerge:

> During the former apartheid era in South Africa's Soil and Irrigation Research Institute a maximum 12 percent slope angle for plow land was set. This was based on the requirements of mechanized cultivation and GIS land suitability analyses was carried out accordingly. This slope angle reflected the Institute's viewpoint and constituency as hand hoeing and animal plowing, as practiced by the majority of black farmers, allows cultivation on much steeper slopes.[38]

Though the decision to set the maximum slope angle suitable for plowing at twelve percent seems innocent, in fact the chosen slope angle reflected the practices of (mostly) white farmers using mechanized farming techniques, while the practices of traditional (mostly black) farmers go unrecognized by the GIS technology. Consequently, black farmers were de facto denied both public recognition as farmers and the resources that come with such recognition, thereby compromising their dignity and livelihood. This example illustrates how an application of a technology was oppressive insofar as its application excluded a large percentage of the local user base without acknowledging that the chosen solution represented only one of a variety of possible answers. A specific

[37] This example is not Feenberg's, but mine.

[38] Steve Cinderby, "Geographic Information Systems (GIS) for Participation: The Future of Environmental GIS?," *International Journal of Environment and Pollution* 11, 3 (1999): 306.

understanding of efficiency was chosen as the solution, and the value-laden aspects of this technological solution were ignored.

One might object here and respond that while there are indeed significant differences between tractor-cultivated large-scale agriculture and labor-intensive, small-scale agriculture, this has nothing to do with the GIS technology per se. This objection overlooks the fact that the design of the technical system to survey slope angles is in itself value-laden. It expresses a favoring of "efficient" mechanized cultivation limited to certain slope angles, and thus chooses slope angles as the determinant data to be found. A different cultural approach, identifying the problems differently, would have resulted in an altogether different technology; or, at the very least, it would have made this particular technology irrelevant to the case at hand. Therefore, Feenberg insists that technology should be understood as "socially relative and the outcome of technical choices is a world that supports the way of life of one or another influential social group."[39] He calls the availability of technology for alternative developments with different social consequences, its "ambivalence."[40]

According to Feenberg, modern technologies are characterized by a particular rationality that has been embodied in their designs. He calls this embodied rationality the "technical code" of that technology. The concept of a "technical code" is meant to

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[39] Andrew Feenberg, "Replies to Critics," in *Democratizing Technology: Andrew Feenberg's Critical Theory of Technology*, ed. Tyler J. Veak (Albany: SUNY Press, 2006), 184.

[40] Feenberg, *Questioning Technology*, 7. Sharon Helsel explains that, "Set against Weber's inescapable determinism, Feenberg's notion of technical ambivalence argues that the ongoing rationalization and innovation of modern production systems does not proceed according to the singular and universal design criterion of ever-increasing efficiency. Technical ambivalence indicates the indeterminacy, or play, in any human-machine arrangement, so that in every technical development there is more than one possible design permutation for a particular application" (Sharon Helsel, "The Dialectic of Capitalist Technology," *New German Critique* 60 [Autumn, 1993]: 162).

articulate the relationship between social and technical requirements. It describes "the realization of an interest in a technically coherent solution to a problem."[41] Feenberg illustrates this concept through an example of the technical and social construction of the technical code for steamboat boilers in the nineteenth century. At first the boilers did not include safety considerations in their design, and indeed thousands of workers died while attending to them. Over time safety gained more weight in public opinion, and despite the cost it was introduced into the design process. Thus, though designing a boiler seems like a technical matter, Feenberg emphasizes that its design embodies specific values; safety versus cost, for example.[42]

Democratizing technology, then, means expanding technological design to include alternative interests and values. Furthermore, a "deep" democracy would entail a transformation of the technical codes, the social processes through which they are developed, and the educational processes through which they are inculcated.[43] Thus, for Feenberg a democratization of technology is ultimately about "finding new ways of

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[41] Feenberg, "Replies to Critics," 185. See also: Feenberg, *Questioning Technology*, 87–89. It is worth noting that Feenberg's notion of technical codes has evolved over time. In his 1991 book *Critical Theory of Technology* this notion is based on his broader argument for the possibility and desirability of transitioning from the present capitalist society to a socialist one. Accordingly, in this early work Feenberg distinguishes between a capitalist and a socialist technical code. However, in his 1995 book *Alternative Modernity* he already revises this binary view and makes room for a variety of technical codes (see Achterhuis, "Andrew Feenberg: Farewell to Dystopia," 66–74. For more on Feenberg's early distinction between socialist and capitalist technical codes, see: Helsel, "The Dialectic of Capitalist Technology," 162–168).

[42] See Andrew Feenberg, "Subversive Rationalization: Technology, Power and Democracy," in *Technology and the Politics of Knowledge*, eds. Andrew Feenberg and Alastair Hannay (Bloomington: Indiana University Press, 1995), 14–16. Also see Andrew Feenberg, *Between Reason and Experience: Essays in Technology and Modernity* (Cambridge, MA: MIT Press, 2010), 21–24.

[43] Feenberg, *Questioning Technology*, 143.

privileging these excluded values and realizing them in the new technical arrangements."[44]

It is now apparent that for Feenberg technology is a dimension of culture with implications for the distribution of political power. As such, technology must be understood as a site of social struggle. He analyzes this struggle as manifested in three principles that constructivists hold regarding technology: (1) Technical design is not determined by a general criterion such as efficiency, but by a social process; (2) this social process is not about fulfilling "natural" human needs, but concerns the cultural definition of needs; (3) competing definitions reflect competing visions of modern society realized in different technical choices.[45] By articulating this struggle, a critical theory of technology can "demystify the illusion of technical necessity, and expose the relativity of the prevailing technical choices."[46]

It is worth noting that this view complicates how we understand Marx's position regarding technology. Similar to Habermas, Marx saw technology as essentially a means to unburdening man of labor necessary to meeting natural needs. However, Marx also questioned why, in his industrial age, the conditions of most have not improved.[47] He of course viewed the technological apparatus of factory machinery as oppressive and

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[44] Feenberg, "Replies to Critics," 185.

[45] Feenberg, *Questioning Technology*, 83–84.

[46] Ibid., 87.

[47] For example, in his analysis of machinery and modern industry (*Capital I*, Chapter XV) Marx emphasizes that modern machinery has the potential of unburdening workers of much of their toil. He quotes Mill's assertion that "It is questionable if all the mechanical inventions yet made have lightened the day's toil of any human being." Marx points out that the aim of the capitalist is not to apply technology toward such unburdening, but rather toward producing surplus value. See: Karl Marx, *Capital, Vol. I: A Critical Analysis of Capitalist Production*, ed. Frederick Engels (New York: International Publishers, 2003), 351.

alienating, but he also held the more optimistic view, as Feenberg does, that technology *has the potential* of being a liberating force.[48] What Feenberg's position illuminates is the way in which technological designs and functions are part and parcel of the struggle among groups in society.

According to Feenberg, this struggle calls for a new type of politics, which must be primarily carried out in the micro level, as changes on this level must ground any changes in the macro political or economic level: "the tensions in the industrial system can be grasped on a local basis from 'within,' by individuals immediately engaged in technically mediated activities and able to actualize ambivalent potentialities suppressed by the prevailing technological rationality."[49] Feenberg argues that actors within technically mediated systems are able to identify a "margin of maneuver" within such systems, and alter them.[50] Feenberg argues that this political approach to technology can introduce more democratic controls and redesign the technology to accommodate greater inputs of skill and initiative. It is a shift in understanding of the possibilities that technology presents, of our ability to resist and reform technological designs, and of the political struggle over technical codes that constitute technology and our use of it.

Before concluding this brief exposition of Feenberg's theory, we must delineate how he proposes to think about technology in a social-constructivist way, while still

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[48] Marx suggests that the advanced productive forces can be harnessed in a communist society so as to bring about the "highest phase of communism," the banner of which will be "From each according to his abilities, to each according to his needs!" See: Karl Marx, "Critique of the Gotha Program," in *Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett, 1994), 321.

[49] Feenberg, *Questioning Technology*, 105; also Andrew Feenberg, *Critical Theory of Technology* (New York: Oxford University Press, 1991), 66.

[50] See Feenberg, *Critical Theory of Technology*, 86–89.

acknowledging that without attributing some basic essence to technology it is unclear what it would mean to speak of technology at all. To address this, Feenberg develops a theory of technology that analyzes it on two levels of instrumentalization – primary and secondary.[51] The primary level simplifies objects for incorporation into a device while the secondary level integrates the simplified objects within a natural and social environment. These two levels are analytically distinguished, though this distinction is not neatly kept in actuality (that is, for the most part they are "ideal types").[52]

Feenberg's central effort in developing the concept of primary instrumentalization is intended to acknowledge some essence of technology, but one that can still account for the social dimensions of technological systems. He believes that a social account of the essence of technology is crucial for enlarging democratic concerns to encompass the technical dimension of our lifeworld (precisely the point he criticizes Habermas for overlooking).[53] Primary instrumentalization is characterized by four moments: (1) *decontextualization*: in order to reconstitute natural objects as technical objects, they must be "de-worlded," that is, artificially separated from the context in which they are originally found so as to be integrated into a technical system; (2) *reduction*: this refers to

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[51] Feenberg, *Questioning Technology*, 203–207.

[52] This conception of primary and secondary instrumentalization also shows a shift in Feenberg's thinking. In his earlier *Critical Theory of Technology* he conceptualizes primary instrumentalization as containing a capitalist bias, and proposes secondary instrumentalization as a socialist alternative (see Helsel, "The Dialectic of Capitalist Technology," 168). However, as explained below, later on he conceptualizes the primary level as inherent to technologies as such, and the secondary level as a social process with democratic potential (though it should be noted that even in this later position he retains the qualified view that capitalism as a system tends to promote designs that reduce technical designs to their narrow, abstracted functions, while more democratic designs integrate broader values drawn from the lifeworld). Thus, it is perhaps fair to say that in his later view we see the influence of Heidegger and Habermas in the notion of primary instrumentalization and Latour's influence in his notion of secondary instrumentalization (on the latter point see: Achterhuis, "Andrew Feenberg: Farewell to Dystopia," 88).

[53] Feenberg, *Questioning Technology*, 17.

the process in which the decontextualized object is reduced to those aspects through which it can be enrolled in a technical network; (3) *autonomization*: this refers to how the agent of technical action isolates herself as much as possible from the effects of her action on her objects (an example of this would be the faint sound that the truck driver hears through the closed truck windows as he is noisily driving down the highway); finally, (4) *positioning*: those in control strategically position themselves in order to exert power, since "the subject's action consists not in modifying the law of its objects, but in using that law to advantage." This act of "positioning" recognizes that technology operates within a field of natural laws (physics, for example). Thus, the aim of the positioning subject is to harness these laws to maximize the technological effect.[54]

Secondary instrumentalization consists in the reappropriation of some of the dimensions of contextual relatedness from which the object has been abstracted. It is characterized by four moments: (1) *systematization*: the process of re-embedding the object in an environment through combinations and connections; (2) *aesthetic and ethical mediations*: these secondary qualities assist in embedding the object smoothly in the new social context; (3) *vocation*: this reflects the impact of tools on their users (this works against the process of autonomization); (4) *initiative*: this is the tactical initiative of those submitted to technical control, which can counter strategic positioning. In other words, through *initiative* actors impacted by the technology react to it (whether by embracing and developing it, or resisting and transforming it).[55]

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[54] Ibid., 204.

[55] It is worth noting that in his essay on "The Question Concerning Technology" Heidegger also offers key structures of technology. Borgmann outlines Heidegger's analysis: "Modern technology challenges (*herausfordern*) nature to yield its treasures to humans. Next, technology positions (*stellen*) and orders

Feenberg's account of technical instrumentalization as a dialectical and reciprocal social process (autonomization vs. vocation, strategic positioning vs. initiative, and so on) can thus be understood as the process in which empowered groups choose to express certain sets of specific interests and standards in specific technologies, which in turn are re-experienced, challenged, redefined and resisted by their users. Consequently, this account raises a great concern when the end users are precisely *not* empowered, and thus it is unclear in many instances to what extent they can resist or redefine the technology in an effective and meaningful way. This concern is the focus of the following section.

Democratizing Technology and the Question of Agency

Feenberg puts great emphasis on the ability of users of technology, and those impacted by it, to resist and reshape existing technical codes. He asserts that "eventually," the pernicious side effects of certain technologies "cause such destruction and disease that ordinary people are affected and protest. The protests feed back into technological design and result in modifications that reflect a more realistic understanding of nature's complexity. This overall dynamic leads to awareness of the hybrid character of technology and a weakening of technocratic and determinist ideology."[56]

In this section I question the validity of Feenberg's confidence in the inherent possibility for meaningful agency and participation in the democratization of technology.

(*bestellen*) the yields of nature so that they are available and disposable to humans. Whatever is so positioned and ordered becomes a resource (*der Bestand*). Finally, Heidegger gathers this entire way of treating and disclosing nature under the title of the framework (das Gestell) – the essence of technology" (Borgmann, "Technology," 428–429). The similarity to Feenberg's categories (positioning, for instance) raises the question of whether Feenberg turned a corner from Heidegger, only to find Heidegger lurking once again. Heidegger might very well argue that Feenberg's categories of the basic structure of technology testifies to the modern understanding of technology which he described as the essence of technology.

[56] Feenberg, "Modernity, Technology and the Forms of Rationality," 871.

This will be conducted along three main lines of thought. The first will examine the validity of empirical examples Feenberg often uses to demonstrate his point concerning agency. Stemming from the examination of the empirical cases, the second line of thought will illustrate that Feenberg's notion of democratizing technology cannot promise participation without a clearer vision of what we mean by democracy. Finally, I will turn to a number of scholars who have highlighted another concern for agency vis-à-vis technology, namely, the way in which some technologies can become deeply entrenched in society and consequently put into question the possibility of their reform. These three concerns regarding the democratization of technology will be taken in turn.

One argument often introduced by Feenberg in order to demonstrate the possibility of such reformative agency is that of empirical examples. It would be less fruitful to simply provide counterexamples as a response to such examples. Rather, it is worth examining the examples Feenberg himself provides, since they are meant to point out that agency is not only a theoretical possibility, but a widespread reality.

However, before delving into the concrete cases that Feenberg gives as examples for resistance and appropriation, the value of empirical examples as such should be evaluated. It seems that the only point such examples make, which granted is an important one, is that (at least some) technologies are "underdetermined." But the fact that this is true in some cases does not mean it is always true. In addition, Feenberg fails to show *what* it is about these cases that made resistance successful. Moreover, even if we could show that it is *theoretically* possible to resist and redefine any technology, it is not clear that every technology could *actually* be resisted and redefined.

Looking at some of Feenberg's empirical examples, perhaps the most telling case is that of the May Events in Paris in 1968. He tells us that this social movement, being very conscious of the technocratic nature of society and the possibility for changing it, primarily demanded "self-management as an alternative."[57] But though this movement was well aware of the politics of technology, in historical perspective it seems to have failed. Not only is self-management far from being a widespread practice, but hierarchical capitalist forms of management have become more dominant over the years since those events. Feenberg eloquently states that the students "hoped to change the system before it became their job to run it,"[58] but does not emphasize enough that this hope has been proven futile. Though they declared, "Progress will be what we want it to be," a democratization of the workplace has not become a reality. In fact, it seems that capitalist hierarchy and management's power over workers have been on the rise since the early 1970s. Thus, it is not clear that Feenberg is justified in announcing that the social movements of the 1960s "were precursors that announced the limits of technocratic power."[59] Insofar as he is referring to putting limits on the reach of the bureaucratic welfare state he may be correct, but the replacement of "technocratic power" (in that sense) by an ever-stronger corporate power does little, if any, to promote any form of emancipation. In any case, social hierarchies, aided and abetted by technical structures of division of labor, have not dissipated.[60]

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[57] Feenberg, *Questioning Technology*, 5.

[58] Ibid., 24.

[59] Ibid., 43.

[60] For more on this see Veak's discussion of Feenberg in: Veak, "Whose Technology? Whose Modernity?," 229–233. Noting the reality of rising economic inequalities in the US since the 1970s, Veak concludes:

What are we to learn from the fact that since the May Events technology has fiercely maintained what Feenberg calls the "conservation of hierarchy" while facing such a popular and resistant movement for change? Feenberg asserts that the most significant achievement of the 1968 protests is that they challenged the technocratic order, unmasking its valuative and hierarchical bias, which hides behind the façade of pure technical rationality.[61] But this seems to lead us to an even bigger problem: even though – so the argument goes – this truth was exposed, the hierarchical system has still endured and expanded since.

Feenberg tells us that in the new technical politics, social groups "turn back reflexively on the framework that defines and organizes them… It is this sort of agency that holds the promise of a democratization of technology."[62] But why, then, has the demand for the democratization of the workplace not been realized? In fact, the discontent with the technocratic welfare state has resulted in the resurgence of a socio-economic paradigm, which bolstered the accumulation of power by the capitalist class.[63] Thus, consciousness of being unjustly impacted has perhaps proven to be necessary, but definitely not in itself sufficient for effective resistance.[64]

"What is needed is not a technological hermeneutic but a sustained critique of the global market system… Workers cannot democratically resist attempts to de-skill or protest poor working conditions when a corporation can simply move to another country and continue to exploit without resistance" (Ibid., 233).

[61] Feenberg, *Questioning Technology*, 104.

[62] Ibid., 105.

[63] The term "capitalist class" often seems too abstract to apply to a salient group, but some critical theorists have suggested concrete ways of operationalizing it in our contemporary economic context. For one example, see: David Schweickart, *After Capitalism* (Lanham, MD: Rowman and Littlefield, 2002), 22–24.

[64] Veak similarly critiques Feenberg, asserting that "in focusing on the 'micropolitics' of local struggles over technological design, he largely ignores the broader context of the global market system and how the 'logic' of the market always seems to prevail" (Veak, "Whose Technology? Whose Modernity?," 227).

A different problem with Feenberg's use of empirical cases can be diagnosed in his example of the Minitel. As he explains, in the early 1980s the French telephone company (the PTT) distributed millions of quasi-computer terminals ("Minitels") that connected to the home telephone. These terminals allowed users to access information, especially, though not limited to, the phone directory. The thought behind the distribution of the Minitels was to provide a centralized and efficient source of information. However, users and other companies realized that this system could be transformed into a network of user communication, contrary to the system designers' initial intent. Consequently, new applications for the Minitel arose which focused on direct interpersonal communication, such as "chatting," including adult chat services known as the *messageries roses* ("pink messages").[65]

Feenberg sees the case of the Minitel as an example of instances in which "the original design of the systems reflected the interests and concerns of technical and administrative elites. These elites imposed their technocratic conception of progress on the technologies they designed. But users resisted and succeeded in imposing another layer of function reflecting interests excluded by the original designs."[66] Feenberg views this as an exemplary case of how diverse interpretive approaches to the devices we make often play a significant role in the way specific technologies evolve. Most importantly for Feenberg, such examples demonstrate the ability of users to resist the imposition of technologies and to reappropriate them toward new and unexpected ends.

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[65] Feenberg, *Questioning Technology*, 126.

[66] Ibid., 219.

What is clear from the example of the Minitel is that the technology in question was appropriated and redefined by users. But was it democratized? As Gerald Doppelt points out, "[w]hile this may be desirable, such changes of technology in response to consumers' initiatives or preferences follow the logic of market rationalization, not democratization."[67] In this Doppelt demarcates an important distinction between consumer power and democratic agency. He adds that Feenberg's examples "do not provide an adequate normative standard or set of standards."[68] Doppelt asserts that if Feenberg is advocating for a democratization of technology, he would do good to articulate what such democratic ideals would entail. Otherwise, his critical theory of technology leaves us with a programmatic and normative deficit, and lacking a larger and clearer vision of democracy, as it relates to technology.[69] Without a theory of democracy, we have no normative resources from which to draw when arguing for the empowerment of hitherto excluded interests. We would have no standard with which to judge whether particular designs are "democratic" or ought to be "democratized." When discussing the interests embedded in particular technical designs, Feenberg looks to participants or users of the technologies as the potential locus of the democratization process. However, it may well be that the democratic public at large (the demos) has interests that are at odds with those of a particular group of users in cases where a particular technology benefits a small group, but is a hindrance to the democratic process or democratic culture. Would

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[67] Gerald Doppelt, "Democracy and Technology," in *Democratizing Technology: Andrew Feenberg's Critical Theory of Technology*, ed. Tyler J. Veak (Albany: SUNY Press, 2006), 89. See also: Gerald Doppelt, "What Sort of Ethics Does Technology Require?," *The Journal of Ethics* 5, 2 (2001): 155–175.

[68] Doppelt, "Democracy and Technology," 92.

[69] Doppelt, "Democracy and Technology," 87.

we say that regulatory policy ought to limit (or encourage) certain design choices, regardless of the desires of particular users? To answer these questions, we would need to better define what democratic values we ought to uphold through such technical designs, and these values would need to be argued for through a democratic theoretical framework.

I now turn to concerns regarding the deep entrenchment of technology in social systems and its implications for reforming technology. It is in this context that David Stump appeals to Thomas Hughes's analysis of four stages in the development of a system: invention and development; technology transfer; system growth; and substantial momentum.[70] According to this analysis, in the last stage (substantial momentum) the technology in question shapes society in such a deep way that it is unclear what kind of resistance to that technology is possible beyond the point where substantial momentum is attained. Veak also draws on Hughes' historical analyses to understand current technological systems. He writes:

> [Hughes] compares the development of electrical systems in Chicago, London, and Berlin and shows how each [particular] context transfigured the shape of the electrical system. […] Nevertheless, Hughes claims that by the 1930s, all three systems were homogenized by the market demands of utilitarian efficiency […] As in the case of the Internet, electricity was hailed as a liberatory technology - emancipating the common person from the drudgery of everyday life. But in the end, we find ourselves more deeply embedded in a system over which we have no control and no way out - that is, short of dropping out completely. Like London, we are all forced to capitulate to the standard (e.g., Microsoft) of the present (Internet) system.[71]

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[70] David Stump, "Rethinking Modernity as the Construction of Technological Systems," in *Democratizing Technology: Andrew Feenberg's Critical Theory of Technology*, ed. Tyler J. Veak (Albany: SUNY Press, 2006), 11. See also: Thomas Hughes, *Networks of Power: Electrification in Western Society 1880–1930* (Baltimore: Johns Hopkins University Press, 1983).

[71] Veak, "Whose Technology? Whose Modernity?," 232.

In other words, some technological systems cannot be easily transformed, certainly not by individual users. Reasons for this may be technical, or economic, but they may also be cultural. That is, some technologies may be so deeply integrated into our lifeworld that life without them can hardly be imagined, and alternative designs that do not change their social function would not change their primary social effect.[72]

This perspective resonates with the concern I raised earlier, namely, that the mere logical possibility of creating alternative technologies is often uninformative, since political action requires real alternatives.[73] Therefore, Stump calls for historical studies that can illuminate the options and choices that scientists actually made, and in what circumstances, a suggestion Feenberg would no doubt welcome. But Stump further stresses that we cannot be satisfied with underdetermination arguments alone.[74] He reminds us that to say that it is possible to challenge any technological development is one thing, but to actually change an entrenched system is another. For him, the issue of how political philosophy can be a guide to action, offering real possibilities instead of merely logical ones, is "the major question facing those who would challenge an entrenched technological system."[75]

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[72] Borgmann expresses similar concerns. See Tijmes, "Albert Borgmann: Technology and the Character of Everyday Life," 19.

[73] One may be reminded here of Kant's distinction between logical and real possibilities in his *Critique of Pure Reason*, where he makes the point that though some concepts may be logically possible, they may still be empirically impossible. Kant's famous example is that there is nothing *logically* contradictory in a concept of a figure enclosed between two straight lines. It is only *empirically* impossible insofar as it does not meet the conditions of possible human experience in space. See: Immanuel Kant, *Critique of Pure Reason*, eds. Paul Guyer and Allen W. Wood (New York: Cambridge University Press, 2009), 323–325 (A220/B267-A224/B272).

[74] Stump, "Rethinking Modernity," 8.

[75] Ibid., 14.

In his call for a micro politics of technology, Feenberg seems not to consider seriously the momentum that the large technological systems that define modern culture have gained. To say that these systems are under the complete control of their users is doubtful, but not because these systems are autonomous, and heteronymous to human culture. For Stump it is rather because they are larger and stronger than most of the social mechanisms that we might use to influence them.[76]

An Insufficient Response to the Concern for Agency

After considering these difficulties for Feenberg's critical theory regarding the democratization of technology, let us consider Feenberg's possible response to them. First, the problem of resistance comes as no surprise to Feenberg. In fact, in *Questioning Technology* he strongly asserts that "[t]he fundamental problem of democracy today is quite simply the survival of agency in this increasingly technocratic universe."[77] Elsewhere he adds that "the central issue for politics today is the prevalence of technocratic administration and the threat it poses to the exercise of human agency."[78] He further articulates his concern by introducing the concept of "operational autonomy" as operating counter to a participatory democracy: operational autonomy is the control that orients technical development toward disempowering workers and the massification of the public. It is the freedom of the owner of an enterprise or his representative to make independent decisions about how to carry on the business of organization, regardless of

[76] Ibid., 10.

[77] Feenberg, *Questioning Technology*, 101.

[78] Feenberg, "Replies to Critics," 179.

the views or interests of subordinate actors and the surrounding community.[79] Feenberg asserts that in systems that wish to conserve power, operational autonomy becomes a goal in itself, "incorporated into the standard procedures and ways of doing things, prejudging the solution to every practical problem in terms of certain typical responses."[80] Feenberg raises the tendency of some technical systems toward operational autonomy as a concern, and calls for a different power structure that would innovatively produce different technologies, but similar to Marcuse's lack of specificity, he leaves nebulous what that would concretely mean.

Despite all his concerns, Feenberg still seems to view resistance as almost inherent to the technology itself. He explains that "[t]he exercise of technical power evokes resistances of a new type immanent to the one-dimensional technical system. Those excluded from the design process eventually notice the undesirable consequences of technologies and protest."[81] He explicitly asserts that "insofar as masses of individuals are enrolled into technical systems, resistances will inevitably arise and can weigh on the future design and configuration of the systems and their products."[82] It seems that here Feenberg is incorrectly binding together motivation for resistance and ability for effective resistance. We have seen through the example of the May Events that motivation per se has not brought about effective change over time.

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[79] Ibid., 181.

[80] Feenberg, *Critical Theory of Technology*, 79.

[81] Feenberg, "Replies to Critics," 180.

[82] Ibid., 183.

Feenberg insists that despite leftist dystopian fears, political action is still possible and that on occasion it has proven effective despite the obstacles. He continues to see micro-politics as a promising path for democratizing technology. But this only begs more questions. Are changes on the micro level all we can hope for in this increasingly technological age? How do we account for the impact of technologies on our very understanding of politics, discourse, and democracy? Can a micro politics of technology resist the larger systems of oppression facilitated by technological means?

Feenberg stresses that the democratization of modern technically mediated organizations is not fundamentally about the distribution of wealth nor even formal administrative authority, but concerns "the structure of *communicative practices*."[83] Here he emphasizes that the democratic question concerning technology is not solely the question of capitalist efficiency, nor is it simply a question of political domination. Rather, Feenberg hints toward reforming technology by reforming the way technology is understood, discussed and designed. He argues that "anything that promotes the interaction of these divergent ways of understanding the world is progressive. Obstacles to communication between technical specialists and those affected by their activities should be removed as quickly and as effectively as possible."[84] Building upon this focus on communicative processes, I will now argue that in order to address the concerns raised above, we need a theory of democracy upon which we can base a critical theory of technology. Furthermore, I argue that Habermas's discourse theory of democracy is best suited to provide this foundation. This would allow us to articulate the ground for a

[83] Feenberg, *Questioning Technology*, 120 (my italics).

[84] Feenberg, "Modernity, Technology and the Forms of Rationality," 872–873.

critique of this or that form of communicative practices, and to point to a set of standards to which we hold others accountable. We stand to gain an ethical and political (democratic) logic for the framework within which negotiations of technical codes take place.

Conclusion

This chapter has discussed Feenberg's response to essentialist conceptions of technology as outlined in Chapter One. I have shown how, stemming from the debate between Marcuse and Habermas about technology, Feenberg provides a valuable contribution to our understanding of the ways in which technologies are socially constituted. After reviewing Feenberg's proposal for a "democratization of technology" based in a micro-political framework, I have argued that such a position raises concerns for the agency of those who would transform the technical systems they confront. What is more, even when some technologies are transformed (such as in the case of the Minitel), it is not clear that this transformation has an emancipatory effect or promotes a more participatory democratic politics. Hence, I have argued that Feenberg's critical theory of technology must be based on a theory of democracy, which would provide normative guidance in analyzing technical systems and transformations. I concluded this chapter by asserting that Habermas's discourse theory of democracy, which emerges from his theory of communicative action, could provide such needed foundation. Habermas's discourse theory and its implications for a critical theory of technology will be the focus of the next two chapters.[85] What emerges, then, is that Feenberg is correct in his criticism of

[85] As will be shown later on, the discussion of Habermas's theory as a foundation for a critical theory of technology will show that Habermas's own theory must be reworked, to account for the ways in which

Habermas's analysis of technology, but can nevertheless benefit from Habermas's later contributions to political theory (a potential contribution of which Habermas himself may be unaware).

emerging technologies are impacting the structure of Habermasian categories of the democratic public sphere. We must, so to speak, take Habermas beyond Habermas.

CHAPTER THREE

SITUATING THE DEMOCRATIZATION OF TECHNOLOGY IN HABERMAS'S DISCOURSE ETHICS

Introduction

Chapter Two established a lacuna in Feenberg's approach to the democratization of technology, namely, the lack of a normative framework. Such a framework would assist in a clearer understanding of what is meant by "democratization" and would counter the concerns for agency that I have laid out. Furthermore, I have proposed that Habermas's discourse-ethical theory can overcome this lacuna by providing a normative ground to Feenberg's account. The aim of this chapter is to (1) provide an overview of Habermas's discourse-ethical framework, and (2) to show how this framework can provide normative guidance to Feenberg's theory of the democratization of technology. I achieve this twofold objective in four steps, as follows:

First, I outline the three theoretical roots of Habermas's discourse-ethical framework, namely, (a) his theory of modernity, (b) his roots in Kantian moral theory, and (c) his theory of moral development.

Second, I outline the basic tenets of discourse ethics by (a) explaining Habermas's position on the metaethical status of normative claims, and (b) demonstrating the derivation of Habermas's normative principles of discourse.

Third, I outline three general objections to discourse ethics that Habermas considers, along with his responses to these objections. The three objections are (a) the Rawlsian (or Kantian) objection; (b) the Aristotelian (or Hegelian) objection; and (c) the skeptical (or non-cognitivist) objection.

Fourth, I demonstrate how Habermas's discourse-ethics can provide a normative ground to Feenberg's account. This is carried out by (a) showing how Habermas's principles of discourse lay the groundwork for normatively guiding deliberative social practices, and then (b) showing how a normative framework for guiding these deliberative practices is significant for the concerns laid out in Chapter Two regarding the democratization of technology.

The chapter concludes by showing that normatively grounding Feenberg's account of the democratization of technology in discourse ethics results in a dialectic in which technology is the object of social deliberation while at the same time shaping these deliberations.

The Roots of Habermas's Discourse-Ethical Framework

In anticipation of my explication of Habermas's discourse-ethical framework, in this section I will lay some preparatory groundwork by sketching the foundation on which this framework rests. This foundation consists of three main bases: (1) Habermas's analysis of modern society's social evolution; (2) Habermas's roots in Kantian moral theory; and (3) Habermas's theory of moral development. I will take each in turn.

Habermas's Theory of Modernity

Chapters One and Two have touched upon Habermas's analysis of the social evolution of modern society, so I will merely review this here, while providing some additional level of detail. As mentioned (Chapter One), Max Weber analyzed modernity as entailing a process of rationalization. In this process, the world becomes "disenchanted" of its perceived inherent values. That is, the world is no longer understood in religious or otherwise metaphysical terms, but instead in secular, scientific terms. This rationalization also entailed a process of individualization insofar as (1) the world is to be examined rationally by every rational individual (one may recall the first of Kant's three maxims of common human understanding: "Think for yourself!"[1]), and (2) the evolution of modern industrialized societies moved away from traditional, community-based forms of self-understanding to increasingly understanding the individual as the locus of moral and legal accountability.[2]

Influenced by Weber's analysis of rationalization, Adorno and Horkheimer argued for an inherent dialectic in the process of enlightenment. Since the result of this process was that nothing has inherent value, all becomes a potential means to particular ends. The role of reason becomes not determining what is good, right, and of value; rather, reason takes on merely an instrumental role in determining the best way to achieve the desired ends. Thus, so the argument goes, the enlightenment process has produced

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[1] Kant's three maxims (Think for yourself; think from the standpoint of others; think consistently) are discussed in the famous section "Of Taste as a Kind of *Sensus Communis*" in the *Critique of Judgment.* See: Immanuel Kant, *Kant's Critique of Judgment* (London: Macmillan, 1931), 171–172.

[2] See Jürgen Habermas's discussion of Weber on rationalization in Chapter Two of his *The Theory of Communicative Action, Vol. I: Reason and the Rationalization of Society* (Boston: Beacon Press, 1984).

instrumental reason as the only form of reason available, which, in a capitalist society, facilitates domination.[3]

However, as noted in Chapter Two, Habermas criticizes his mentors' analysis of the dialectic of enlightenment, and ultimately argues for the centrality of communicative reason. First, Habermas argues that the *rationalization* of modern society also entails a process of *differentiation* of spheres of life.[4] That is, in modern society we see an increasing differentiation between the sphere of work and administration ("system") on the one hand, and the sphere of the lifeworld on the other hand. According to this theory of differentiation, well-functioning (non-pathological) modern societies can maintain a healthy differentiation between the two spheres, which are characterized by different forms of social interaction.[5] Habermas maintained that Adorno and Horkheimer's critique of instrumental reason as such is misguided, since this kind of reason has a positive function in its proper place, namely, the system. Furthermore, their analysis of the dialectic of enlightenment neglects another form of reason, namely, communicative reason, which has its proper function in the lifeworld. It is the underlying (rational) structure of communicative action that holds the emancipatory potential lamented by the first generation of critical theorists. As Ingram points out, Habermas traced the error of the "dialectic of enlightenment" insofar as it ignores the intersubjective nature of

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[3] See for example: Horkheimer, "Means and Ends," 38–42. For Habermas's presentation of Horkheimer and Adorno's critique of the dialectic of enlightenment, see: Habermas, *The Theory of Communicative Action, Vol. I* (Chapter Four, Section Two).

[4] I have noted in Chapter Two the challenges posed to Habermas's strict notion of differentiation by Feenberg and others in their analyses of the social construction of technologies.

[5] See Habermas's analysis of the "uncoupling" of system and lifeworld in: Jürgen Habermas, *The Theory of Communicative Action, Vol. II: Lifeworld and System: A Critique of Functionalist Reason* (Boston: Beacon Press, 1987), Chapter Six, Section Two.

communicative action back to "its origins in Kant's transcendental philosophy of 'subject-centered' reason."[6]

Habermas's disagreement with the early critical theorists is not only about a historical analysis (though it is also true that Habermas rejected the first generation of critical theorists' appeal to Marx's "speculative philosophy of history"). Habermas is also disagreeing with them about the very role of the critical theorist. It is not the role of the critical theorist to expose the false consciousness and hence distorted preferences of those supposed to be dominated. Rather, the role of the critical theorist is to expose the impediments to free communication through which these preferences can be worked out intersubjectively. As Ingram explains Habermas's position, "The convergent preferences of the 'common mind' are the only preferences that should count in specifying the concrete goal of a 'reasonable society'… All the critical theorist as *philosopher* can do is enlighten people about the norms implicit in these standards… And all the critical theorist as *social critic* can do is uncover the various powers in society that threaten to undermine and distort these norms."[7] We see here how Habermas's communicative framework is based both on his understanding of critical theory as such, as well as his analysis of the emancipatory challenges facing modern societies.

Habermas's Kantianism

From the analysis above one might get the impression that Habermas distanced himself from Kant's ethical framework. However, though critical of its subject-centered nature

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[6] Ingram, *Habermas*, 9. According to Habermas, Kant is not the sole perpetrator of this neglect. Habermas goes back to Descartes in this assertion, and continues all the way up to Sartre and Heidegger (he praises Kierkegaard, for example, for insisting on intersubjective philosophy). See Ibid., 4, 19–21.

[7] Ibid., 15–16.

(as noted above), it is well known that Habermas is deeply influenced by Kantian ethics in developing his own discourse ethics.[8] Hence, Habermas not only faces the various challenges to Kantian morality, but also the challenge to the Kantian unwavering trust in reason as presented by Horkheimer, Adorno and others. Thus, Habermas, like others (Rawls is but one example), takes on the task of rehabilitating a moral theory based on reasons by "analyzing the conditions for making impartial judgments of practical questions, judgments based solely on reasons."[9] The task is to show how reason can lead to a judgment with an "ought" character that has a justified claim to universal validity. To take on this task, Habermas sees discourse ethics as resting on three theoretical premises: (1) Cognitivism; (2) Universalism; and (3) Formalism.[10] His defense of these features of his moral theory clearly trace back to Kant. I will explain these features briefly.

1. Habermas's Cognitivism. First, Habermas's cognitivism means that for him moral judgments have cognitive content. This means that moral judgments "represent more than expressions of the contingent emotions, preferences, and decisions of a speaker or actor."[11] In other words, the question "What ought I do?" should not be reduced to the following two questions: (1) "What do I want to do?" and (2) "How do I do it?"[12] That said, as we will see, Habermas's cognitivism is careful about exactly what sort of claims

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[8] See for example Amy Allen's comment that "Habermas's focus on the rationality inherent in our social practices and political institutions, a rationality that for him is rooted in their communicative structure, places him in the long and illustrious tradition of political thought stretching back through Kant to Plato" (Amy Allen, "Discourse, Power and Subjectivation," *Philosophical Forum* 40, 1 [Spring 2009]: 2).

[9] Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: MIT Press, 1990), 43.

[10] See: Ibid.,119–120.

[11] Ibid., 120.

[12] Ibid., 49.

normative claims are. For Habermas, to say I *ought* to do X is to say I have *good reasons* for doing X, but still we should be careful not to assimilate normative claims to empirical propositions.[13] That is to say, the proposition "I ought to do X" does not admit of truth or falsity in the same way as the proposition "The shirt is white." This is not to say that we do not justify normative claims with reasons, but only that we justify normative claims with different kinds of reasons than we do empirical claims. Therefore, Habermas suggests that instead of talking about normative claims as claims to *truth*, it is better to talk about them as claims to *validity* (more on this follows).[14]

2. Habermas's Universalism. In endorsing universalism, Habermas states that discourse ethics rejects the position according to which "the validity of moral judgments is measured solely by standards of rationality or value proper to a specific culture or form of life."[15] Perhaps Habermas's most clearly Kantian starting point is that respect and dignity of individuals are necessarily tied to moral agents' autonomy to act upon universalizable norms they themselves accept as binding on the basis of their own reasoning.[16] As Allen points out, Habermas not only links the justification of moral norms with their universalizability; he makes the explicit claim that we "call moral only

[13] Ibid., 52.

[14] Ibid., 55–56.

[15] Ibid., 121.

[16] See: Thomas McCarthy, "Translator's Introduction," in *Legitimation Crisis* (Boston: Beacon Press, 1975), x.

those norms that are strictly universalizable, i.e., those that are invariable over historical time and across social groups."[17]

3. Habermas's Formalism. Like Kant, Habermas is concerned with the appropriately *moral* point of view. His effort is to reconstruct precisely this point of view as a universal one while acknowledging the plurality of worldviews and commitments (what Rawls later called "comprehensive doctrines") in modern society. Hence, for Habermas the moral point of view then becomes a universally justified *procedure*. The solitary reflection of the Kantian categorical imperative becomes an intersubjective process of dialogue. As McCarthy explains, for Habermas "normative justification is tied to reasoned agreement among those subject to the norm in question."[18] This requires not a hypothetical dialogue (like the one we imagine in Rawls's "original position"), but real discourse among real people. What Habermas emphasizes in labeling discourse ethics as formalistic, is that it does not inherently favor a particular type of ethical life over another, and it "sets the domain of moral validity off from the domain of cultural value *contents*."[19]

Though Kant's moral theory influenced Habermas's discourse ethics in undeniable ways, there is nevertheless an important sense in which Habermas grounds his moral theory in empirical research. Namely, Habermas draws on empirically informed theories of moral development. For example, Habermas's cognitivism is informed by

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[17] Habermas, *Moral Consciousness and Communicative Action*, 111, n. 41. See Allen's discussion of this claim in "Discourse, Power and Subjectivation," 8.

[18] McCarthy, "Translator's Introduction," viii.

[19] Habermas, *Moral Consciousness and Communicative Action*, 121.

(and Habermas claims also strengthens the arguments for) the notion that the relevant cognitive structures that support moral reasoning emerge as part of a developmental learning process.[20] Hence, we now turn to Habermas's theory of moral development.

Habermas's Theory of Moral Development

The role of a theory of moral development in Habermas's discourse ethics is not only to explain the process through which we become morally competent subjects. In addition to this, Habermas wants to show that the process through which we become subjects at all is intersubjective.[21] He calls this process "individuation through socialization."[22] Habermas draws on the work of George Herbert Mead to argue that the formation of the self emerges through processes of socialization within a conventional lifeworld. The subject emerges through "the internalization of the agencies that monitor behavior, which migrate, as it were, from without to within."[23] Since the subject emerges from a linguistically mediated lifeworld, Habermas argues that the subject has an "intersubjective core."[24]

Within the larger question of the development of what is sometimes called "ego identity," the more focused question in the context of discourse ethics is the development of moral consciousness, that is, of morally accountable agents. Here Habermas is heavily

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[20] See for example: Ibid., 122–127.

[21] This latter claim is aimed at supporting Habermas's intersubjective ethical account. Allen goes so far as to assert that "Habermas's defense of discourse ethics rests, in the end, on the plausibility of his intersubjective account of subjectivation" (Allen, "Discourse, Power and Subjectivation," 4).

[22] See: Habermas's essay, "Individuation Through Socialization: On George Herbert Mead's Theory of Subjectivity," in: Jürgen Habermas, *Postmetaphysical Thinking: Philosophical Essays* (Cambridge, MA: MIT Press, 1992).

[23] Habermas, *Postmetaphysical Thinking*, 152.

[24] See: Ibid., 178, 199.

influenced by the framework put forth by Lawrence Kohlberg. Kohlberg argued that we can identify six main stages in a person's moral development, where stages are distinguished by greater and greater degrees of reflexivity, abstraction, and generalization. Furthermore, these six stages can be grouped into three more general levels: preconventional, conventional, and postconventional levels of development.[25] I will now briefly review these levels in turn.

1. Preconventional Level. The first stage of moral development is characterized by punishment and obedience. Right is considered obedience to rules and authority. The motivation for action is the avoidance of punishment by authorities. The second stage is characterized by pursuit of self-interest and the acknowledgement of the standard of fairness. Right is understood as meeting one's own interests and needs, while acknowledging that one ought to let others do the same.[26]

2. Conventional Level. In the move from the preconventional to the conventional level, there lays a complicated and gradual transition involving both authority and autonomy.[27] As Habermas explains, "The task of passing to the conventional stage of

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[25] Habermas summarizes Kohlberg's theory in: Habermas, *Moral Consciousness and Communicative Action*, 123–124, 128–129. See also "Moral Consciousness and Ego Identity" in: Jürgen Habermas, *Communication and the Evolution of Society* (Boston: Beacon Press, 1979), 77.

[26] Habermas, *Moral Consciousness and Communicative Action*, 123.

[27] I cannot explain nor address at length the problems raised with regard to the transition from obedience to autonomous moral consciousness. In short, one might ask how the child is "ever to be in a position to assess the legitimacy of these structures of power/authority, given that he or she first has to internalize them in order to be capable of assessing their legitimacy?" (Allen, "Discourse, Power and Subjectivation," 19). One response here may be to concede that subjects are vulnerable to becoming psychically attached to and invested in unhealthy, authoritative forms of subjectivity and identity. But since the move from one stage to the next is a *learning process*, this process can be guided in a healthy way by (say) parental figures so that the child learns to utilize concepts such as norm-guided action in increasingly abstract and critical ways. One might think of abusive parents who were previously abused children as an example of a lingering distorted conception of the parental role in this learning process.

interaction consists in reworking the imperative arbitrary will of a dominant [often parental] figure of this kind into the authority of a suprapersonal will detached from this specific person."[28] Hence, in stage three one is concerned with the feelings and expectations of others, and is motivated to live up to those expectations because one values these relationships, and one is able to apply some version of the Golden Rule (treating others as one would want to be treated in similar situations). Stage four is characterized by a concern for the integrity of the social system and its order. Right is considered fulfilling one's agreed upon obligations, and contributing to one's group or broader society.[29]

2. Postconventional Level. The transition from the conventional to the postconventional stages is described as a transition from "norm-guided action to norm-testing discourse."[30] The social norms, which in previous stages went unquestioned, are now held to a standard of justification. In McCarthy's words, "the social world loses its quasi-natural validity."[31] Thus, in the fifth stage right is considered upholding basic rights and values of a society, even if these conflict with actual rules and social practices. Herein lies an acknowledgement that most social norms are relative to one's group, and that some values are universal. Habermas understands this stage to be aligned with utilitarian moral theories. In stage six one recognizes universal moral principles, and holds actual laws to the standard of these guiding principles. Here not only universal

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[28] Habermas, *Moral Consciousness and Communicative Action*, 153.

[29] Ibid., 124.

[30] Ibid., 127.

[31] McCarthy, "Translator's Introduction," ix.

values are recognized, but decision-guiding principles. One adheres to these principles because one has rationally recognized their validity.[32]

Finally, we can now see how this theory of moral development relates to Habermas's principles of cognitivism, universalism, and formalism. First, this theory explains how one develops the cognitive capacity for moral judgments. Second, Habermas asserts that this theory responds to objections to universalism in ethics precisely by appealing to universal forms of ethical reasoning. He explains that such objections "generally bring up the fact that different cultures have *different* conceptions of morality." For Habermas, Kohlberg's theory of moral development "offers the possibility of (a) reducing the empirical diversity of existing moral views to variations in the *contents*, in contrast to universal *forms*, of moral judgment and (b) explaining the remaining structural differences between moralities as differences in the stage of development of the capacity for moral judgment."[33]

Habermas's Discourse Ethics

After sketching the theoretical foundations of Habermas's discourse ethics, the aim of this section is to explain Habermas's argument for a discourse-based approach to ethics in greater detail. Within this explanation I will begin to show the way in which this theory can serve the norm-guiding function in the democratization of technology.

The Status of Normative Claims

Habermas's discourse-ethical approach emerges within his theory of communicative action. Communicative action refers to the use of language in order to coordinate action

[32] Habermas, *Moral Consciousness and Communicative Action*, 124–125.

[33] Habermas, *Moral Consciousness and Communicative Action*, 117.

on the basis of mutual understanding (as opposed to strategic action, which involves various forms of manipulation).[34] Hence, in communicative action the use of language as a coordinating medium is based on reasons, which are the currency used in a discursive exchange. Assertions in this exchange may vary in the kind of claims that they make, though we can put them under the general category of being claims to validity.

For Habermas, claims to validity are inherently claims we are willing to defend against criticism. This is because a claim to validity cannot be arbitrary, and, hence, we have reasons for this claim that we are willing to put forth.[35] Moreover, it is the fact that *criticizable* reasons ground the exchange that gives the claims asserted their validity.[36] Habermas asserts that by engaging in a free discursive exchange, we are already (pre-theoretically) affirming a number of presuppositions, such as having the goal of being understood and putting our claims forth for critique.

Habermas asserts that actors may make three different claims to validity in their speech acts when oriented to reaching agreement. First, *claims to truth* are made when referring to something in the objective world. For example, empirical propositions ("It is raining outside") lay a claim to truth and may admit of falsity. We justify, or redeem, these sorts of claims by means such as empirical observation. A second kind of claim is

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[34] Habermas's distinction between communicative action and strategic action can be briefly stated as follows: strategic action is when the influence of another is through threat of sanction or promise of gratification, whereas in communicative action the attempt to motivate another actor rationally through speech acts (see Habermas, *Moral Consciousness and Communicative Action*, 58). For an extensive discussion of communicative action as oriented toward reaching an understanding, see Chapter Three ("Immediate Reflections: Social Action, Purposive Activity, and Communication") in Habermas, *The Theory of Communicative Action, Vol I*.

[35] Habermas, *Moral Consciousness and Communicative Action*, 56.

[36] Habermas, *Between Facts and Norms*, 35.

claims to truthfulness (or sincerity), which refer to something in one's own subjective world. These may include, for example, statements about one's beliefs or emotions ("I believe it is raining outside"; "I am disappointed that it is raining outside"). The third kind of claims to validity is *claims to rightness,* which are made when referring to something in the shared social world. This would include normative claims ("Everyone ought to have equal rights").[37] For Habermas, the motivation of discussants to accept all three of these claims lies in the ability of the speaker to redeem them discursively by offering reasons, or, in the case of claims to truthfulness, by demonstrating behavior consistent with one's claims.[38]

With the analysis of speech acts as implicitly requiring justification, Habermas's intent in his theory of communicative action is to expose the rational *potential* intrinsic in everyday communicative practices.[39] He sees this analysis as providing a reflexive grounding for his discourse approach to ethics (and, as I will show in Chapter Four, politics as well). The analysis makes us aware of how the possibility of communicative rationality is already presupposed in every discourse, and therefore its *actualization* depends largely on observing the rules of discourse.[40] This awareness has a critical

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[37] Habermas, *Moral Consciousness and Communicative Action*, 58.

[38] Ibid., 58–59. As mentioned above, Habermas's type of cognitivism does not assert that normative claims are claims to truth in the same way as empirical propositions. Redeeming both kinds of claims require reasons, but different kinds of reasons.

[39] Jürgen Habermas, "Further Reflections on the Public Sphere," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, MA: MIT Press, 1992), 442.

[40] Habermas acknowledges that the term "rules" here is ambiguous. He explains that, for example, the rules of chess are constitutive of the game of chess. That is, one cannot "approximate" the rules of chess while actually playing, and yet still be playing the game of chess. However, the rules of discourse "are merely the *form* in which we present the implicitly adopted and intuitively known pragmatic presuppositions of a special type of speech" (Habermas, *Moral Consciousness and Communicative Action*, 91). In other words, when engaging in discourse participants must assume that these presuppositions are approximately realized,

social-political function insofar as it potentially rejects approaches that challenge the philosophical basis of democratic processes based on discourse, and hence on reason.[41]

Habermas's Principles of Discourse

Earlier I pointed out that in Habermas's theory of moral development, the move from the conventional to the postconventional level of moral competence involves the move from norm-guided action to norm-testing discourse. In a way reminiscent of Kant's categorical imperative, Habermas introduces the Principle of Universalization (U) as a principle with which we test the validity of normative claims. Habermas explains that this principle "intended to compel the *universal exchange of roles* that G. H. Mead called 'ideal role taking' or 'universal discourse'."[42] Hence, every valid norm has to fulfill the following condition:

> (U) *All* affected can accept the consequences and the side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests (and these consequences are preferred to those of known alternative possibilities for regulation).[43]

Habermas goes on to explicitly state the principle ("Discourse Principle") for discursively testing norms, as follows:

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even if this is to a tolerable extent a counterfactual assumption. As Habermas's analysis of universal pragmatics shows, a straight denial of these presuppositions while engaging in discursive argumentation – which is the attempt to discursively redeem claims to validity – would result in performative contradiction.

[41] Habermas, *Between Facts and Norms*, 158.

[42] Habermas, *Moral Consciousness and Communicative Action*, 65.

[43] Ibid. Habermas's more recent formulation of (U) is this: "A norm is valid when the foreseeable consequences and side effects of its general observance for the interests and value-orientations of *each individual* could be *jointly* accepted by *all* concerned without coercion" (See Allen's comment on this in "Discourse, Power and Subjectivation," 10).

> (D) 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*.[44]

Habermas stresses that (U) should not be mistaken for (D), since it is (D) that contains the "distinctive idea of an ethics of discourse."[45] Habermas also notes that (U) differs from the thinking of John Rawls (and Kant) in that it requires a plurality of participants in the discourse.[46] Moreover, while Rawls appeals to the solitary "veil of ignorance" for impartiality (and then requires a justification for requiring impartiality), Habermas contends that the impartiality requirement is (implicitly) built into the structures of discursive argumentation. In fact, Habermas approvingly cites McCarthy's Habermasian reformulation of Kant's categorical imperative, as follows: "Rather than ascribing as valid to all others any maxim that I can will to be a universal law, I must submit my maxim to all others for purposes of discursively testing its claim to universality. The emphasis shifts from what each can will without contradiction to be a general law, to what all can will in agreement to be a universal norm."[47]

Objections to Discourse Ethics

Before moving ahead to more explicitly consider the potential benefits of Habermas's discourse ethics for a theory of the democratization of technology, I will briefly outline

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[44] Habermas, *Moral Consciousness and Communicative Action*, 66. Amy Allen points out that "in his original account of the relationship between these two principles, Habermas claims that (D) presupposes (U); that is, it presupposes that norms can be justified. Habermas's strategy is first to defend (U), then to make the transition to discourse ethics properly. More recently, Habermas has revised his account of the relationship between (U) and (D); he now argues that (U) is derived from (D), rather than vice versa" (See: Allen, "Discourse, Power and Subjectivation," 10).

[45] Habermas, *Moral Consciousness and Communicative Action*, 66; see also Ibid., 93.

[46] Ibid., 66–67.

[47] Ibid., 67.

three general objections to discourse ethics that Habermas considers, along with his responses to these objections. The three objections may be (somewhat crudely) labeled, (1) the Rawlsian (or Kantian) objection; (2) the Aristotelian (or Hegelian) objection; and (3) the skeptical (or non-cognitivist) objection. I will take each in turn.

1. The Rawlsian (or Kantian) Objection. One might ask why we should privilege actual discourse over hypothetical discourse (such as Rawls's original position)? Habermas's response is that the best way to ensure that a participant's interest is not distorted is to allow her to actually participate in the discourse. However, the challenger may still object that the participant may nevertheless have a distorted sense of her own interests. Here Habermas responds in a twofold way. First, the participant must indeed be open to criticism by others. As we have seen, this is not only a beneficial attitude to hold from an epistemic perspective, it is indeed inescapable, at least implicitly, due to the presuppositions of communicative action.[48] Second, one's needs and wants stem from one's cultural values. Since these values derive from intersubjectively shared traditions, Habermas argues, they are best interpreted intersubjectively and not in isolation.[49]

2. The Aristotelian (or Hegelian) Objection. One may object to the approach of discourse ethics on the grounds that, similar to Kant's formalistic framework, it lacks content and therefore cannot be action-guiding in a meaningful way. According to this

[48] Habermas explains that just as the philosopher of consciousness recognizes the self-referentiality of her own thinking, so the theorist of argumentation must recognize that she is partaking in an argumentative process. Therefore, the question is not which principles ultimately "ground" the argumentation process, but rather which presuppositions are unavoidable (Habermas, *Moral Consciousness and Communicative Action*, 81). Habermas summarizes this "transcendental-pragmatic" rule as follows: "Every argumentation, regardless of the context in which it occurs, rests on pragmatic presuppositions from whose propositional content the principle of universalism (U) can be derived" (Ibid., 82). For Habermas's demonstration of the "transcendental-pragmatic" justification of discourse ethics, see: Ibid., 82–98.

[49] Ibid., 67–68.

line of critique, the source of action-guiding norms must be sought in the ethical life of a community, and the attempt to abstract from the embeddedness of our norms in particular cultures brings us to "empty formalism."[50]

Habermas responds to this objection by acknowledging some of the premises, while rejecting the conclusion. He acknowledges that morality is always embedded in (what Hegel called) "ethical life," and so "discourse ethics is always subject to limitations."[51] Moreover, Habermas readily acknowledges that "practical discourses depend on content brought to them from outside."[52] However, he argues that discourse ethics is not meant to *generate norms*, but only to *test the validity of norms* being proposed in actual discourse. Therefore, the limitations posed by the necessary embeddedness in ethical life do not devalue the critical function of discourse ethics.[53]

The result is a distinction between properly moral questions on the one hand, and questions of the good life ("evaluative questions") on the other hand. On the distinction between the two Habermas writes: "the development of the moral point of view goes hand in hand with a differentiation within the practical into *moral questions* and *evaluative questions*. Moral questions can in principle be decided rationally, i.e., in terms of *justice* or the generalizability of interests. Evaluative questions present themselves at the most general level as issues of the *good life* (or of self-realization); they are accessible

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[50] Ibid., 98–99. One may think here of Hegel's critique of Kantian ethics in the *Phenomenology of Spirit*, where, for Hegel, reason as testing laws must be sublated in the form of an actual ethical community. See especially sections 429–437 ("Reason as testing laws") and the transition to Spirit in: G. W. F. Hegel, *Phenomenology of Spirit* (New York: Oxford University Press, 1977).

[51] Habermas, *Moral Consciousness and Communicative Action*, 99.

[52] Ibid., 103.

[53] Habermas, *Moral Consciousness and Communicative Action*, 99.

to rational discussion only *within* the unproblematic horizon of a concrete historical form of life or the conduct of an individual life."[54] The reason that moral questions can be decided rationally *in principle*, is that the moral point of view is derived from the universal pragmatics underlying social interaction, while evaluative questions are decided within a particular and contingent tradition.

3. The Skeptical (or Non-Cognitivist) Objection. This challenger to Habermas's framework questions any kind of universally applied moral imperatives. For example, Habermas argues that metaethical positions such as emotivism[55] and imperativism,[56] ultimately come down to the same skeptical point:

> The meaning of our moral vocabulary, they declare, consists in reality in saying something which could be said better with experiential sentences, imperatives, or intentional sentences. None of these types of sentences can serve as a vehicle for making a truth claim or for making any claim to validity that requires argumentation. That is why, on this [skeptical] view, the belief in the existence of moral truth is construed as an illusion stemming from the intuitive understanding of everyday life. In short, with a single blow, noncognitivist approaches deprive the sphere of everyday moral intuitions of its significance.[57]

To respond to such metaethical positions, Habermas sets up a debate between the ethical cognitivist and the moral skeptic.[58] This discussion is lengthy, and so here I will only briefly point to some of the arguments. The skeptic begins by denying that practical questions admit of truth at all. Habermas responds to this with his position (noted above)

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[54] Ibid., 108.

[55] The position that to say "X is good (or right)" is to express an emotional attitude toward X (for example, in the form, "I approve of X").

[56] The position that to say "X is good (or right)" is to imply an imperative about X (for example, in the form, "I approve of X; do so as well!").

[57] Habermas, *Moral Consciousness and Communicative Action*, 55.

[58] Habermas outlines the debate in: Ibid., 76–77.

that normative claims are claims to validity in a way *analogous* to the way in which empirical claims are claims to truth. Both are claims to validity, and though these claims are redeemed in different ways, in both cases their acceptance as valid requires reasons.

Next, the skeptic argues that, even if we accept Habermas's first point, faced with a plurality of value orientations among individuals and groups, there is no hope for consensus in moral questions. Habermas responds here by explaining – through his Principle of Universalization (U) – that normative claims to rightness can be redeemed in practical discourse. Habermas contends that the basic principles of discourse ethics can bridge between the particular interests and commitments held by discussants on the one hand and generalizable norms on the other.[59]

Finally, the skeptic asserts that even if Habermas is granted that there are indeed unavoidable presuppositions when one participates in argumentation, still these presuppositions do not necessarily hold in the field of action.[60] Habermas responds to this objection by agreeing that ethical norms indeed do not derive from the presuppositions of argumentation as such. However, these ethical norms nevertheless ought to be the result of practical discourse, and therefore must stand the procedural test of the principles of discourse.

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[59] See: Allen, "Discourse, Power and Subjectivation," 9. In response to Habermas's positing of (U), the skeptic "voices the objection that (U) represents a hasty generalization of moral intuitions peculiar to our own Western culture" (Habermas, *Moral Consciousness and Communicative Action*, 76). Habermas responds to this rejoinder to the skeptic's objection with his argument (which I have noted above), that (U) is a necessary and unavoidable presupposition of any normative discourse, regardless of particular culture or tradition.

[60] Habermas, *Moral Consciousness and Communicative Action*, 86.

Discourse Ethics and the Democratization of Technology

I now turn to demonstrating how Habermas's principles of discourse lay the groundwork for normatively guiding deliberative social practices. I will then show how a normative framework for guiding these deliberative practices is significant for the concerns laid out in Chapter Two regarding the democratization of technology.

The first generation of critical theorists worried that an effect of the enlightenment is the emphasis of reason in its instrumental dimensions. In their analysis, reason becomes a tool to be used strategically, but is not intrinsic to social communication. In his attempt to rehabilitate the emancipatory potential of reason in communication, Habermas aims to demonstrate that reason resides inherently in political communications. Thus, the reflective character of reason – i.e. that upon reflection we recognize the rationality inherent in common deliberation – can stand as the source of legitimation for deliberative politics.

No doubt invoking Kant's notion of the "public use of reason," Habermas explains that the public use of uninhibited communication has two dimensions, cognitive and motivational. The cognitive dimension, which has been mentioned, includes the free processing of information and reasons (and is presupposed in communicative interaction). The motivational dimension, which bolsters both social integration and legitimacy, involves the actors' inclinations to accept reasons given on free and rational grounds. What is more, intersubjectively shared convictions that result from deliberation form the very medium of social integration.[61]

[61] Habermas, *Between Facts and Norms*, 35.

Habermas argues that in order to engage in argumentation at all, speakers must strive to and counterfactually presuppose an "ideal speech situation" (ISS).[62] This ideal speech situation entails that all participants understand the argumentation process to be a cooperative search for the truth and are motivated to agree or disagree solely on the basis of "the unforced force of the better argument."

In conceptualizing the ISS Habermas aims to expose what is presupposed in any endeavor to truly convince another person. In ISS we intuitively presume that others will be convinced not due to conditions of oppression or inequality, but rather because they have tested the reasons provided and found the claims put forward valid. Thus, in this situation actors have "the intention of winning the assent of a universal audience to a problematic proposition in a noncoercive but regulated contest for the better arguments based on the best information and reasons." What is more, Habermas asserts that ideally this speech situation would include, or at least take into account, all those potentially affected by the issue at hand. Thus, the discursive forum constituting such a debate would be the "communication community of those affected."[63]

The rationality that grounds communicative action – the capacity to understand the speech of the other, to adhere to the "force of the better argument," and finally to reach consensus[64] – provides a solid foundation for developing discursive norms for

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[62] Habermas gives a concise explication of what is meant by a "speech situation" in Habermas, *Moral Consciousness and Communicative Action*, 134–135.

[63] Habermas, *Between Facts and Norms*, 228.

[64] A note on the orientation to consensus: Habermas stresses the difference between (1) the conditions necessary for the discursive generation of a rationally motivated consensus, and (2) the conditions necessary for negotiating a fair compromise. Discourse ethics recognizes the need for creating (1), and not settling for (2).

public debate, and for the critique of various forms of societal domination, oppression and manipulation that distort free processes of communication. It is in this context that Habermas develops the ISS model as a tool for critique and as an aspirational model for democratic social communication.[65] As William Rehg explains, it involves a set of counterfactual "pragmatic presuppositions" of rational consensus that serve as a regulative ideal.[66] Hence, to concerns regarding the practicality of ISS when applied to actual speech situations, Habermas replies that since this model is derived from the structure of language itself, anyone serious about participating in reasonable argumentation must necessarily take on this attitudinal ideal role (in this sense his theory has a quasi-transcendental aspect to it insofar as it postulates the conditions for the possibility of reasonable argumentation).

Furthermore, it is precisely because "the demanding communicative presuppositions of rational discourses can only be approximately fulfilled" that he emphasizes the need for democratic *procedures*.[67] The focus on the structure of procedures also allows room for differentiation between varying types of discourses, a distinction that would bear on the question of the imperative of inclusion in the communication community. For example, following Dworkin, Habermas distinguishes between discourses of justification and discourses of application. Discourses of

[65] Kellner, "Habermas, the Public Sphere and Democracy," 270–271.

[66] William Rehg, *Cogent Science in Context: The Science Wars, Argumentation Theory, and Habermas* (Cambridge, MA: MIT Press, 2009), 27.

[67] Habermas, *Between Facts and Norms*, 230–234.

justification discuss whether a norm is just in general, while discourses of application discuss whether this norm ought to be applied in a specific case.[68]

These questions of rights to participation in a communication community (to be included in a discursive exchange) are significant since they emphasize the need to demarcate the boundaries of the applicability of a political theory. When considering a theory from a legal perspective, Habermas stresses the need to explicate the bounds of membership for the applicability of a legal code.[69] He suggests that being a member of a specific community not only bears upon questions of legal application, but also about questions of participation in discourses of "those affected." For him, discourses of justification and discourses of application would weigh differently the principle of including all those affected.[70] He explains that in the case of ethico-political questions (as opposed to moral ones) "those affected" can include only those who share "our traditions."[71] However, when discussing moral (not ethical-political) questions, there is room to admit the participation of nonmembers as well.[72] This is because, as Habermas emphasizes, "[d]iscourse theory conceives of morality as an authority that crosses the boundaries between private and public spheres."[73] One important implication of this is that one cannot construe law to be public and morality to be private.

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[68] Habermas, *Between Facts and Norms*, 217.

[69] Ibid., 124–125.

[70] Ibid., 229.

[71] Ibid., 108.

[72] See: Ibid., 183.

[73] Ibid., 109.

I argue that Habermas's conceptualization of the ISS can assist in providing a normative framework for the democratization of technology in two ways. First, Habermas's framework conceives of actors engaging each other with an aim of reaching consensus, which will serve as a foundation for some form of collaborative action. This ideal, which may possibly be approximated in actual speech situations, can serve as a guide for the institutionalization of discourse or the critique of systematically (and technologically) distorted communication. Second, the concept of ISS can serve as a critical tool in examining consensus, or, in the context of the democratization of technology, perhaps a technical code, that was actually established. In other words, we can ask whether the established technical code is genuine, consensual and democratic, or perhaps based on domination. Thus, even if we want to say that the ISS is never actualized, Habermas can still claim it to be a critical standard against which every actually realized consensus can be called into question and tested.[74]

In addition, since the concept of the ideal speech situation asks not only *how* decisions are made but also *by whom*, it provides a model for selecting those participants who should engage in a practical discourse to test the validity claims of norms (which can be embodied in technical codes) and, to the extent that they accept them with reasons, arrive at the conviction that in the given circumstances the proposed norms (or technical codes) are "right."[75] Within the aforementioned concept of the "communication community of those affected," ISS demands the maximization of participation in the discursive act of all parties potentially affected by the issue at hand, including (for us, not

[74] See McCarthy, "Translator's Introduction," xvii–xviii.

[75] Habermas, *Legitimation Crisis*, 105.

Habermas) technical design. Habermas insists that "generality is guaranteed in that the only norms that may claim generality are those on which everyone affected agrees (or would agree) without constraint if they enter into (or were to enter into) a process of discursive will-formation."[76] This inclusive conception of fair and adequate discourse can serve us well in arguing for a democratization of technology. As the concerns for agency discussed in Chapter Two highlight, we do not enter the public sphere of mutual discourse as free and equal citizens, and do not negotiate technical codes on equal grounds. The imperative of ISS instructs us to address this disparity.

As discussed in Chapter Two, Feenberg's theory lacks a developed theory of democracy, and Habermas's discourse-ethical theory provides much needed direction and a glimpse toward what we mean by democracy. Feenberg seems to think that the very reference to a democratization of technology implies enough as to what values such a technology should embody. As he would put it, "let the people decide" (adding of course the necessary protections for minorities so as to avoid a tyranny of the majority).[77] But what he does not seem concerned about is that democratic decision-making can take different forms, and indeed has meant different things for different streams of thought. As Doppelt articulates this concern, "[w]hen we characterize society or social change as more or less democratic, we may operate with very different standards in mind concerning its institutions, practices, and ideals." He adds that "[i]t is useful to distinguish standards concerning democratic models of political agency from ones

[76] Ibid., 89.

[77] Feenberg put forth such a position in response to a question I asked regarding his thoughts on discourse ethics and democracy in a video-conference exchange we had in April 2009.

concerning democratic models of equality or individual rights."[78] This is precisely why a normative framework for how such a discourse regarding the democratization of technology should be carried out must accompany Feenberg's theory. To put things differently, we must be able to explain who the "we" is that would be involved in this process, and how that decision is justified. This would allow us to ask how power is exercised, who can, or cannot, does, or does not, have a voice in the key decision-making practices of the society at various levels of social life.[79] Habermas's discourse ethical framework brings us closer to a thematized answer to these questions.

What is more, Veak interprets Feenberg as admitting that advanced societies concretize power through technologically mediated organizations that prevent their citizens from meaningful political participation. Thus, "[a] centralized-hierarchical power structure is perpetuated because technological designs (codes) are intentionally chosen to maintain operational autonomy."[80] As an example of this, one may think of the various technologies that now permeate local and global economic structures (the digitization of money is but one example) that enable economic domination of some by others in specific concrete ways. This, added to Hughes's analysis of momentum according to which technological systems develop autonomy and an almost unstoppable momentum, leads us to conclude that we must develop a normative account of how to empower those

[78] Doppelt, "Democracy and Technology," 92. In fact, Doppelt asserts that for Feenberg, "the obstacle to democratizing technology is not primarily political powerlessness" (Ibid., 94).

[79] This is what Doppelt calls a democratic focus on political agency, and it is precisely our concern here. See: Doppelt, "Democracy and Technology," 92.

[80] Tyler Veak, "Introduction," in *Democratizing Technology: Andrew Feenberg's Critical Theory of Technology*, ed. Tyler J. Veak (Albany: SUNY Press, 2006), xiv.

who are impacted by dominating technical codes.[81] This, I argue, includes securing a voice and a place in decision-making to those impacted parties.

The Dialectic of Technology and Social Discourse

When considering the development of a discourse ethical framework that could account for the processes of negotiating technical codes, it seems that a dialectical relationship between technology and social discourse emerges. That is to say, such an analysis must take into account that technology itself is not only the *object* of discourse; it is also a *means* by which this discourse takes place, and shapes the very nature of this discourse. To a great extent technology constitutes the ways in which we engage in communicative action. Thus, the struggle over the place of technology in public discourse may prove to be a struggle over the possibility of any other effective struggle concerning technological design.

What is more, technologies are continuously reshaping the lifeworld in which we move, and this lifeworld is the context in which we engage in communicative action toward reaching some understanding. Moreover, as Habermas explains, the lifeworld "not only forms the *context* for the process of reaching understanding but also furnishes *resources* for it. The shared lifeworld offers a storehouse of unquestioned cultural givens from which those participating in communication draw agreed-upon patterns of interpretation for use in their interpretive efforts."[82] It seems that the potential

[81] Stump correctly adds that "the presence of technological masters is not necessary to criticize modern technological society, since even if no one is in charge, some actors still benefit from technological development more than others, which is enough to raise issues of social justice" (Stump, "Rethinking Modernity," 15).

[82] Habermas, *Moral Consciousness and Communicative Action*, 135.

deliberations about technological designs draw upon a lifeworld increasingly infused with communication technologies. This conundrum raises further questions about Feenberg's approach to the democratization of technology on the micro level. From Cooper's point that technology reframes our social and cultural frames of reference, we learn that democratic participation must be thematized, since the very meaning of politics and of democratic participation is being transformed by technology itself.[83] Cooper claims that "Feenberg doesn't adequately theorize the grounds through which the values he relies on to guide technology – such as democracy, noninstrumentality, and so on – operate in the contemporary context."[84] Along these lines, we must carefully listen to Cooper's argument that as we shift with technology to looser, more abstract modes of being-in-the-world, and being-with-others, "the settings that have always grounded social life and any sense of a *cooperative ethic* are destabilized."[85]

Feenberg sees great possibility in technology's advantages for communication over face-to-face encounters. He gives as an example the Internet-based ALS support group that could not have come together without technology. In fact, he points to the possibility of remaining anonymous as an advantage, and so "the very limitations of the medium open doors that might have remained closed in a face-to-face setting."[86] Indeed,

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[83] Technology itself is revealed as a site of political struggle, but there is more. For example, the very notion of the public sphere is changing, as cyber public spheres emerge. Political means are changing as well (including social networks and other forms of telecommunication), thus altering the very concept of political action. See: Asaf Bar-Tura, "Arendt, Habermas and Facebook: Participation and Discourse in Cyber Public Spheres," *Humanities and Technology Review* 29 (Fall, 2010): 1–25.

[84] Simon Cooper, "The Posthuman Challenge to Andrew Feenberg," in *Democratizing Technology: Andrew Feenberg's Critical Theory of Technology*, ed. Tyler J. Veak (Albany: SUNY Press, 2006), 26.

[85] Ibid., p. 35 (my italics). See also: Asaf Bar-Tura, "Between Virtual Reality and the Real: Cyber Subjectivity and Ideology Critique," *Humanities and Technology Review* 30 (Fall, 2011): 25–56.

[86] Feenberg, *Questioning Technology*, 192.

Feenberg is right that the online medium has proven beneficial for various forms of social support and therapy – eating disorders, to name but one other example.[87] Other beneficial applications include isolated individuals who are marginalized in their own communities (such as gay individuals in conservative communities), who can find other individuals with similar interests via technological mediums of communication.[88]

However, what becomes apparent is that Feenberg's example, as well as the examples above, primarily applies to cases where individuals of *similar* interests wish to congregate. In cases where differences must be negotiated and resolved, where we really do need a discourse-ethical grounding, the changes to discourse brought about by technologically mediated forms of communication must be carefully considered. Therefore, in developing a discourse-ethical account to ground the democratization of technology, we must consider how technology as a social medium bears upon Habermas's deliberative framework. The realization of Habermas's discourse principle and discourse ethics requires an open and vibrant public sphere. Consequently, if we are to examine the dialectic of discourse and technology, the task before us is to investigate the impact of technology on the public sphere and public discourse carried out within it.

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[87] See for example: A. A. Celio, et al, "Reducing Risk Factors for Eating Disorders: Comparison of an Internet- and a Classroom-Delivered Psychoeducational Program," *Journal of Consulting and Clinical Psychology* 68, 4 (2000): 650–657.

[88] On this point some critics have pointed out that such online "communities" often develop online markets for investors and marketers, insofar as they gather in one (cyber)space people with similar consumer interests, more than they develop a real sense of community. Focusing on such internet portals, Gamson argues that "the Internet has been a major force in transforming 'gay and lesbian media from organizations answering at least partly to geographical and political communities into businesses answering primarily to advertisers and investors'" (Jodi Dean, *Democracy and other Neoliberal Fantasies: Communicative Capitalism and Left Politics* [Durham: Duke University Press, 2009], 38).

Conclusion

After demonstrating the need to ground Feenberg's democratization of technology in a normative framework in Chapter Two, in this chapter I demonstrated that Habermas's discourse-ethical theory is a promising candidate for this norm-guiding task. This is especially the case since the democratization of technology predominantly entails democratizing the communicative practices pertaining to the social embeddedness of technologies, including the formation of their technical codes, their design, and their application in various social contexts. Since attention to communicative practices is at the core of Habermas's theory, discourse-ethics explicate what is meant by democracy.

That said, Chapter Three only examined Habermas's discourse framework as an ethical theory. We have heretofore said little about how this framework informs a political theory of democracy. Since I argued in Chapter Two that Feenberg's micro-level approach to the democratization of technology might fall short, and that the concerns this raises pertain to a broader social picture, the next step must be to examine how discourse ethics can offer a normative guide to assessing broader social processes, which include the democratic public sphere and political structures. We must demonstrate how discourse ethics can evolve into a theory that normatively assesses the circulation of power and flow of communications in the democratic public sphere.

As noted, the grounding of the democratization of technology in discourse ethics presents a dialectic: we place technology as the topic of discourse, while at the same time technology is shaping the discourse itself. Hence, the task in the following chapters is twofold: *first*, I will lay out Habermas's discourse-based theory of law and democracy; and *second*, I will examine the ways in which Habermas's own theory must be reworked

in light of emerging technologies, which are changing the structures of the democratic public sphere.

CHAPTER FOUR

HABERMAS'S PROCEDURAL PARADIGM OF POLITICS AND THE PUBLIC SPHERE

Introduction

Following in the footsteps of Andrew Feenberg's critical philosophy of technology, Chapter Two pointed to technologies as sites of social struggle, and technological design processes as processes in which particular values and forms of life aim to embody themselves in things. The fact that technologies can be designed to promote particular values (and in fact they always do), raises the possibility of the "democratization" of technologies, i.e. conceiving of design processes that are more participatory along democratic lines. Such processes would allow diverse parties to participate in shaping technologies that in turn shape social life.

As I argued in Chapter Two, this possibility of democratization is not promised. Moreover, I raised concerns for the agentic capacities of various disempowered parties to participate in such processes in a meaningful and consequential way. I argued that in order to counter such concerns, a critical theory of technology aimed toward its democratization must operate within a normative framework. In other words, we must explicate what we mean when we speak of democracy.

In accord with Feenberg's analysis, I suggested that at the heart of the design processes of technologies lay communicative processes. Hence, a normative framework

for these processes ought to start at the communicative level. In Chapter Three I pointed to Habermas's discourse ethical theory as a theory well positioned to guide us in our search for a much-needed normative theory toward the democratization of technology. I argued that we can think of a technological design as a form of social arrangement, and we can examine whether we reached this arrangement through legitimate communicative processes, in which case the arrangement would be the result of consensus; or, perhaps this process entailed distorted communication deriving from various forms of domination.

However, Habermas's discourse ethical framework was not entirely satisfying in two ways. First, while we were able to see how Habermas derives a normative framework from the pragmatics of communicative action, we have not yet seen how discourse ethics informs a social political theory of democracy. Second, when we attempt to examine technology and its design processes as the *object* of discourse, we cannot ignore the ways in which technology *mediates* this very discourse. These two lacunas are interconnected, for in order to get at the latter, we must address the former. That is, in order to clearly see the ways in which technology mediates social discourses in the public sphere, we must first lay out Habermas's account of the flow of communication and the circulation of power in the democratic public sphere.

Hence, the aim of this chapter is to provide an account of Habermas's discourse-based theory of democracy, as is derived from his theory of communicative action, and the demonstrative work he has already done in his formal pragmatics. This account will be developed in four steps: (1) I will begin by showing how Habermas moves from a

discourse-ethical theory to a discourse theory of law and democracy. I will then (2) show how Habermas conceives of the legal form as central to modern democratic societies, and how he derives his "Democracy Principle" from the Discourse Principle and the legal form. This will bring us to (3) Habermas's procedural approach to law and politics. Here I will situate his approach vis-à-vis the liberal and republican traditions in political theory. Finally, (4) I will illustrate how Habermas reconstructs the democratic public sphere in light of the normative principles of the procedural paradigm. This will include (a) the flow of communications, including formal and informal public spheres, as well as the distinction between the core and periphery of the political system; and (b) the circulation of power, including communicative, administrative, social, and media power.

From Ethics to Political Theory

To understand Habermas's move from a discourse-based ethical theory to a discourse-based theory of law and democracy, we must once more go back to the formal-pragmatic analysis, which supports his discourse ethics. To anticipate this move, we can preface by saying that Habermas will argue that the same structure we find in language (played out in communicative action), we also find in broader social relations. In both cases, this structure entails a tension between facticity (real discourses) and validity (ideal discourses). Let us now see how this unfolds.

In Chapter Three we saw how communicative action implicitly entails a goal of reaching mutual understanding. Actors engaged in communicative action implicitly agree to abide by a basic set of norms, including the commitment to being truthful and sincere, to be open to critique, and to assent to the better argument. As explained, Habermas asserts that these implicit norms are best described as claims to validity. We begin to see

the tension between facticity and validity when we see that, on the level of language, these norms appeal to a counterfactually ideal discourse. That is to say, the redeeming of these claims to validity always involves a counterfactual idealization of the circumstances of the communicative exchange, since the implicit assumptions are often at odds with the real context in which the exchange takes place. [1]

As Rasmussen explains, "in order to reach an agreement about the validity of a certain claim put forth in the process of reaching an understanding it is necessary to juxtapose facticity and validity. In this view, individuals who act communicatively must involve themselves in certain 'idealizations' concerning commitment to 'pragmatic presuppositions of a contrafactual sort'."[2] What is important to see here is that the counterfactual idealizations on which communicative action rests are unavoidable. One cannot speak without implicitly making these claims (for example, even the liar makes an implicit claim to sincerity; otherwise she wouldn't be lying but merely mistaken). The result is that the basis for actual communicative practices is a set of unavoidable counterfactual idealizations of these practices; moreover, these counterfactual ideals are the basis for then criticizing the sub-ideal actual practices. Therein lies the tension between facticity and validity on the level of linguistic practice.[3] The crucial point for which Habermas argues when he turns to political theory, is that the same tension between facticity and validity that we find in language, we also find in broader social

[1] For a restatement of this argument in the context of Habermas's exposition of his theory of law and democracy, see: Habermas, *Between Facts and Norms*, 3–5.

[2] David Rasmussen, "How is Valid Law Possible? A Review of Faktizität und Geltung by Jürgen Habermas," *Philosophy and Social Criticism* 20, 4 (1994): 23.

[3] On the tension between facticity and validity in the formal pragmatic analysis, see: Habermas, *Between Facts and Norms*, 15–16.

relations. For Habermas, understanding this tension and its implications are the basis for a theory of law and democracy in modern societies.[4]

On the level of communicative action, the tension between facticity and validity is mitigated by the fact that the counterfactual ideals are unavoidable. But once we move from speaking to acting, this tension becomes more problematic. When considering whether the Discourse Principle can be upheld when coordinating action on the social level, the stability of the relationship between facticity and validity – between actual social practices and ideal social norms – is not promised. This stability was immanent to language, but not so in society.

In the transfer of the tension between ideal norms of discourse and the empirical unfolding of real discourses (the tension between the facticity of social relations and the validity of normative claims) to the social realm, the need to coordinate action involves the need for social integration. The question then arises: where do we look for a legitimate medium that will serve as a sort of bridge between facts and norms, thus maintaining a valid social order? Habermas argues that in modern societies, the medium that operates in the space of tension between social facts and social norms – thus providing a coordinating medium and hence a means of social integration – is law.[5]

The Legal Form

Habermas suggests that the legal form serves as the medium that bridges the tension between the facticity of social life and the normative claims made by actors in social

[4] Ibid., 17.

[5] Habermas, *Between Facts and Norms*, 27; Rasmussen, "How is Valid Law Possible?," 24.

interaction.[6] To understand this we must return once more to Habermas's theory of modernity. In Chapter Three we saw how his views of social evolution inform his ethical theory. These views now return to inform his political theory.

In traditional, premodern societies, there was no separation between the religious community and the political community. In Weber's "enchanted" world, social facts were understood as imbued with values. The differentiation between spheres of life that we find in modern societies was not yet present. As Rasmussen explains, "[f]rom the point of view of the stability of the social order, archaic institutions could be conceived as institutions which represent a fusion of facticity and validity, a link which is sustained and reinforced later by sacred authority."[7] Tradition was strong and pervasive enough to coordinate the actions of individuals based on shared traditional values. However, with the "disenchantment of the world," the pluralization of lifeworlds, and secularization, tradition could no longer serve in this role.[8] Traditional institutions were then replaced with authoritarian political regimes (such as monarchies), which attempted to hold together the connection between social facts and social norms. But with the advent of the enlightenment, this social arrangement met a legitimation deficit as well. Hence Habermas comments that, "the constitution of the legal form became necessary to offset deficits arising with the collapse of traditional ethical life."[9]

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[6] Habermas, *Between Facts and Norms*, 29.

[7] Rasmussen, "How is Valid Law Possible?," 24.

[8] Habermas, *Between Facts and Norms*, 33–36.

[9] Ibid., 113.

The enlightenment's Kantian moral framework might be seen as a potential candidate for the medium through which individuals can coordinate actions in social life. However, Habermas argues that postconventional morality as such proved too weak in order to coerce and direct actions when faced with the void left by the collapse of traditional ethical life.[10] Though morality as such proves too weak, Habermas's earlier view (in his *Theory of Communicative Action*) was that there is a sense in which the rise of modern law can be explained "in terms of the posttraditional structures of moral consciousness it embodies."[11] That is to say, as traditional forms of ethical life weakened, postconventional moral consciousness emerges in its social form.[12]

Law as a newly emerging coordinating medium provides a dual function hitherto sustained by tradition: it provides directives for action (a set of authoritatively binding norms), while at the same time providing individuals with the cultural knowledge needed to anticipate the way others will behave as well as what behavior is expected by others and by the state. Whereas postconventional morality alone would burden citizens with "the cognitive demand to apply abstract norms to complex situations under temporal and

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[10] Todd Hedrick, *Rawls and Habermas: Reason, Pluralism, and the Claims of Political Philosophy* (Stanford: Stanford University Press, 2010), 108.

[11] Habermas, *The Theory of Communicative Action, Vol. I*, 260. As discussed below, in the later *Between Facts and Norms* it seems that Habermas does not rely on the legal form's affinity with postconventional morality as a *justification* of modern law. Hedrick comments that Habermas might argue on this point that "modern morality involves but one form of post-traditional justification, and post-traditional legal justification does not stand in a subordinate relation to it. For that matter, it is not clear that Habermas wants to rely on such developmentalist arguments anymore: they suggest that the use of the legal form is normatively called for the internal logic of post-traditional consciousness and not just functionally required. He now gives the impression that the functionalist argument is sufficient for his purposes" (Hedrick, *Rawls and Habermas*, 109).

[12] Hedrick, *Rawls and Habermas*, 108.

spatial constraints, and […] the motivational burden always to act conscientiously," the system of law provides clear and consequential action-guiding social norms.[13]

According to Habermas's analysis, the fact that the legal form emerges as the medium through which social integration occurs has further consequences, which can be delineated in terms of strategic and communicative action.[14] As mentioned above, Habermas recognizes that modern society becomes increasingly complex, with differentiation in spheres of social life. We have seen in previous chapters that Habermas asserts that one result of this differentiation is the emerging distinction between strategic action and communicative action. Hence, while traditional institutions attempted to fuse together facticity and validity, the legal form allows actors to act strategically in some spheres and communicatively in others while still keeping a level of social stability and integration. The result is that "in modernity mutual understanding replaces authority as the mechanism for mediating the spheres formerly regulated by habit and custom."[15]

In what way does the legal form result in replacing custom with mutual understanding? This must be understood through the problem of social differentiation. Though one can see the differentiation of the spheres of action (system and lifeworld) and the pluralization of lifeworlds as a mere historical fact, this fact also presents a problem. Social integration is jeopardized in a twofold way: *first*, the pluralization of lifeworlds calls into question the ability to interact communicatively, since such interaction relies on a shared background culture to provide shared meaning; and, *second*, the process of

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[13] Ibid.

[14] Habermas, *Between Facts and Norms*, 83.

[15] Rasmussen, "How is Valid Law Possible?," 25.

differentiation has also brought about the distinction between strategic and communicative interaction, which seem to be incompatible.[16] What norms would then guide strategic interactions? Habermas's analysis here is that the legal form as a medium serves as a mechanism of mutual understanding regarding the norms that guide strategic interactions. An important dimension of this form of mutual understanding is that the actors themselves reach this understanding. Custom, tradition, or coercive authority does not impose it. Thus, though binding and hence stabilizing, the legal form can also make a claim to rationality, and hence legitimacy.[17]

Since the legal form does not gain its validity from tradition or sheer political authority, it must find this legitimacy elsewhere. Though law provides social integration through coercive mechanisms of enforcement, these mechanisms must be recognized as legitimate. From a discourse-ethical viewpoint, valid law gains its legitimacy from those to whom it is applied. According to this approach the legal form derives its force not from political domination, but rather from its origin in democratic will-formation. It is by appealing to this genesis that law can serve as a source of solidarity.[18]

The derivation of law's legitimacy from processes of democratic will-formation will prove central to Habermas's theory of democracy since in a sense we first encounter here the concept of *communicative power*. This is a form of power in the democratic process that originates from the formation of opinion among actors in various publics. As we will see, this form of power forms in the "periphery" of the political arena and is

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[16] Habermas, *Between Facts and Norms*, 25–26.

[17] Rasmussen, "How is Valid Law Possible?," 25.

[18] Habermas, *Between Facts and Norms*, 28–31. See also: Rasmussen, "How is Valid Law Possible?," 28.

directed toward the center for consideration. Communicative power entails a form of communicative reason insofar as opinions are formed through intersubjective processes of communicative action, in which claims to validity are put forth and redeemed.[19]

To sum up this point, Habermas (following Weber) argues that modern societies are no longer held together by a common tradition, ethos, or ethic. This raises two related questions, namely, (1) how is the social order to be held together, and (2) what makes this binding force legitimate. Thus, the medium of social integration must fulfill functional and normative requirements. Law is ultimately legitimated by appeal to its origin in democratic will-formation based in communicative action. At the same time, law creates a framework in which actors can legitimately act strategically and are "unburdened" of the need to interact communicatively.[20]

Interestingly, it seems that for Habermas the functional aspect of the legal form in some sense takes precedence over the normative aspect. That is to say, Habermas suggests that the legal form emerges in modern societies first and foremost as the only plausible medium that could provide social integration. In this sense the legal form is a social fact, for which the need for justification is lessened, since there is no other plausible candidate one might consider. In this context Habermas writes, "this elucidation

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[19] Habermas, *Between Facts and Norms*, 35.

[20] Hedrick, *Rawls and Habermas*, 109. In fact, Habermas explains that actors may not only *act* strategically, but may also take a strategic attitude toward law itself: "Legitimate law is compatible only with a mode of legal coercion that does not destroy the rational motives for obeying the law: it must remain possible for everyone to obey legal norms on the basis of insight. In spite of its coercive character, therefore, law must not *compel* its addressees to adopt such motives but must offer them the option, in each case, of foregoing the exercise of their communicative freedom and not taking a position on the legitimacy claim of law, that is, the option of giving up the performative attitude to law in a particular case in favor of the objectivating attitude of an actor who freely decides on the basis of utility calculations" (Habermas, *Between Facts and Norms*, 121).

is part of a *functional* explanation and not a normative justification of law. The legal form is in no way a principle one could 'justify,' either epistemically or normatively."[21] Habermas thus emphasizes the contingency of the legal form in modern societies. This may seem problematic: in what sense can law not be normatively justified?

Here Habermas differentiates between two perspectives we take on when considering the legal form: a participant perspective and an "outside" perspective. Habermas explains that we must begin with the latter perspective. That is, we begin by observing that the legal form is required for functional purposes, and *in this sense* does not require normative justification. However, once we engage the legal form as participants, then we demand that this medium of social interaction be legitimated. That is, we want to follow the established legal norms *for good reasons* (this attitude from the participant perspective is what Habermas considers as the modern moral consciousness, which references the postconventional stage of moral development discussed in Chapter Three).[22]

We can now show how Habermas's discourse principle (which is a moral principle) and his conception of the legal form come together to articulate a discourse-based principle for democratic politics.[23] Habermas calls this the Democracy Principle, and the aim at its core is to delineate what legitimates law: "[T]he democratic principle states that only those statutes may claim legitimacy that can meet with the assent

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[21] Habermas, *Between Facts and Norms*, 111–112.

[22] Hedrick, *Rawls and Habermas*, 107–111.

[23] Habermas asserts that "the principle of democracy derives from the interpretation of the discourse principle and the legal form" (Habermas, *Between Facts and Norms*, 121).

(*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted."[24] As noted, there is an important sense in which the democracy principle presupposes the discourse principle. Whereas the discourse principle provides guidelines for achieving rational opinion- and will-formation on practical matters, the democracy principle provides guidelines for institutionalizing this will in a legitimate way. According to Habermas, this institutionalization happens "through a system of rights that secures for each person an equal participation in a process of legislation whose communicative presuppositions are guaranteed to begin with."[25] Hence, the twofold normative concern of the democracy principle is (1) ensuring effective (meaningful and consequential) participation in discursive processes of opinion- and will-formation, and (2) legally guaranteeing the forms of communication through which these processes take place.

Habermas, then, sees the role of the system of rights to be enabling the fulfillment of the democracy principle and hence the legitimation of law.[26] In fact, Habermas indicates that there is no legitimate law without the sets of rights that he derives from the democracy principle.[27] We now turn our attention to these sets of rights.

In order to arrive at a legal code that is legitimate according to the democracy principle, we must posit certain sets of rights that would guarantee the legitimacy of the

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[24] Ibid., 110.

[25] Ibid.

[26] One might think that at this point Habermas's argument becomes circular: the system of rights serves as the institutionalization of the legal form, while at the same time these rights legitimate it. More on this problem and Habermas's response follows.

[27] Habermas, *Between Facts and Norms*, 125.

process. These include freedoms that could be categorized as those guaranteeing one's private autonomy (as an individual) and those guaranteeing one's public autonomy (as a member of the community). Before laying out these sets of rights, it is important to note that Habermas is careful not to specify any particular right when outlining these sets of rights. He argues that the legitimate legal code must be constituted by certain *kinds* of rights; but, in accord with his procedural approach, it is up to the participants themselves in a particular legal community to articulate the particular rights they legislate for themselves.[28]

Habermas initially identifies three categories of rights that refer to private autonomy: the first and most basic is the classic liberal notion of "the right to the greatest possible measure of equal individual liberties." He then asserts that the following two categories of rights are necessary in order to ensure the first. Hence, the second set of rights includes basic rights of membership ("being a member in a voluntary association of consociates under law"). The third set of rights would elaborate the protection afforded to individuals under the law in the form of actionable rights.[29]

These categories of rights, which pertain to an individual's private autonomy, are not sufficient since legitimate law is premised on the participation of individuals in generating it. Hence, the basic system of rights must include categories that guarantee public autonomy. These include two additional categories. The first category pertains to rights of participation in the political process; the rights "to equal opportunities to

[28] See: Ibid., 127; also: Hedrick, *Rawls and Habermas*, 114.

[29] Habermas, *Between Facts and Norms*, 122. Habermas elaborates on these categories of rights in *Between Facts and Norms*, 123–125.

participate in processes of opinion- and will-formation." The final category pertains to rights that guarantee the material conditions necessary for a more or less equal opportunity to exercise the other rights. This category of rights is posited reflexively, with the previously mentioned rights in mind, and may be revised accordingly.[30]

I now wish to clarify three points with regards to Habermas's thinking about the system of rights and the legal form: *First*, one might conclude that Habermas derives public autonomy from private autonomy. I will clarify the status of public and private autonomy vis-à-vis each other. *Second*, one might see this derivation of the system of rights as resembling Rawls's derivation of basic rights through the founding act in his "original position." I will briefly clarify Habermas's position on this "founding moment" of the constitution. *Third*, I will return to an apparent circularity in Habermas's argument, according to which the system of rights serves as the institutionalization of the legal form, while at the same time these rights legitimate it. I will clarify how this apparent circularity can be disentangled.

1. The status of public and private autonomy. Traditional liberal political theory has prioritized private autonomy over public autonomy, and has seen political rights as derived from, and aimed at guaranteeing, individual rights. However, Habermas takes a different approach, according to which public and private autonomy are co-original, and are given equal weight.[31] While the rights associated with private autonomy are indeed basic, the same is true for the rights underwriting public autonomy. This is because all rights, when instituted as positive law, are legitimated by their origin in democratic

[30] Ibid., 122–123, 126–127.

[31] Ibid., pp. 127–128.

legislative procedures; and these procedures, in turn, require public autonomy.[32] Habermas explains that "[b]y securing both private and public autonomy in a balanced manner, the system of rights operationalizes the tension between facticity and validity, which we first encountered as a tension between the positivity and the legitimacy of law."[33]

There is a sense in which these co-original categories of rights, which guarantee their correlated forms of autonomy, are derived from a conception of freedom rooted in the discourse principle, i.e. *communicative freedom*. In non-political contexts, this form of freedom is interpreted through the discourse principle as norm-guiding in the use of language toward mutual understanding; in a political context this freedom requires both public and private autonomy.[34]

2. The founding act of the system of rights. The discussion so far has pointed to the forming of the system of rights as the institutionalization of Habermas's discourse principle in the legal form. This discussion of determining basic rights may remind the reader of the founding act of the political community as described by John Rawls in his theory of justice, when he depicts an "original position" in which the basic principles of justice are determined.

To better understand Habermas's position with respect to the founding act of a political and legal community (that is, the formation of a constitution), one should recall the difference between Rawls and Habermas to which I referred in Chapter Three. While

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[32] See: Hedrick, *Rawls and Habermas*, 113; Rasmussen, "How is Valid Law Possible?," 29–30.

[33] Habermas, *Between Facts and Norms*, 129.

[34] See: Ibid., 127–128; also Rasmussen, "How is Valid Law Possible?," 30.

Rawls determines the content of his principles through a hypothetical discourse, Habermas only posits those basic categories of rights that would enable *real* participants to carry out a discourse with respect to the concrete rights that they self-legislate. Therefore, the determination of particular rights, the concrete implementation of a system of rights, is the task of concrete political communities. Hence, Hedrick notes that for Habermas the legitimacy of a legal system is not sustained by "maintaining fidelity to a pregiven scheme of liberties and procedures." Rather, "[t]he legally constituted democratic process legitimates itself by re-creating itself through the practice of self-legislation, which in turn depends on ever more adequately realizing the public and private autonomy of all citizens through the system of rights."[35]

3. Overcoming the circularity in Habermas's argument. Habermas's argument regarding the legitimation of modern law seems to be somewhat circular. In his answer to the main question – What gives law its legitimacy? – he appeals to the process that brought law about, a process that secures the private and public autonomy of citizens. It seems that participants need to be recognized as rights-bearers in advance of the establishment of the legal system, since these rights ensure their meaningful participation, but on the other hand these rights are secured by this legal system. Indeed, it is these rights that legitimate it.[36]

In order to clarify this point, and understand why this argument operates less like a circle, and more like a spiral, we need to consider the shifts in perspectives that occur along the way. As I will show, we begin with a participant perspective, then shift to an

[35] Hedrick, *Rawls and Habermas*, 118.

[36] See: Rasmussen, "How is Valid Law Possible?," 42; see also Hedrick, *Rawls and Habermas*, 116.

observer perspective, and finally shift back to a participant perspective. These shifts are necessary for justifying the system of rights, but the return to the participant perspective gives a sense of circularity that requires a brief explanation.

We begin, then, with the participant perspective necessary for the derivation of the discourse principle. When taking on this perspective we can see the unavoidable presuppositions we must take on when engaging in some form of cooperative social interaction. However, this perspective cannot direct us to the medium through which the discourse principle can be institutionalized in the context of a political community.[37] To see that this institutionalization is carried out through the legal form, we must shift from a participant perspective to an "outside" perspective. As observers of history and social evolution, we see that law is the medium that can regulate social life in modern societies. As Hedrick explains, in contrast to the unavoidable presuppositions of communicative action, the modern legal form "is not similarly immanent in human social life, but instead is a contingent historical artifact. Therefore, it can be introduced into the argument only from the outside."[38]

Then, equipped with the knowledge that we gained through observation and analysis of social evolution in modern times – the knowledge that achieving social integration requires regulating social interaction through the legal form – we return once more to the participant perspective. This time around, the question before us is how to integrate the discourse principle and the legal form into operationalized institutions. This

[37] Hedrick, *Rawls and Habermas*, 113.

[38] Ibid., 117.

brings us to the democracy principle and to the derivation of the basic categories that comprise the system of rights.

Habermas's Procedural Paradigm of Law and Politics

The discussion until now has shown how Habermas conjoins the discourse principle and the legal form, toward developing his discourse-based theory of law and democracy. The next step in this exposition is to further explicate Habermas's procedural paradigm of law and democracy by situating his theory within the context of the competing theories to which he is responding. The focus will for the most part be on Habermas's approach vis-à-vis the liberal and republican approaches to law and democracy.

At the root of Habermas's procedural framework is the aforementioned co-originality of private and public autonomy (individual and political rights). For Habermas, rights "should not only institutionalize a rational political will-formation, but should also guarantee the very medium in which this will-formation can express itself as a common will of freely associated consociates under law."[39] We see here that the basic concern is for the procedure that guarantees these rights, and based on them. This framework emphasizes procedures that are fundamentally communicative. Hence, in a sense, the most basic freedom that underwrites both private and public autonomy is communicative freedom. Hedrick explains Habermas's position, as follows:

> In order for our constitutional practice to be legitimate, according to the discourse principle, those participating in it must legally recognize themselves and others as responsible agents entitled to an equal say in the political process, Put another way, successful constitutional practice depends, in the first place, upon guarantying the 'communicative freedom' of participants: their ability to freely

[39] Rasmussen, "How is Valid Law Possible?," 29. On this point Habermas asserts: "The system of rights can be reduced neither to a moral reading of human rights nor to an ethical reading of popular sovereignty, because the private autonomy of citizens must neither be set above, nor made subordinate to, their political autonomy" (Habermas, *Between Facts and Norms*, 104).

> enter into, or freely opt out of, communicative practices, to say what they believe and have it considered, to accept or challenge arguments and proposals.[40]

The question at stake is: how can law, which always exists in contingent (and often changing) contexts, be carried out with internal consistency *and* in some way externally rational way, so as to guarantee both certainty and rightness? We note that for Habermas law receives its normativity "neither through its legal *form* per se, nor through an a priori moral *content*, but through a *procedure* of lawmaking that begets legitimacy."[41] Here we see Habermas's theory in tension with legal theories such as legal positivism and natural law theory.

Contra legal positivism, Habermas claims that the legitimacy of law cannot be underwritten by the legal form alone (we recall that he based his democratic framework on combining the legal form with the discourse principle). Habermas's basic critique of legal positivism is the worry that it lacks any context-independent principles to which it can appeal. This problem is evident, for example, when considered within oppressive traditions; in such cases legal positivism cannot find validity beyond the facticity of the social context in which it operates.[42]

Agreeing to an extent with Ronald Dworkin's brand of natural law theory, Habermas argues that law must appeal to rightness. The key point here is that in order to apply the law, this law must always be interpreted. This interpretation appeals to some

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[40] Hedrick, *Rawls and Habermas*, 112.

[41] Habermas, *Between Facts and Norms*, 135.

[42] Habermas adds another worry, namely that "the positivity of law cannot be grounded solely on the contingency of arbitrary decisions without forfeiting its capacity for social integration" (Habermas, *Between Facts and Norms*, 38); see also: Rasmussen, "How is Valid Law Possible?," 33.

moral compass (Dworkin called this moral content law's *integrity*).[43] In Dworkin's framework, there is one (and only one) *right* interpretation of the law. The ideal judge would interpret law in this right way. Habermas criticizes Dworkin's reliance on the integrity of the judge in a way similar to his critique of Kantian morality. He argues that though Dworkin is right to point to the interpretive nature of law, and that this interpretation requires an extra-legal normative appeal, this interpretation is best carried out intersubjectively. For Habermas, Dworkin's ideal judge must be freed "from the solitude of a monologically conducted theory construction."[44] Rather, the rightness of law must be interpreted by a community of interpreters. Here Habermas moves to a procedural paradigm of law. This means that the rightness of law does not rely on its content, but rather on the procedure through which it came to be. Hence, instead of an idealization of the judge as interpreter, we get an idealization of the process through which law is produced.[45]

When we move from examining Habermas's procedural paradigm through the prism of legal theory to examining it from the perspective of political theory, we once again see it in tension with other paradigms. From the political-theoretical perspective, Habermas situates his procedural paradigm, at the root of which is the emphasis on the co-originality of private and public autonomy, vis-à-vis the liberal and republican (communitarian) paradigms.

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[43] See: Dworkin, *Law's Empire* (especially chapters six and seven).

[44] Habermas, *Between Facts and Norms*, 223.

[45] This position also informs Habermas's position on judicial review. Habermas argues that the role of the Supreme Court is limited to reviewing the *application* of legal norms. The question of the justification of legal norms is properly left to the community of citizens, which most often would refer to the representative legislature (see Habermas, *Between Facts and Norms*, 262–263).

Habermas explains that according to the liberal view, society is seen as "a market-structured network of interactions among private persons," and the government is seen as an "apparatus specializing in the administrative employment of political power for collective goals." The role of politics ("in the sense of the citizens' political will-formation"), then, is to mediate between the interests of private citizens and the government's administrative apparatus. In contrast, according to the republican view, "politics involves more than this mediating function." Indeed, politics is what constitutes social processes – "the medium in which the members of somehow solitary communities become aware of their dependence on one another."[46]

Habermas asserts that we can discern two sources of social integration shared by the liberal and the republican views. The *first* is the hierarchical regulations of the state and the *second* is the defused regulations of the market.[47] That said, the republican view has a *third* source of social integration, namely, solidarity and an inherent orientation to a common good.

However, Habermas points to the ways in which these views differ more significantly. *First*, each view leads to a different view of the citizen. According to the liberal view, "the citizen's status is primarily determined according to negative rights they have vis-à-vis the state and other citizens." These individual rights, along with political rights, are meant to protect the citizen from external compulsion. According to the republican view, "the status of citizens is not determined by the model of negative liberties to which these citizens can lay claim *as* private persons." Rather, the rights to

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[46] Jürgen Habermas, "Three Normative Models of Democracy," *Constellations*, 1, 1 (1994): 1.

[47] Ibid.

political participation are seen as positive liberties. The emphasis is not on freedom from external compulsion, but on the right to participate in a common project. Hence, "the state's *raison d'etre* does not lie primarily in the protection of equal private rights but in the guarantee of an inclusive 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."[48]

According to Habermas's analysis, the *second* (related) significant difference between the liberal and republican view of politics has to do with the nature of the political process. The liberal view sees the process of opinion- and will-formation in the public sphere and the legislature as a competitive process in which strategically acting groups compete for access to power. In contrast, the republican view sees this process of opinion- and will-formation not as following the logic of a competitive market, but rather as a communicative process oriented toward mutual understanding.[49]

We can already see in the last point that Habermas sees the republican paradigm as more in line with his discourse-based approach. In fact, he clearly expresses his preference for the republican model over the liberal one, when he argues that when comparing the two, the republican model "has the advantage that it preserves the original meaning of democracy in terms of the institutionalization of a public use of reason jointly exercised by autonomous citizens." Habermas adds that the republican model "accounts for those communicative conditions that confer legitimating force on the political opinion- and will-formation." By contrast, in the liberal model "politics loses all

[48] Ibid., 2.

[49] Ibid., 3.

reference to the normative core of a public use of reason."[50]

However, Habermas criticizes the republican model when it turns into a communitarian view. While a republican model as such is defined by an orientation to some common good, the communitarian strand offers a "thicker" interpretation of this common good, and sees politics as an interpretive process in which a community makes explicit its shared form of life and collective identity. For Habermas, this communitarian model is normatively "overburdened." He argues that "[p]olitical questions may not be reduced to the type of ethical questions where we, as members of a community, ask ourselves who we are and who we would like to be."[51] Here Habermas criticizes Rousseau's formulation of the political legislature as speaking in a unanimous voice, since this unanimity rests on a presupposed consensus among citizens with regards to ethical questions of the good life. Habermas explains that his discourse-based procedural paradigm "insists on the fact that democratic will-formation does not draw its legitimating force from a previous convergence of settled ethical convictions, but from both the communicative presuppositions that allow the better arguments to come into play in various forms of deliberation, and from the procedures that secure fair bargaining processes."[52] By asserting that "[d]iscourse theory breaks with the purely ethical conception of civic autonomy," Habermas is pointing to the potential universal reach of

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[50] Ibid.

[51] Ibid., 4.

[52] Ibid., 4. On the contrast between Rousseau's approach and that of Habermas, Peters comments: "All this amounts in a way to a procedural concept of popular sovereignty which is meant to solve Rousseau's problem of the transformation of the *volonti de tous* into the *volonté générale*. But the solution is different from the one that Rousseau himself imagined. Not some mysterious social alchemy, but the conditions of public deliberation and discursive institutional procedures are to guarantee that the popular will becomes also the enlightened will" (Peters, "On Reconstructive Legal and Political Theory," 113).

his procedural paradigm. While the communitarian view attributes citizens' inclination to a deliberation about the common good to a set of ethical virtues, Habermas draws on the universal nature of the pragmatics of language.

One concern that Habermas is aiming to address in his critique of communitarianism is how to achieve solidarity and political legitimacy in a religiously and culturally diverse society. In other words, the question is what kind of normative unity can be achieved among a diverse citizen body with a plurality of visions regarding the good life? He argues that although a unitary conception of the collective good life in modern societies is improbable, there can nevertheless be a strong consensus regarding fundamental constitutional principles and political procedures.[53] The argument for the procedural paradigm of law and democracy vis-à-vis communitarian views is articulated in Habermas's understanding of the kind of validity claims implied in legal norms:

> One can understand the complex validity claim of legal norms as the claim, on the one hand, to compromise competing interests in a manner compatible with the common good and, on the other hand, to bring universalistic principles of justice into the horizon of the specific form of life of a particular community.[54]

That is to say, the legal form combines a universalistic normative moment with a mechanism for resolving competing interests. Habermas argues that such a mechanism is problematic in the communitarian model, since this model obfuscates the normative distinctions between politics, ethics and law. Each one of these domains lays different normative claims to validity, yet without a clear distinction, Habermas argues, questions

[53] Peters, "On Reconstructive Legal and Political Theory," 112.

[54] Habermas, "Three Normative Models of Democracy," 5.

of validity cannot be examined and resolved from the perspective of rational discourse.[55] Habermas's procedural paradigm emphasizes the institutionalization of the procedures and conditions of communication that ensure a successful process of opinion- and will-formation among free and equal citizens.[56] This institutionalization will be the subject of the final section in this chapter. More broadly, this last section will show how Habermas conceives of the circulation of power and the flow of communications in the political public sphere within his procedural paradigm of democracy.

Habermas's Reconstruction of the Political Public Sphere

According to Habermas's proceduralist model, the political public sphere is "an arena for the detection, identification, and interpretation of those problems that affect society as a whole."[57] That is, the public sphere is conceived through its epistemic and hermeneutic function in society. More precisely, Habermas speaks not of one public sphere, but of multiple public spheres, and has a two-level view of these public spheres. The first level includes formal (institutionalized) public spheres (e.g., parliament, courts), while the second level is comprised of informal (or "peripheral") public spheres, which form "a communication structure rooted in the lifeworld through the association network of civil society."[58] According to this two-level theory, the deliberative practice of legislation requires formal public spheres (parliament) but also informal channels of political

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[55] Rasmussen, "How is Valid Law Possible?," 39.

[56] Habermas, "Three Normative Models of Democracy," 7.

[57] Ibid., 9.

[58] Habermas, *Between Facts and Norms*, 359.

communication.[59] The parliament as a representative public sphere must be anchored in open communication with social public spheres that are open to all.[60] Contrary to formal public spheres, social ("peripheral") ones should not be legally regulated by rigidly structured discursive procedures.[61]

Hence, in his thinking about (deliberative) democracy, he differentiates between "decision-oriented deliberations" and "informal processes of opinion-formation in the public sphere." The latter are "weak publics" that inform the former. These weak publics are more prone to distorted communication, but they are also "unrestricted" and as such can be more sensitive to new ways of thinking. Thus, to function well, weak publics must be free of domination.[62]

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[59] Ibid., 275.

[60] Ibid., 171, 182.

[61] Ibid., 314.

[62] Ibid., 307–308. On this point Bernhard Peters has understood Habermas to be saying that informal publics are less susceptible to manipulation, and as such enjoy a sort of epistemic social privilege in Habermas's theory. Peters writes:

> These informal processes of opinion formation and possibly of critical discussion are undoubtedly important. But why are they depicted as the prime source of social wisdom and as untainted by the competition for power or other distorting influences which (in this picture) make more formally institutionalized discourses less suitable for rational problem-solving? In fact, the 'informal' discourses that I know - such as intellectual circles, specialized cultural and political publics, or social movements - definitely have their share of unconscious structures and mechanisms, of cultural blinders, selective perception, status competition, distorted communication and so on. Perhaps these influences are less distorting than in party politics, jurisprudence, or administrative agencies or other forms of 'institutionalized' discourse, but this is an open empirical question. Similar things could be said for other areas of 'informal' social relations (Peters, "On Reconstructive Legal and Political Theory," 123).

In fact, I believe that Habermas's position is much more ambivalent than Peters suggests. Habermas suggests that informal ("weak") publics are in some sense *more* susceptible to manipulation (through what the first generation of critical theorists called the "culture industry," and other social forces). However, Habermas points out that it is in the periphery, in the margins, so to speak, that new ideas and oppressed voices are often trying to find their way into the center of public consideration.

Habermas loosely distinguishes between three types of informal public spheres.[63] First, there are *episodic* publics, of the sort one may find in a local tavern. The second type is the *occasional* publics, which are defined in their being "arranged." These would include a theater audience or a public of organized protesters on the street. The third type is *abstract* publics, which include isolated individuals who are "brought together" in an abstract way through mass (and new) media. These distinctions are meant to emphasize variations in density of communications, organizational complexity, and other relevant features, but Habermas emphasizes that these are always partial publics and that they are porous to each other.[64]

Habermas seems to suggest that the role of public spheres is to promote the resolution of social conflict through processes of deliberation that result in collective will-formation. While both bargaining and consensus are forms of conflict resolution, the former tends to be resolved through negotiations based on power relations, whereas the latter tend to be resolved through discerning the validity of reasoned argumentation.[65] In any case the public sphere is distinguished as a communicative structure that refers to a social space generated through communicative action and as such is constituted linguistically. Most importantly, the public sphere forms opinions, but defers decision making to the institutionalized political process. The quality of discursive public opinion formation depends on the ability of the public sphere to serve as a place to clarify issues,

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[63] This taxonomy of groups may remind some readers of Sartre's analysis of groups in his *Critique of Dialectical Reason*. However, one should note that Habermas indicated that this later work of Sartre has had little influence on him. See Richard Wolin and Jürgen Habermas, "Jürgen Habermas on the Legacy of Jean-Paul Sartre," *Political Theory* 20, 3 (1992): 497.

[64] Habermas, *Between Facts and Norms*, 374.

[65] Ibid., 140.

pose questions, and assert arguments, a function we find lacking in oppressive regimes.[66] Indeed, the public sphere is the sphere in which public (political) autonomy is realized; where discursive opinion- and will- formation takes shape.

Thus, for Habermas what constitutes a public sphere as public is the nature of the *discourse* it enables, understood through the procedural mechanisms by which this discourse is enacted. Whereas Arendt designated the public sphere as the sphere of words *and deeds*,[67] Habermas designates the public sphere for words only. Kellner correctly points out that Habermas does not follow along lines of strong theories of democracy, which "posit individuals organizing, deliberating, making decisions, and *actively* transforming the institutions of their social life."[68]

Instead, Habermas emphasizes "the power of public discourses that uncover topics of relevance to all of society, interpret values, contribute to the resolution of problems, generate good reasons, and debunk bad ones." These opinions can only be transformed into decisions and take the form of action through "democratically constituted decision-making bodies. The responsibility for practically consequential decisions must be based in an institution. Discourses do not govern. They generate a communicative power that cannot take the place of administration but can only influence it."[69] From this we get the sense that, for Habermas, the public sphere functions outside

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[66] Ibid., 360–362.

[67] See: Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 200.

[68] Kellner, "Habermas, the Public Sphere and Democracy," 273 (my italics).

[69] Habermas, "Further Reflections on the Public Sphere," 452.

of the actual political-institutional system, mainly as a site for debate, but not as the space of political organization, struggle, and transformation.[70]

Above I distinguished between two levels of the public sphere, namely, formal and informal publics. But with Habermas we can also distinguish more broadly between three spheres of social-political life.[71] The first is the private sphere. The "core private spheres of the lifeworld are characterized by intimacy and hence by protection from publicity." These private spheres "structure encounters between relatives, friends, acquaintances, and face-to-face interactions."[72]

The second sphere is that of civil society (which includes what I referred to above as informal publics). It is in this sphere that private people gather to form a public. According to Habermas, this public, the "bearers of the public sphere," is recruited from the private spheres of the lifeworld. Civil society, then, is composed of associations, organizations, and movements that emerge more or less spontaneously, and as such are attuned to societal problems. These associations can in turn transmit these social currents in amplified form to the broader public.[73] Here Habermas differentiates between the role of these spontaneous associations and the role of the more "institutionalized opinion- and will-formation" that manifests itself in "mass media and large agencies" (sometimes

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[70] Kellner, "Habermas, the Public Sphere and Democracy," 278.

[71] Here one might see a debt owed to Hegel for his analysis of the state as including the private sphere (the family), civil society, and the state. For Habermas's discussion of Hegel with respect to these issues, see Habermas's essay, "Hegel's Concept of Modernity," in: Jürgen Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures* (Cambridge, MA: MIT Press, 1990), 23–44 (especially pp. 37–41). For other commentaries on this see: Robert B. Pippin, "Hegel, Modernity, and Habermas," *The Monist* 74, 3 (1991): 329–357; Fred Dallmayr, "The Discourse of Modernity: Hegel and Habermas," *The Journal of Philosophy* 84, 11 (1987): 682–692.

[72] Habermas, *Between Facts and Norms*, 354.

[73] Ibid., 367.

Habermas refers to the latter as "the" public sphere pure and simple). It seems, then, that the *spontaneous* associations of civil society "form the organizational substratum of the general public of citizens,"[74] while the mass media and large agencies form the *institutional* "backbone of the public sphere."[75]

The third sphere is what Habermas sometimes refers to as the political system. This includes "formal" public spheres of deliberation, such as parliaments and courts. It also includes the administrative system. The interrelations between these three spheres – the private sphere, civil society, and the political system – are what constitute Habermas's procedural conception of democracy. When functioning legitimately, these interrelations are best understood as a circulation of various forms of power, regulated by proper communication flows. To clarify this, we can consider three forms of power: administrative power, social power and communicative power.

Administrative power is the power of the administrative system to make decisions and execute them. *Social* power refers to the power of various social forces that may not be legitimated through democratic processes (one may think of the power and influence exercised by corporations, for example). *Communicative* power is the power of actors in informal publics to raise issues for public deliberation and potential decisions. *Media* power is a fourth category, which, as I will show, mediates communicative and administrative power.

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[74] Ibid.

[75] See Habermas's "Media, Markets and Consumers: The Quality Press as the Backbone of the Political Public Sphere" in: Jürgen Habermas, *Europe: The Faltering Project* (Malden, MA: Polity Press, 2009).

Habermas recognizes that a fundamental worry from a democratic perspective is the possibility of administrative and social power operating without accountability to the public in the periphery. He observes that in order to avoid an "illegitimate independence of social and administrative power vis-à-vis democratically generated communicative power […], noninstitutionalized public communication [must] make possible more or less *spontaneous* processes of opinion-formation" in the periphery.[76] Here we see the important role of communicative processes in informal publics in the periphery. According to Habermas, the public sphere should operate as a "warning system" that signals to formalized discursive forums (such as parliaments) about social problems. It is, if you will, the canary of democracy. Habermas emphasizes that this warning system must be *effective*, i.e. it must "not only detect and identify problems but also convincingly and *influentially* thematize them, furnish them with possible solutions, and dramatize them in such a way that they are taken up and dealt with."[77] The basic idea is that civil society, through autonomous public spheres, develops impulses that (if vital enough) bring conflicts from the periphery into the center of the political system.[78]

But how do topics that arise in the periphery enter the center of public debate? To answer this Habermas considers the power of the media. Journalists, publicity agents, and members of the press "collect information, make decisions about the selection and presentation of 'programs,' and to a certain extent control the entry of topics,

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[76] Habermas, *Between Facts and Norms*, 358.

[77] Ibid., 359. This emphasis on effective influence on decision-making processes echoes the concerns I raise regarding Feenberg's framework in Chapter Two.

[78] Ibid., 330.

contributions, and authors into the mass-media-dominated public sphere."[79] According to this analysis, since effective channels of mass communication have become more complex, expensive and thus centralized, there is increasing pressure on members of the media to select which topics get public attention (and which do not). These selection processes become the source of "media power." The flow from communicative action to political execution is then understood procedurally as follows:

> [O]nly the administrative system itself can 'act.' The administration is a subsystem specialized for collectively binding decisions, whereas the communicative structures of the public sphere comprise a far-flung network of sensors that in the first place react to the pressure of society-wide problematics and stimulate influential opinions. The public opinion that is worked up via democratic procedures into communicative power cannot 'rule' of itself, but can only point the use of administrative power in specific directions.[80]

To sum up, according to Habermas's discourse theory of democracy, "binding decisions, to be legitimate, must be steered by communication flows that start at the periphery and pass through the sluices of democratic and constitutional procedures situated at the entrance to the parliamentary complex or courts."[81] These "sluices" at the entrance to the political system include the various social processes occurring in the public sphere. Thus, in a well-functioning democracy the circulation of power is regulated by the proper flow of communication and vice versa.

Let us now see where this discussion of Habermas's procedural paradigm of law and democracy takes us. I began by arguing that Habermas's discourse-ethical theory is

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[79] Ibid., 376.

[80] Habermas, "Three Normative Models of Democracy," 9.

[81] Habermas, *Between Facts and Norms*, 356. In this sense law is the medium through which communicative power is translated into administrative power (see Rasmussen, "How is Valid Law Possible?," 32).

well positioned to inform our normative understanding of a democratization of technological design (Chapter Two). However, I acknowledged that technology mediates the discourse about technology (Chapter Three). Hence, this chapter (Four) was dedicated to explicating the paradigm through which Habermas analyzes the public sphere, and the communicative-democratic processes, which underlie the civic deliberation about technology. What has so far been missing from this analysis is an examination of technological developments that impact key aspects of Habermas's political-procedural paradigm, such as social power, media power, civil society and the public sphere. Hence, Chapter Five will be devoted to just such an investigation, focusing on media power in particular. In order to theorize the democratization of communicative processes regarding technological designs, we must first investigate how new technologies are changing the flow of communications in the political public sphere, and what problems arise as a result of these changes.

CHAPTER FIVE

MEDIA POWER RECONSIDERED

Introduction

The previous chapter provided an account of Habermas's discourse-based theory of democracy, as is derived from his theory of communicative action and formal pragmatics. This account illustrated how Habermas reconstructs the democratic public sphere in light of the normative principles of his procedural paradigm, thus articulating the flow of communications (including formal and informal public spheres, as well as the distinction between the core and periphery of the political system) and the circulation of power (including communicative, administrative, social, and media power).

The aim of this chapter is to examine the ways in which contemporary digital technologies, and Internet-based technologies in particular, must inform a Habermasian discourse-theoretic account of the democratic public sphere and the processes of democratic opinion and will formation within it. I will develop this examination in four steps: First (1), I will review optimistic voices that consider digital media to be expanding the democratic public sphere, and that argue that these technologies provide heretofore marginalized individuals and groups with access to democratic participation which they previously lacked. I will then (2) argue, contrary to such voices, that digital media do not necessarily promote democracy, citing cases from democratic and authoritarian regimes. Third (3), I will delve deeper into Habermas's concept of media power, and show that

though the ways in which mass communication is filtered has changed, we can nevertheless identify gatekeepers of information flows in the digital public sphere. Finally (4), I will show that digital media do not in themselves alleviate socio-economic dynamics, which marginalize the voices of socially disadvantaged individuals and groups. Ultimately, the conclusion of this chapter is that the distribution of access to online participation in processes of democratic opinion and will formation is a result of technological design. This means that the design of the Internet itself warrants a public discussion based on democratic values offered by Habermasian discourse theory.

Digital Democracy Optimism

In 2006 Time magazine chose a surprising figure as its "Person of the Year": You.[1] The subtitle on the cover read: "Yes, you. You control the information age. Welcome to your world."[2] This choice reflects the prevalent notion that the Internet may lead to more intercultural understanding, more citizen participation, and a more flourishing and vibrant democracy.[3] Indeed, the development of communication networks has historically been a powerful force in shaping the political public sphere and the meaning of discourse and action within it. Today many theorists consider digital technology, and especially the

[1] Lev Grossman, "Time's Person of the Year: You," *Time Magazine*, December 13, 2006, http://www.time.com/time/magazine/article/0,9171,1569514,00.html

[2] See cover image at: http://www.time.com/time/covers/0,16641,20061225,00.html.

[3] See: Kellner, "Habermas, The Public Sphere, and Democracy"; also: Bar-Tura, "Arendt, Habermas and Facebook." It may be helpful to clarify the difference between the "Internet" and the "World Wide Web," since these are often, mistakenly, used interchangeably. The *Internet* is the name for the large-scale interconnection of computer networks. The *World Wide Web* ("the Web") is one (the most popular) software application used on this interconnected network. The Web uses an Internet language ("protocol") called Hypertext Transfer Protocol (or HTTP). Most content on the Internet appears on Web "pages" that use the HTTP protocol (hence Web pages have the http:// prefix before the page address).

rapid development of the Internet, as a democratizing medium that promotes wider access and participation in the political public sphere.[4]

Consider for example the words of Douglas Kellner, who in 2000 asserted that "in the contemporary high-tech societies there is emerging a significant expansion and redefinition of the public sphere comprising new sites of information, discussion, contestation, political struggle, and organization that include the broadcasting media and new cyberspaces as well as the face-to-face interactions of everyday life."[5] Many who claim that the Internet is "democratizing" politics often mean that the Internet is driving a redistribution of opportunities for political influence. That is to say, more people can get involved in civic and political activities, can increase their participation in the political public sphere, and have more access to positions in which they can influence public debate. This change, it is often claimed, challenges the monopoly of traditional elites over meaningful influence of the public sphere and the political process.[6]

These claims are especially relevant for our discussion, since they rest on a particular conception of democracy and democratization – one that emphasizes participation, and, more specifically, deliberation. The hope of those hoping that the Internet will have a democratizing effect often rests on their understanding of democratization as increasing the breadth and equity of political participation; the understanding that "meaningful democratic participation requires that the voices of

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[4] For Habermas's perspective on this see: Habermas, *Europe: The Faltering Project*, 143 (in his essay "Political Communication in Media Society").

[5] Kellner, "Habermas, the Public Sphere, and Democracy," 279.

[6] See discussion in: Matthew Hindman, *The Myth of Digital Democracy* (Princeton: Princeton University Press, 2009), 6.

citizens in politics be clear, loud and equal."[7] As explained by Hindman, "proponents of participatory citizenship, deliberative citizenship, and monitorial citizenship all focus on political equality – and particularly on making formal political equality meaningful in practice."[8]

Some political scientists have suggested that the traditional scholarly divide between creators and consumers of media messages would have to be rethought in light of the Internet: "The World Wide Web… allows individuals – even children – to post, at minimal cost, messages and images that can be viewed instantly by global audiences. It is worth remembering that as recently as the early 1990s, such actions were impossible for all but a few world leaders, public figures and entertainment companies – and even for them only at select moments."[9] This optimism about the role of digital media in expanding opportunities for entering public discourse is widely echoed outside the academy as well. Matthew Hindman provides the following examples of enthusiasm regarding the Internet and democracy:

- *Political consultants*: "Howard Dean campaign manager Joe Trippi effuses that 'the Internet is the most democratizing innovation we've ever seen, more so even than the printing press'."[10]
- *Government officials*: "Federal Communications Commission chair Michael Powell used the Internet to justify looser regulation of broadcast media,

[7] Ibid., 6.

[8] Ibid., 8.

[9] Ibid., 7.

[10] Ibid., 2.

explaining that 'information technology… has a democratizing effect… With a low cost computer and an Internet connection every one has a chance to 'get the skinny,' the 'real deal,' to see the wizard behind the curtain'."[11]

- *Journalists*: "Tom Brokaw has argued that bloggers represent 'a democratization of news.' […] Brian Williams, who succeeded Brokaw as anchor, complained that he had spent 'all of my life, developing credentials to cover my field of work, and now I'm up against a guy named Vinny in an efficiency apartment in the Bronx who hasn't left the efficiency apartment in two years'."[12]
- *Judges*: "[I]n *John Doe No. 1 v. Cahill* (2005), the Delaware Supreme Court held as a matter of fact that 'the Internet is a unique democratizing medium' that allows 'more and diverse people to engage in public debate'."[13]

But is this confidence in the promise of digital technologies for political participation warranted?

Digital Media Does Not Promise Democracy

Many point to the role of digital technologies in challenging authoritarian regimes as a clear example of the democratizing effects of such technologies. Jürgen Habermas has claimed that the role of digital media varies between democracies and authoritarian regimes. In this context Habermas asserted that "computer-based communication can claim unequivocal democratic merits only for a specific context: it undermines

[11] Ibid.

[12] Ibid., 3.

[13] Ibid.

censorship by authoritarian regimes which try to control and suppress spontaneous public opinions."[14]

However, a note of caution may be in order to those who point to the role of digital media in the various 2011 uprisings in the Middle East (the so-called "Arab Spring"), or the 2009 protests in Iran. It is not clear even in those seemingly significant cases precisely how significant such media were in bringing about and facilitating political action. Despite the popular enthusiasm of some about the role of Twitter in Iran after the 2009 presidential election, there is evidence suggesting that Twitter communications ("tweets") about the Iranian protests occurred mostly in the West, and were not primarily used by Iranians to organize.[15] Rather than to organize, the social media tools were used primarily to report protest events as they unfolded and to disseminate information, thus in effect replacing the foreign press which could not cover the events. The outward communication flow also created international support for the movement.[16]

Furthermore, little consideration was given at the time to the ways in which such digital means can (and have been) used to more nefarious ends, as well as the fragility of such networks. Some scholars point out that "[i]n the run-up to the disputed election [in Iran, 2009], the [opposition-backed] Mousavi campaign sought to use Facebook to rally supporters. The government responded by simply blocking access to Facebook. Online

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[14] Habermas, *Europe: The Faltering Project*, 157.

[15] Bruce Etling, Robert Faris, and John Gorham Palfrey, "Political Change in the Digital Age: The Fragility and Promise of Online Organizing," *SAIS Review* 30, 2 (Summer-Fall 2010): 44.

[16] A related point was made by Gladwell in his essay: Malcolm Gladwell, "Small Change: Why the Revolution will not be Tweeted," *The New Yorker*, October 4, 2010, http://www.newyorker.com/reporting/2010/10/04/101004fa_fact_gladwell

communities that congregate at a single URL are easily dismantled; organizations that rely on centralized nodes and hierarchical structures are trivial to break up."[17] In this same context Evgeny Morozov adds that,

> The [Iranian] government did its share to obstruct its opponents, too. Not only did it thwart Internet communications, the government (or its plentiful loyalists) also flooded Iranian Web sites with videos of dubious authenticity—one showing a group of protesters burning the portrait of Ali Khamenei—that aimed to provoke and splinter the opposition. In an environment like this—where it's impossible to distinguish whether your online interlocutors are your next-door neighbors, some hyperactive Iranians in the diaspora, or a government agent masquerading as a member of the Green Movement—who could blame ordinary Iranians for not taking the risks of flooding the streets only to find themselves arrested?[18]

Where social networks are formed more and more in the virtual world, and where one cannot know with whom one is communicating, political alliances pervaded by anxiety and mistrust my become more prevalent, especially in a civil society facing an authoritarian regime.[19] The benefits of digital media notwithstanding, strong on-the-ground relationships are often crucial to the success of democratic movements.

This seems true even in protest movements in fully developed democracies such as the United States. When asked about the role of digital media in the "Occupy" movement that began in 2011 in New York, Yochai Benkler – co-director of the Berkman Center for Internet and Society at Harvard University – admitted that "the online component was critical — the ability to stream video, to capture the images and create records and narratives of sacrifice and resistance." However, Benkler stressed that

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[17] Etling et al., "Political Change in the Digital Age," 45.

[18] Evgeny Morozov, "The Digital Dictatorship," *The Wall Street Journal*, February 20, 2010, http://online.wsj.com/article/SB10001424052748703983004575073911147404540.html

[19] For more on this see: Bar-Tura, "Between Virtual Reality and the Real."

"[t]he ability to focus on a national agenda will depend on actual, on-the-ground, face-to-face actions, laying your body down for your principles — with the ability to capture the images and project them to the world."[20]

How then ought we examine the implications of digital media for participation in democratic public discourse (what Habermas called "democratic opinion- and will-formation) in democracies such as the United States? I will examine this question with respect to Habermas's analysis of the democratic public sphere as outlined in Chapter Four. Specifically, I will examine the ways in which digital media should inform a rethinking of the concept of *media power* – that mechanism through which topics of social concern can be raised in civil society and reach a large audience for public debate.

The New Gatekeepers

On the one hand it seems true that communication networks in the public sphere have become much less centralized. Consider the discussion in Chapter Four about what Habermas has referred to in the early 1990s as "media power." As mentioned, in his attempt to account for the way in which peripheral topics enter the center of public debate, Habermas argued that journalists, publicity agents, and members of the press "collect information, make decisions about the selection and presentation of 'programs,' and to a certain extent control the entry of topics, contributions, and authors into the mass-media-dominated public sphere."[21] Due to the increasing complexity, cost, and

[20] See interview with Benkler in: Jennifer Preston, "Protesters Look for Ways to Feed the Web," *The New York Times*, November 24, 2011, http://www.nytimes.com/2011/11/25/business/media/occupy-movement-focuses-on-staying-current-on-social-networks.html?_r=2

[21] Habermas, *Between Facts and Norms*, 376.

centralization of effective channels of mass communication, there is increasing pressure on the media to select topics for public discussion. As mentioned in Chapter Four, for Habermas the spontaneous associations of civil society "form the organizational substratum of the general public of citizens,"[22] while the mass media and large agencies form the institutional "backbone of the public sphere."[23]

However, with the advent of online social networks, blogs, and other "bottom up" and "peer-to-peer" digital media, such centralization seems to have been diffused. It seems that citizens are no longer reliant on centralized institutions for their information, and are not dependent on the editorial selection process. "Media power" seems to have waned. The gatekeepers no longer seem to control the flow of information. Indeed, the gates seem to have been stampeded by millions of Internet users who are raising their voices and speaking directly to their online audiences. Is this an accurate description? Is Habermas's concept of media power obsolete?

Yochai Benkler has argued that "the networked public sphere provides broader intake, participatory filtering, and relatively incorruptible platforms for creating public salience." The Web, Benkler adds, is ultimately structured "in an ordered, but nonetheless meaningfully participatory form." For him, ultimately the Internet is just concentrated enough to support "universal intake and local filtering."[24] In what follows I examine the transformation of the filtering function of media power in the digital age, and the

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[22] Ibid.

[23] See Habermas's essay, "Media, Markets and Consumers: The Quality Press as the Backbone of the Political Public Sphere" (in Habermas, *Europe: The Faltering Project*).

[24] Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (New Haven: Yale University Press, 2006), 247–248.

potential impact of this transformation for increased participation in public deliberation and democratic opinion and will formation.

One reason to think that gatekeepers to the public sphere persist in the digital age is the nature of networks. When examining the Internet through this lens, concerns about online participatory parity arise. Jodi Dean has an insightful discussion of how network structures work, and consequently of the ways in which the technology behind the Internet does not provide equal opportunity for varying sites to be seen, and the voices presented by them to be heard. She explains that as in any network (cyber or "real"), "[h]ierarchies and hubs emerge out of growth and preferential attachment." Smaller, newer, or lesser known sites that seek publicity and attention on the Web, will attach themselves through various links to sites that have established themselves as central hubs. In the process, clusters of networked power inevitably form.[25] As a network, the Internet tends to coalesce around certain central nodes. Moreover, even in the diffused cyberspace of the Internet, we can still identify a few channels of online communication that have gained the status of gatekeepers to public recognition (e.g. Facebook, Google), though in much more subtle ways such as default settings, design, "personalization" and algorithms used to *screen* information.[26]

We have established with Feenberg (Chapter Two) that the ways technologies are designed embody certain values, and these designs will bring about particular distributions of benefits and burdens. The World Wide Web is no different. As the most

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[25] Dean, *Democracy and Other Neoliberal Fantasies*, 27–30.

[26] For a phenomenology of screens, that emphasizes how screens indeed screen (that is, *selectively* display) information, see: Lucas D. Introna, L. D. and Fernando M. Ilharco, "On the Meaning of Screens: Towards a Phenomenological Account of Screenness," *Human Studies* 29, 1 (2006): 57–76.

prevalent application used over the Internet, the World Wide Web is designed according to certain protocols, and it allows certain actions and functions, but not others. What is important to see is that these design choices have consequences. They determine how, and hence who, will be seen and heard online.

Furthermore, the services of these gatekeepers to their users are often free of charge, and thus appear to be egalitarian and inclusive. Giving these service providers the key to the gates seems like the democratic thing to do. However, we better understand the price we pay when we consider that the users of Facebook and Google are not the clients. They are *the product*.[27] Such web-based service providers strive to accumulate as much information as possible about their users, and use this information to tailor advertisements to them. The clients, then, are the corporations that purchase the ads. In fact, the principle that directs the way in which Facebook structures its processes of connecting and networking its users is overwhelmingly driven by advertising concerns. I will now focus more closely on the consequences of privately owned digital gatekeepers.[28]

Corporate Digital Gatekeeping: Legal Concerns

It is easy to acknowledge the role of authoritarian governments in keeping the gates to public discussion. In the discussion above I suggested that such gatekeeping by authoritarian regimes need not end with the introduction of digital technologies. But in more developed democracies, where governments find it harder to intervene directly in

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[27] See: Siva Vaidhyanathan, *The Googlization of Everything (and Why We Should Worry)* (Los Angeles: University of California Press, 2011), 3.

[28] For a brief overview of the evolution of the concept of "gatekeeping," and its application to information flows, see: Hindman, *The Myth of Digital Democracy*, 12–13.

the digital public sphere, one might think that the cybersphere is more egalitarian and open to participation.

However, as I began to show, the digital public sphere has owners. Digital platforms are owned by a multitude of corporations, and a few of them are particularly influential. As I will show, digital changes in communication technologies also have implications for the role and distribution of what Habermas referred to as social power. Corporations that are not media organizations are becoming the new "backbone" of the public sphere – filtering information in new ways.

Consider the controversy regarding "net neutrality." The principle of net neutrality addresses an issue of supply and demand of Internet access.[29] The debate centers around the question: should suppliers of access to broadband (such as telecom companies) be allowed to provide a tiered model of services, according to which some users would have better (faster, more reliable) access than others? For example, suppliers may wish to give preferred service to users who are clients of a certain company. To give a hypothetical example, AT&T could sign an agreement with Apple such that iPhone users who browse the Web via AT&T-powered phones get better service than other

[29] The debate surrounding "Internet Neutrality" is situated within broader discussions about neutrality of networks more broadly. Even within the particular debate regarding Internet neutrality, there are a number of issues that garner concern. As explained by Turilli et al., most definitions of Internet neutrality "prescribe an **'**absence of differentiation**'**. They advocate that no difference should exist in how information flows on the Internet irrespective of the device that is used to access it. Analogously, users paying for a given quality of service should not experience differences in how they can use the Internet or, once routed, Internet packets should not be treated differently, depending on what data they carry or who or what has generated them" (Matteo Turilli, Antonino Vaccaro, and Mariarosaria Taddeo, "Internet Neutrality: Ethical Issues in the Internet Environment," *Philosophy of Technology* 25 [2012]: 138). For an extensive discussion of Net Neutrality, especially as it relates to principles of fairness (and critiques of strict Net Neutrality), see the full article: Turilli et al., "Internet Neutrality."

AT&T customers. In a sense, it's like providing an express lane to certain drivers on a busy highway.

Another, even more concerning possibility, is that companies that own certain websites (think of Google for example) would pay telecom companies a fee, and in return that telecom company would provide preferred service to users who attempt to access those websites. In this case, hypothetically, AT&T could sign an agreement with Google such that AT&T customers trying to access Google Search get there faster than those trying to access, say, Yahoo Search.

In the case of net neutrality, the legislature must decide whether this tiered service model, which enables large corporations to have significant control over the course of traffic on the Internet, is legal (some have coined this possibility "data discrimination"). In the United States the current decision is that net neutrality must be upheld in landline connections, but "data discrimination" is allowed in wireless connections. The latter are of course becoming much more significant, especially as Internet access via mobile devices becomes more popular and more available.[30]

Furthermore, the increased reliance on online platforms for public discussion raises a multitude of other questions relating to law and democracy, not the least of which are constitutional questions regarding the right to free speech on the Internet. The platform upon which the cyber public sphere is built is privately owned by corporations such as Google, Amazon, and so on, all of which are not bound to uphold First

[30] For more on the net neutrality legislation passed in December 2010 see: Brian Stelter, "F.C.C. is set to Regulate Net Access," *The New York Times*, December 20, 2010, http://www.nytimes.com/2010/12/21/business/media/21fcc.html

Amendment obligations. Though they often facilitate free speech, they are not definitively bound to uphold this service. We have seen instances in which this had public consequences, such as in the case of the dissemination of the WikiLeaks U.S. Embassy Cables.[31]

As Yochai Benkler points out, the Pentagon had described WikiLeaks in 2008 as dedicated "to expos[ing] unethical practices, illegal behavior, and wrongdoing within corrupt corporations and oppressive regimes in Asia, the former Soviet bloc, Sub-Saharan Africa, and the Middle East," and in 2009 WikiLeaks had received the Amnesty International New Media Award for reporting on extrajudicial killings in Kenya.[32] However, despite these accolades, in December 2010 an attack on the WikiLeaks site occurred in an attempt to shut down the site's functionality.

Benkler explains that the attack on WikiLeaks combined "a large-scale technical distributed-denial-of-service (DDoS) attack with new patterns of attack aimed to deny Domain Name System (DNS) service and cloud-storage facilities, disrupt payment systems services, and disable an iPhone app designed to display the site's content."[33] What is significant in the attack on WikiLeaks is that it was *not* carried out by the U.S. government. Though elected officials expressed outrage aimed at the site, they could not take legal action against it. However, government officials did encourage private

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[31] See for example: Scott Shane and Andrew W. Lehren, "Leaked Cables Offer Raw Look at U.S. Diplomacy," *The New York Times*, November 28, 2010, http://www.nytimes.com/2010/11/29/world/29cables.html?_r=1

[32] Yochai Benkler, "WikiLeaks and the PROTECT-IP Act: A New Public-Private Threat to the Internet Commons," *Daedalus* 140, 4 (Fall 2011): 154.

[33] Ibid.

corporations to deny the site basic technical services, and when this happened the site's functionality was significantly disrupted. To illustrate the scale of this corporate action, participating companies included Amazon, PayPal, Bank of America, MasterCard, Visa, and Apple, among others.[34] Benkler comments on the constitutional aspects of the WikiLeaks case:

> [The attack on WikiLeaks] entailed an extra-legal public-private partnership between politicians gunning to limit access to the site, functioning in a state constrained by the First Amendment, and private firms offering critical functionalities to the site – DNS, cloud storage, and payments, in particular – that were not similarly constrained by law from denying service to the offending site. […] The inapplicability of constitutional constraints to non-state actors created the legal void, permitting firms to deny services to WikiLeaks. This, in turn, allowed them to obtain results (for the state) that the state is prohibited by law from pursuing directly.[35]

It is precisely due to WikiLeaks' reliance on privately owned Internet infrastructure (such as donation/payment software, "cloud" storage, and so on), that the attack on the site was constitutionally possible. Thus, in this case the force confronting the Web-based political activist was not an authoritarian regime, but private corporations (encouraged by a democratic government) who own foundational Internet platforms.

The issue of free speech and the Internet was also interestingly manifested in the case of philosophy professor Peter Ludlow and "The Sims Online" Web-based game. "The Sims Online" lies within the genre of "virtual reality" games, otherwise known as "massively multiplayer online role playing games." Owned and operated by a company called Electronic Arts, "The Sims Online" featured a virtual town called Alphaville,

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[34] Ibid, 156–157. For an extensive account of the events related to the attack on WikiLeaks, see: Yochai Benkler, "A Free Irresponsible Press," Forthcoming in: *Harvard Civil Rights-Civil Liberties Law Review*, http://benkler.org/Benkler%20Wikileaks%20CRCL%20Working%20Paper%20Feb_8.pdf

[35] Benkler, "WikiLeaks and the PROTECT-IP Act," 155.

where many users (paying subscribers) take on fictional identities and interact with each other. Ludlow opened a virtual newspaper in this virtual town, naming it "The Alphaville Herald." This "newspaper" reported about activities, some covert, that were undertaken by other subscribers. Exposing various kinds of online activities was not comfortable for Electronic Arts, so they shut down Ludlow's user account.[36]

Regardless of the details of this specific controversy, it certainly raises the question of what rights Internet users have when the platforms they use are overwhelmingly privately owned. As some have pointed out, Internet companies are not like other communications corporations (like phone companies, for example), which are legally obligated to allow all speech through their conduits. Companies such as Electronic Arts are more like a private club, and have much control over its membership and its activities. Users of services of such companies often sign away rights of free speech when they subscribe, and thus have no constitutional protection. The complex question of the status of free speech on privately owned Internet platforms makes clear that we must be careful when we consider to what extent the cyber sphere can or in fact does function as a democratic public sphere.

Corporate Digital Gatekeeping: Socioeconomic Concerns

As mentioned above, many view digital media as eliminating the socio-economic barriers to entering the public sphere. For example, Hindman quotes Williams and Delli Carpini, who assert that new media "undermine the idea that there are discrete gates through

[36] For Ludlow's own extensive account of these events, see: Peter Ludlow and Mark Wallace, *The Second Life Herald: The Virtual Tabloid that Witnessed the Dawn of the Metaverse* (Cambridge, MA: MIT Press, 2007).

which political information passes: if there are no gates, there can be no gatekeepers."[37] I have explained how the structure of networks creates hubs of information flow, which in turn creates gates, or at least bottlenecks. While I have already raised concerns regarding how the new gatekeepers may have consequences for constitutional issues, I would now like to turn our attention to the political economy of the Internet, and how it creates or sustains socio-economic barriers to accessing the digital public sphere.

The Access, Usage and Skill Divides

Since the use of the Internet has become widespread, there has been much focus on what has been dubbed the "digital divide." This refers to the unequal access to Internet services among various demographic groups.[38] This inequality often follows socio-economic inequalities and as such calls into question the degree to which the Internet has an equalizing socio-economic effect. What follows is some sobering data regarding Internet access.

Since its introduction to public use on a mass scale, the Internet has rapidly expanded, growing from 16 million users worldwide in 1995 to over 2.2 billion in 2012.[39] But this growth is not spread evenly among all demographic groups. Furthermore, while one might assume that this inequality is only between populations of developed and developing countries, this is hardly the case. That is, inequalities in access to the Internet persist in the United States, and can be traced along clear socio-economic lines.

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[37] Hindman, *The Myth of Digital Democracy*, 13.

[38] For an overview of the current scholarship on the digital divide, especially as it relates to democratic participation, see: Jason M. Lamb, "The Digital Divide: Free Expression, Technology and a Fair Democracy," SSRN, http://ssrn.com/abstract=2245072 (pp. 12–24).

[39] Ibid., 3.

Race and gender continue to be predictors of access to the Internet in the US. Disparities in access and use of Internet technology still exist between Black citizens and Whites, favoring the latter. Similar disparities exist between women and men, again favoring the latter.[40] That said, there are signs that disparities in Internet access along lines of race and gender are slowly closing.[41]

A 2012 study found that while one in five Americans does not use the Internet, by far the social groups most negatively affected by the digital divide in the US are the elderly, the poor, and the less educated.[42] More precisely:

- *Education:* Educational attainment is one of the strongest predictors for Internet access, as 43% of adults without a high school education use the Internet, versus 71% of high school graduates – and 94% of college graduates.
- *Income:* Household income is strongly correlated to Internet use, "as only 62% of those living in households making less than $30,000 per year use the internet, compared with 86% of those making between $50,000–74,999 and 95% of those making more than $75,000."[43]
- *Age:* Being 65 or older is a strong predictor of lack of Internet use.[44]

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[40] Ibid., 6–7.

[41] Ibid., 12.

[42] Ibid., 4.

[43] Ibid., 7.

[44] This should not be read as suggesting that young people are all indeed "digital natives." As of 2008, 25% of young people in the US do not have Internet access. Furthermore, lack of access presents a strong positive correlation with lower socioeconomic status. See: Eszter Hargittai, "Digital Na(t)ives? Variation in Internet Skills and Users among Members of the 'Net Generation'," *Sociological Inquiry* 80, 1 (February 2010): 94.

One might assume that as technology advances in its sophistication, it will also alleviate the social inequalities associated with it. Perhaps surprisingly, however, there is good reason to think that in some respects things are getting worse. In particular, broadband communication technology is broadening the digital divide. Consider that in June 2000, thirty-four percent of American adults accessed the internet at home via dial-up versus three percent who accessed the internet at home via broadband. A decade later, in May 2010, more than sixty-six percent of American adults accessed the Internet at home via broadband and only five percent via dial up.[45] Lamb explains the significance of this technological shift in terms of access:

> The slower dial-up Internet connections that dominated the Internet landscape in its early days were widely available due to the ubiquity of telephone and electrical service, the two utility components needed for dial up access. The high penetration rate of telephone technology, at over 94%, made adoption of dial up Internet as simple as buying a computer, buying a modem and signing up for service. However, broadband Internet, which is a much faster and more reliable upgrade over dial-up service, required Internet service providers to build out networks with higher bandwidth capacities than the existing telephone networks. Broad access suffered because Internet service providers rolled out these new more expensive services in higher income areas and charged accordingly. This initial deployment of broadband internet services left the poor shut out because they could scarcely pay for access to dial up service, let alone the higher prices for new broadband service.[46]

The shift toward broadband technology has created a "soft" digital divide; the divide between those accessing the Internet via broadband, and those whose access utilizes inferior technology, such as dial-up (the latter are predominantly poor and rural users). This "soft" divide is still an important divide in *access* and not only quality of use, since with the prevalence of broadband technology, much of the content on the Internet

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[45] Lamb, "The Digital Divide," 10.

[46] Ibid., 9.

(YouTube videos are but one example) simply cannot be seen with a dial-up connection.[47]

Indeed, the inequalities in access to Internet services are an important consideration when assessing the degree to which the Internet is "democratizing" the public sphere.[48] However, access by itself is not the only factor to consider, and arguably not even the most important. Hargittai has studied patterns of Internet usage extensively. Her research shows that the *skills* one needs in order to use the Internet effectively are to a large extent more stratified than the access itself.[49]

Some might suggest that skill stratification will correlate more with age than other variables, since many consider youth to be "digital natives." Hence, according to this logic, the "skill divide" is not a democratic deficit, but rather a natural process of cultural

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[47] Ibid., 10–11. In defense of broadband technology, Gerhards and Schäfer point out that with the improved technical equipment of households, the range and duration of Internet usage have significantly increased (see: Jürgen Gerhards and Mike S. Schäfer, "Demokratische Internet-Öffentlichkeit? Ein Vergleich der öffentlichen Kommunikation im Internet und in den Printmedien am Beispiel der Humangenomforschung," *Publizistik* 2, 52 [Juni 2007]: 210). However, their analysis of these technological developments remains naïve. For example, they argue that the barriers to accessing the Internet are lower than other media. They write that broadcasting information via an Internet site is indeed not completely free of cost, but still comes with substantially lower cost connected than the operation of a television or radio station or even the publications of the print media. As I discuss in the current chapter, this does not yet answer the question of who receives this information, if anyone. Other naïve assertions include their claim that there are few legal barriers to access and that in comparison to the "old" mass media, the Internet has fewer associated requirements; the claim that censorship and control on the Internet are hardly possible, with the corresponding positive and also negative aftereffects; the claim that since there is no selection and editing of content conducted by professional journalists, a variety of actors and content can be presented in this medium. I address many of these claims in the current chapter.

[48] I follow Hindman in using the verb "democratizing" here descriptively. That is, for the Internet to be democratizing means it is "redistributing political influence; it is broadening the public sphere, increasing political participation, involving citizens in political activities that were previously closed to them, an challenging the monopoly of traditional elites" (Hindman, *The Myth of Digital Democracy*, 6). Hindman adds that "proponents of participatory citizenship, deliberative citizenship, and monitorial citizenship all focus on political equality – and particularly on making formal political equality meaningful in practice" (Ibid., 8).

[49] See: Ibid., 9.

adaptation to new technologies.[50] To examine this "generational" argument regarding the skill divide, Hargittai examined the variation in Internet skills among youth – the "Net Generation." She studied how people differ in their online abilities and activities, especially in younger populations.[51] Her findings are informative.

First, Hargittai finds that increased Internet access does not necessarily translate to increased Internet skills.[52] This means we should be concerned about disparities in Internet skills above and beyond our concern for access. Second, her findings with respect to Internet usage skills do point to reasons for concern regarding social stratification. Her research finds that among younger populations, socio-economic status and education (including the educational level of parents) are positively correlated to higher levels of Internet skill.[53] When examined through the lens of race, the findings show that youth of Asian and White ethnicities present better Internet skills than those of Black and Hispanic youth.[54]

Perhaps the most important finding related to Internet usage skills and social stratification is the ways in which these skills are put to use. To assess this, Hargittai examined what she calls "Internet usage diversity." That is, the diversity of Web sites

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[50] Research does in fact show that youth embrace new media technologies faster than older populations (see: Stephen Coleman and Vincent Price, "Democracy, Distance, and Reach: The New Media Landscape," *Connecting Democracy: Online Consultation and the Flow of Political Communication*, ed. Stephen Coleman and Peter M. Shane [Cambridge: MIT, 2012], 36). However, one should proceed with caution: research shows that while general Internet use over-represents younger populations, online politics does not (Hindman, *The Myth of Digital Democracy*, 68).

[51] Hargittai, "Digital Na(t)ives?," 92.

[52] Ibid., 93.

[53] Ibid., 106–108.

[54] Ibid., 105.

accessed by individuals on average. Perhaps unsurprisingly, the overwhelmingly determining variable for diversity in Internet usage was level of skill.[55] More interesting than the simple category of site diversity is the *kind* of sites accessed by youth. For the purposes of her study, Hargittai distinguishes between two kinds of activities over the Internet: (1) capital enhancing activities and (2) recreational activities. Capital enhancing activities are defined as activities aimed at advancing one's social and financial capital, positively affecting one's socio-economic status. Examples of capital enhancing activities might be seeking health information, engaging in financial transactions, job search, reading the news, and so on. Recreational activities are defined as activities aimed at pleasure. These may include playing games, gambling, casual browsing, and so on. Perhaps the most important finding is that higher levels of education and higher level of Internet usage skill are positively correlated with more capital enhancing activities.[56] This suggests that rather than leveling the playing field, Internet usage is *reinforcing* the socially stratified status quo.

Since social networking sites (SNS) such as Facebook, Twitter, YouTube, and others, are often lauded as catalysts for increased access to political participation, it is worth examining whether the stratifying trends that apply to the Internet also affect SNS and if so, whether they affect them differently. If similar trends do not apply to SNS, then it may be possible to view such sites as "democratizing," even if the broader usage of the Internet is not.

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[55] Ibid., 109.

[56] Ibid., 95.

Unfortunately, here too Hargittai shows that "use of such sites is not randomly distributed across a group of highly wired users. A person's gender, race and ethnicity, and parental educational background are all associated with use [of social networking sites]."[57] When using measures of the *intensity* (time spent on sites) and *diversity* (how many social networking sites are utilized) of SNS usage, studies show that the use of SNS is *not* random, and is directly motivated by social circumstances.[58]

Finally, in order to assess the possibility that Internet-based platforms will increase participation in democratic processes, some studies compared trends of participation in such processes (for example, in town hall meetings regarding municipal issues) when participants were given the options of participating in person or via the Internet. Findings show that socially advantaged groups tended to participate more in general, and in particular tended to participate more in person. For example:

- Men (especially educated, politically concerned, male Caucasians) participated more in all forms of participation, but dominated in person participation, while women participated in greater percentages online.[59]

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[57] Eszter Hargittai, "Whose Space? Differences Among Users and Non-Users of Social Network Sites," *Journal of Computer-Mediated Communication* 13, 1 (October 2007): 276–297. In particular, the level of parental education is shown to correlate very strongly with specific ways of SNS interaction. For example, individuals with college-level (and above) educated parents are much more likely to engage in "strong-tie" activities (i.e. activities involving close friends) via SNS. See: Eszter Hargittai and Yu-li P. Hsieh, "Predictors and Consequences of Differentiated Practices on Social Network Sites," *Information, Communication & Society* 13, 4 (2010): 526–527. Furthermore, savvy Internet skills positively correlate to student GPA (Ibid., 525, 531).

[58] Ibid., 516–518.

[59] Laurence Monnoyer-Smith, "The Technological Dimension of Deliberation: A Comparison between Online and Offline Participation," *Connecting Democracy: Online Consultation and the Flow of Political Communication*, eds. Stephen Coleman and Peter M. Shane (Cambridge: MIT, 2012), 196, 201. The gender variable is interesting in many ways. For example, when asked to self-report Internet proficiency, women tend to claim lower levels of proficiency regarding Internet-related terms than men. However, other research that was able to measure both actual and perceived online Internet abilities found that women rate

- Homeowners participated more than tenants in general, and tenants participated more online than in person.[60]
- The educated dominated all participation forms, and the less educated were much more likely to participate online than in person.[61]

Some scholars view such findings as endorsing a more optimistic hypothesis, namely, that Internet platforms do in fact offer disadvantaged groups a medium for democratic participation in which they feel more comfortable. This hypothesis rests on the assumption that citizens choose to participate online or offline "because they feel the technological arrangement provided is the best suited to their ability to express themselves, considering the distribution of power within the deliberative space."[62]

However, this optimism may be misplaced. We need not assume that individuals made the choice about online or offline participation based on what was perceived by them to be in their best interest. It may be that their choices were constrained by available time, other commitments, and so on. For example, attending a town hall meeting in person requires more time (to get to and from the meeting). It also requires more control over one's time, which is often a luxury of socially advantaged individuals.

What is more, researchers have found that in circumstances where online and offline modes of participation were available, in-person deliberation tended to support

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their Internet proficiency lower than their actual observed skills. (Hargittai, "Digital Na(t)ives?", 104–106). For more on bias in self-reporting see: Stewart I. Donaldson and Elisa J. Grant-Vallone, "Understanding Self- Report Bias in Organizational Behavioral Research," *Journal of Business and Psychology* 17, 2 (2002): 245–60.

[60] Monnoyer-Smith, "The Technological Dimension of Deliberation," 197.

[61] Ibid., 198.

[62] Ibid., 193.

"acquisition and exchange of information" while online participants focused more on the accumulation of information.[63] That is to say, not all forms of democratic participation are created equal. In many cases where individuals of disadvantaged social groups feel less comfortable with face-to-face deliberation, and might nevertheless be able to participate online, these individuals are more likely to be losing out on the opportunity to have their voices heard.

The Infrastructure Divide

For the most part, we experience the Internet visually through what appears on our screen. This is the Internet's "front end," or user interface. Hence, less attention is given to what happens behind the scenes in the Internet's "back end." When considering this "back end," we may think of various kinds of infrastructures that make our user experience possible. This includes hardware such as computers, cables, satellites, giant servers that store and process information, and more. The infrastructure also includes software, codes, algorithms and so on.

Hence, the structure of the Internet is often described in terms of three layers: (1) the hardware layer, (2) the code layer, and (3) the content layer. Matthew Hindman has suggested that the link structure of the Internet is underrepresented in this tripartite schema, and that this link structure is central in determining the flow of information on the Internet. In order to capture the significance of this additional component, Hindman suggests distinguishing a fourth layer – search.[64] In fact, search engines span through all three layers. The algorithm designed by companies for their search engines are key to

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[63] Ibid., 202–203.

[64] Hindman, *The Myth of Digital Democracy*, 39–40.

understanding Internet use patterns. Hindman explains that "[t]he network protocols that route data packets around the Internet and the HTML code used to create Web pages say nothing about search engines, and yet these tools now guide (and powerfully limit) most users' online search behavior. The technological specifications allow hyperlinks to point anywhere on the Web, yet in practice social processes have distributed them in winners-take-all patterns."[65]

It is true that the Web provides users with millions of choices about where to go to get information, news, and so on. But the fact that these options are available in principle does not mean that users utilize these options in practice. In fact, patterns of Internet usage make it clear that they do not.[66] The reason for "winner-takes-all" patterns in Internet usage and visits to sites is not primarily direct commercial pressure. Rather, the reason lies in the design of the Internet: "online concentration comes from the sheer size of the medium and the inability of any citizen, no matter how sophisticated and civic-minded, to cover it all."[67] Hence, the function of search algorithms is to narrow down the choices, and highly networked sites – based on the link structure – almost always prevail.

When discussing the "infrastructure divide," it is important to focus on the physical infrastructure of search engines as well. Google Search, for example, is backed by vast physical servers that store web content. It is because of these vast servers, which cost billions of dollars annually to purchase and maintain, that Google is able to provide

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[65] Ibid., 15.

[66] Ibid., 56.

[67] Ibid., 57.

the search capacity that it does. A 2009 study showed that Google spent as much on physical equipment as a typical telephone company.[68] This suggests that the Internet may not be lowering barriers to entry, but rather rearranging the location of the barriers.

For example, in the case of traditional newspapers it is often pointed out that the infrastructure needed to enter the market poses a barrier to newcomers. Hence, it is not surprising that for the past several decades, fewer than 1 percent of U.S. daily newspapers have had a direct competitor in the same city.[69] On the face of things, the case of the Internet is different. One does not need to overcome the costs of printing and distribution. But this misguided analysis ignores the structure of how information is found and circulated online. Creating content is relatively easy. Attracting online traffic to that content at scale is far from easy, and the search and link structures work against newcomers.[70]

As a point of conclusion, this chapter has questioned the extent to which the Internet presents an arena in which all are free to participate equally and meaningfully. When one considers the underlying infrastructure and political economy of the Internet – the vast server farms, the particular designs of the algorithms, the network's link structure, and so on – this optimistic picture changes, and we get a complex landscape, in

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[68] Ibid., 85.

[69] Ibid., 83.

[70] A note of caution is in order here: From the description of the infrastructure divide above, one might conclude that if there was a diverse competitive market in various domains of the Internet (for example, Google, Yahoo and to a lesser extent Microsoft have dominated the Internet search market for years), then we would have more diversity in which sites get seen and read. But this is not necessarily the case. Studies have found that Yahoo and Google searches, for example, still produce much of the same search results in the first results pages. This is especially significant since past studies have shown that users rarely click on a search result beyond the first page. One study found that 90% of users clicked on a link presented in the first page of results (Ibid., 59–60, 69).

which some have more opportunity than others. It seems that some (overly-optimistic) observers of the Internet do not pay enough attention to its underlying industry. It is perhaps fitting, then, to return to Adorno's reflection, in which he explains why, along with Horkheimer, he distinguished between "mass culture" and the "culture industry":

> The term culture industry was perhaps used for the first time in the book Dialectic of Enlightenment, which Horkheimer and I published in Amsterdam in 1947. In our drafts we spoke of 'mass culture'. We replaced that expression with 'culture industry' in order to exclude from the outset the interpretation agreeable to its advocates: that it is a matter of something like a culture that arises spontaneously from the masses themselves, the contemporary form of popular art. From the latter the culture industry must be distinguished in the extreme. The culture industry fuses the old and familiar into a new quality. In all its branches, products which are tailored for consumption by masses, and which to a great extent determine the nature of that consumption, are manufactured more or less according to plan.[71]

Our focus here is not on culture per se, but on information and participation online. Consider a revised version of Adorno's last sentence in the passage above, as follows:

> The *Internet information* industry fuses the old and familiar into a new quality. In all its branches, products which are tailored for consumption by masses, and which to a great extent determine the nature of that consumption, are manufactured more or less according to plan.

The "plan" here need not be a malicious conspiracy. Rather, the point is that the distribution of access to online participation in processes of democratic opinion and will formation is a result of design. This means that the design of the Internet itself merits a public discussion based on democratic values, informed by Habermas's discourse-theoretic framework.

[71] Adorno, "The Culture Industry Reconsidered," 98.

CHAPTER SIX

WHAT MAKES THE BETTER ARGUMENT BETTER? ON ARGUMENTATION, PUBLIC REASON AND SOCIAL RESOURCES

Introduction

The previous chapter has examined some changes in processes of opinion and will formation in the Habermasian democratic public sphere, in light of the emergence of digital technologies. The changes examined pertain to the impact such technologies have on the flow of communication and the circulation of power in the democratic public sphere, and the implication of these changes for inclusivity in deliberative processes.

The aim of the current chapter is to move the investigation into the public deliberation itself. In a sense, this discussion sits at the interface of Habermas's theory of democracy (as discussed in Chapter Four) and his theory of communicative action (as discussed in Chapter Three), since it relates to the way rational discourse is enacted in the public sphere as public reason. In Chapter Three we saw how communicative action implicitly entails a goal of reaching mutual understanding. Actors engaged in communicative action implicitly agree to abide by a basic set of norms, including the commitment to being truthful and sincere, to be open to critique, and to assent to *the better argument*.

In Chapter Four I showed how Habermas's discourse principle (which is a moral principle) and his conception of the legal form come together to articulate a discourse-

based principle for democratic politics. This gave us the Democracy Principle, which states that "only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted."[1] I noted that whereas the discourse principle provides guidelines for achieving rational opinion- and will-formation on practical matters, the democracy principle provides guidelines for institutionalizing this will in a legitimate way. Here we saw the significance of public reason in Habermas's political theory: "the power of public discourses that uncover topics of relevance to all of society, interpret values, contribute to the resolution of problems, generate good reasons, and debunk bad ones."

Argumentation and public reason will be the focus of this chapter, and will be examined from two perspectives. The aim of the *first perspective* is to delineate the concept of rational argumentation. The aim of the *second perspective* is to broaden our understanding of argumentation, to include components that are not rational per se. This chapter will prepare a foundation for Chapter Seven, which will examine the role digital media may play in processes of argumentation in the democratic public sphere.

Hence, this chapter will unfold in four steps: *First* (1), I will outline basic concepts and distinctions related to argumentation, rational persuasion, and reason-giving. *Second* (2), I will discuss forms of discourse that take us beyond rational communication, but nonetheless seem important for the flow of communication in a democratic society. *Third* (3), I will segue into the social dimensions of arguments by discussing the epistemic and semantic ways in which arguments depend on a social

[1] Habermas, *Between Facts and Norms*, 110.

context. *Finally* (4), I will examine the ways in which arguments draw on social resources. This section will engage Habermas's framework in dialogue with Hannah Arendt's thinking regarding argumentation versus action in the public sphere, and will include examining whether civil disobedience has a place in Habermas's discursive-democratic framework.

Argumentation and Rational Persuasion

As noted in Chapter Three, Habermas emphasizes the role of argumentation in ideal discourse. He states that in an ideal speech situation, discussants will adopt beliefs based not on coercion and domination, but rather based on the force of the better argument. This raises at least two immediate questions, which will be addressed in this chapter: (1) what constitutes an argument, and (2) on what basis do we evaluate which argument is "better"?

Let us begin by elucidating some basic concepts. As Blair suggests, argumentation can be understood as "the activity of making or giving arguments." He then adds that, "[b]y an argument here I mean a set of one or more reasons for doing something, such as—but not limited to—to adopt or maintain an attitude such as a belief but also such as hope, or anger, or expectation; to accept a proposition; or to engage in an activity."[2] Argumentation, as the posing of arguments, is an attempt at rational persuasion.

Not all forms of persuasion are indeed rational. We might think of irrational forms of persuasion. One might think here of a robber pointing a gun at the teller at a bank, thereby persuading the teller to hand over money, under the threat of violence. However,

[2] J. Anthony Blair, "Argumentation as Rational Persuasion," *Argumentation* 26 (2012): 72.

there is a sense in which at least from the teller's perspective, the teller is acting based on rational reasoning. The teller observes the set of facts before him, and reasons that he is better off handing over the money.

Here some theorists of argumentation might argue that by pointing a gun at the teller, the robber is not attempting to persuade him at all, but rather to coerce him. For example, O'Keefe writes that persuasion is "a successful intentional effort at influencing another's mental state through communication in a circumstance in which the persuadee has some measure of freedom."[3] But we can think of other situations that more fully fit the description of irrational persuasion. These may be instances in which the persuader is attempting to persuade her interlocutor by appealing "to fears, hopes, prejudices or desires that have not only no basis, but every reason to be rejected... The point is not that these attitudes are false, although they happen to be. What makes such persuasion irrational is that they are held blindly and against all evidence."[4] One may think here of the arguments made against voting for Barack Obama when he was a candidate for the presidency, asserting that he was born in Kenya (even after the Hawaiian hospital in which President Obama was born publicized his birth certificate), and other clear fallacies that were uttered to spread fear, prejudice and misinformation.

To better distinguish between the case of the bank robber and the case of Barack Obama, we can turn to Blair's suggestion that an attempt to persuade can fail to be rational in two distinct ways: it can be irrational (as in the case of Barack Obama), or it

[3] O'Keefe is quoted in: Ibid.

[4] Ibid., 73–74.

can be non-rational (as in the case of the bank robber).[5] He writes: "Persuasion that is non-rational but not irrational is communication that changes a person's mental state without appealing to reasons of any kind, yet allows for the influenced person to have a measure of freedom in the face of the influencing factor."[6] In a sense, non-rational persuasion attempts to persuade the persuadee to do or believe something, without any explicit appeal to reasons at all.

One might object here that the case of the bank robber fails to satisfy the latter component of Blair's description of non-rational persuasion, namely, that the influenced person should have a measure of freedom in the face of the influencing. One might plausibly argue that though the teller could in theory reject the demand of the robber, the perceived consequences of this course of action are so severe that it is not reasonable to attribute a meaningful measure of freedom to the teller's action. In other words, we should understand the teller as acting under duress, and such a circumstance does not satisfy the conditions for non-rational persuasion.

Nevertheless, we could think of other everyday situations in which this description of non-rational persuasion would apply. Some forms of marketing and advertising would be a good example. When we are persuaded to buy a product in the bakery, it is often not the case that there is an explicit argument made for the health or pleasure we might derive from the product. Rather, we are simply persuaded by the smell or look of the product.

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[5] Ibid., p. 73.

[6] Ibid., p. 74.

To sum up so far, in order for a form of persuasion to be rational rather than irrational or non-rational, it must:

1. Attempt to provide reasons, and suggest that the persuadee ought to accept those reasons as a result of considered judgment;
2. Appeal to reasons that have some minimal degree of plausibility;
3. Appeal to reasons that present a genuine *attempt* to be relevant to the issue at hand.[7]

Argumentation Beyond Rational Reason Giving

In discussions regarding argumentation, verbal reason giving (whether oral or written) is considered to be the central medium through which reasons are provided in the argumentation process. However, visual resources, such as images, are an example of a non-verbal medium that can often be part and parcel of rational (and also non-rational and irrational) argumentation. Images are often taken to be merely illustrative in the development of a rational argument, or otherwise contributing merely aesthetically to the point being made. However, as Aspeitia shows, this is not always the case.[8]

Aspeitia, following Barwise, demonstrates that in "heterogeneous arguments," arguments are "not conveyed through a single medium, but instead make use of both

[7] See: Ibid., 75. Blair notes here that "[t]his understanding of what makes persuasion rational implies that the classifications of cases of attempted or actual persuasion as rational, irrational or nonrational are in principle contestable. What counts as 'minimally credible,' 'some measure of pertinence' or 'engaging the intellect' will in some cases be controversial, for these are properties with vague borderlines and some cases will fall within those penumbras. But this feature is not a flaw: precision about such concepts as rationality (cf., practicality, efficiency) is a false ideal" (Ibid., 75).

[8] For an extended discussion about the role of images in rational arguments see: Axel Arturo Barcelo´ Aspeitia, "Words and Images in Argumentation," *Argumentation* 26 (2012): 355–368.

verbal and visual resources."[9] Aspeitia insists that in "heterogeneous arguments," images contribute to the argument substantially and directly. This means that in such cases, images do not merely reinforce the verbal argument made, but are essential to the success of the argument. That is to say that in such cases, the images play a substantial and direct role in conveying the premises or conclusions of the argument.

To give an example, let's go back to the bank robber (let's call her Jane) and the teller we discussed above (let's call him John). Suppose that John in fact hands over the money to Jane, and Jane subsequently flees the bank with the stolen cash. A few days later, a woman is apprehended by the police and is alleged to be the robber, but this woman is not Jane. It is someone else (let's call her Kate). When asked by the police officer, John tells her that Kate is not the robber. The police officer, who has reasonable reasons to believe Kate is in fact the robber (she was overheard saying she is planning to rob that bank, etc.), argues with John and tries to persuade him that Kate is in fact the robber by communicating her reasons. Finally, John takes out a printed image taken from the bank's security camera during the robbery, which clearly shows Jane's face as she commits the crime. John points to the image and asks the police officer: "Is this Kate?" The police officer shakes her head. John then concludes: "Kate is not the robber."[10]

In the case above, the image of Jane robbing the bank played a central role in John's argument. There are no words he could have uttered that would have fully replaced the function that the image played in the success of his argument. The image, then, was essential to his argument. When turning to consider the role of images in public

[9] Ibid., 356.

[10] This example is analogous to an example given by Aspeitia (Ibid., 359).

reasoning, one cannot ignore the way in which images are playing an increasing role in digital communications in the public sphere. The ability to produce quality digital images on mobile electronic devices, coupled with the increasing ease with which these images can be digitally stored, circulated and shared with others, has had an impressive effect on the centrality of images in communicative action. One can think of platforms such as Instagram, Facebook, Twitter, YouTube, Pinterest and Tumblr as only a few of the many digital platforms through which millions of images are shared every day.

It is worth noting that the case of images could still keep us within the realm of rational argumentation, even if it is non-verbal. What we turn to question now is whether rational argumentation is all there is to say about the "best" argument. Habermas's writing seems to suggest that the "force of the better argument" stems from its reliance on rational reason giving. The discussion will now turn to challenges posed to this view of the "best" argument, showing that there are several ways in which arguments draw on extra-rational resources. I will especially emphasize the way in which arguments draw on social resources for persuasion.

Epistemic and Semantic Reliance on Others

Before delving into the social and political contexts of argumentation, I will begin this discussion at a more foundational level – our epistemic and semantic reliance on others for reason giving. One obvious way in which we rely on others when constructing arguments is the use of testimonial knowledge. In such cases, we take the testimony of another person as supporting evidence for our position. Our argument then relies on the knowledge provided by the testifier, and a key component in subsequent evaluation of our argument becomes the reliability attributed to the testifier and her testimony.

That said, Sanford Goldberg argues that "the social nature of testimonial knowledge extends beyond epistemology proper."[11] This means that the social nature of our knowledge is not only due to our epistemic reliance on others (when we rely on the content of the testimony provided). Rather, that reliance on testimony necessitates the practice of *semantic* (in addition to epistemic) deference, which means relying on expert knowledge in order to recover the *meaning* of concepts in the testimony.[12] The speaker is implicitly relying on the expert for any further explication of the concept the speaker is deploying when providing testimony.

As an example, think of a reporter who is reporting on an exciting new scientific discovery. In her writing about the discovery, the reporter relies (mostly implicitly) on expert knowledge in the scientific community for further explication of the concepts being used. The speaker (the testifier) then, is implicitly relying on the experts for any further explication of the concept the speaker is deploying when providing her testimony. Goldberg explains that semantic deference to experts has a practical function. Namely, it allows the hearer to acquire knowledge by testimony from the speaker, without the need for a complete grasp of all the concepts deployed in the testimony.[13]

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[11] Sanford Goldberg, "Experts, Semantic and Epistemic," *Nous* 43, 4 (2009): 582.

[12] Goldberg defines "expertise" as "the state of having specialized background knowledge (or at least justified belief) in a given domain, where the knowledge in question is organized in a manner that allows for easy access and use in appropriate circumstances" (Ibid.). Furthermore, Goldberg clarifies that testimonial knowledge need not be acquired from experts (I can rely on my friend to know who won the Yankees game, but that does not make him an expert). Hence, *epistemic* reliance on others need not involve experts at all. The reliance on experts becomes more important for this discussion when considering *semantic* deference.

[13] Ibid., 589.

Goldberg acknowledges that this raises the question: "How can the hearer's understanding both be specific enough to underwrite the acquisition of the very piece of knowledge expressed in the speaker's testimony, and yet fall short of a complete grasp of the concepts in the attested content?"[14] His answer to this question brings us not only to the epistemic function of testimony, but also the social function of semantic deference. He argues that "in cases of incomplete grasp, the determinacy of the hearer's comprehension of the content of a testimony-constituting speech act is grounded in her semantic deference to the relevant experts… [I]t is semantic deference by a *minimally* competent speaker that ensures the determinacy in comprehension required by the acquisition of testimonial knowledge."[15] What we see here is that semantic deference is a natural part of sharing knowledge in a community of speakers. We rely on a wide community of testifiers and experts not just for their knowledge, but for the meaning of our speech.

As we grapple with this reliance on others in the context of rational discourse, two immediate questions arise: *First*, how can we recognize arguments as rational when they involve an incomplete grasp of the very concepts they deploy? *Second*, if we semantically defer to experts to recover the meaning of our speech, what happens when experts disagree? I will address these questions in order.

To answer the first question, regarding the perceived problem of incomplete grasp, we must go back to the fundamental epistemic condition we find ourselves in, namely, that we must often rely on others for what we wish to know. In a similar context,

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[14] Ibid.

[15] Ibid., 589–590.

Helen De Cruz points to an example given by Elizabeth Fricker, which demonstrates this epistemic necessity. De Cruz writes, "suppose I want to find out for myself what Australia's like for myself rather than relying on other people's say-so in books and the like. Even so, the fact that I trust I am in Australia after a long and exhausting flight depends on my trusting transmitted knowledge about the shape of the Earth and its geography. Similarly, we have unavoidable practical dependence. For instance, people who start a self-reliant community where they grow their own food and the like are still going to rely on each other (e.g., one person tends the cows, two others build a shed) to make this work. And they rely on the broader society, e.g., laws that deter people from ransacking their community."[16]

So we are dependent on the testimony of others (epistemic reliance) for knowledge acquisition. In order to acquire this knowledge, we then need to recover the content transmitted via testimony. However, as Goldberg explains, "since it is not the case that we all possess equal knowledge of the application conditions of the concepts that constitute the communicated contents, we find ourselves in need of relying on others in our speech community; only in this case, this reliance is manifested in our *semantic* deference to the relevant experts. In this way our epistemic reliance on others gives rise to the need to rely semantically on others as well; and given that the upshot of our epistemic reliance is the possibility of acquiring lots of knowledge 'on the cheap', our epistemic reliance *rationalizes* the sort of semantic deference on which the acquisition of

[16] Helen De Cruz and Elizabeth Fricker spoke together in an epistemology workshop at the University of Oxford. De Cruz recounts Fricker's comments in: Helen De Cruz, "Practical Deference: Does It Matter?," *New APPS Blog*, June 21, 2014, http://www.newappsblog.com/2014/06/practical-deference-does-it-matter-.html#more

such 'knowledge on the cheap' depends."[17] What we see is that sematic reliance on others is rationalized by our necessary epistemic dependence on others.

The second question raised above was – What if the experts that the semantically deferential hearer draws upon themselves disagree regarding the meaning and proper application of the concepts in question? Goldberg acknowledges that experts may in fact disagree. Hence, he explains that "[t]he process by which concept individuation proceeds is one of reflective equilibrium aiming to maximize coherence of existing theory with paradigm applications. If no single concept emerges from such a process, then the case might be one in which no determinate concept is in play; or, alternatively, it may be one in which more than one determinate concept is in play (in which case hearers deferring to different experts may well comprehend the term differently)." One of the conclusions here is that we may end up not with one determinate expert understanding of the concepts in question, but rather with competing understandings.

How then, is the hearer to determine which expert to follow? Goldberg asserts that we must go beyond an "individualist" approach to answer this question of concept determination (or, individuation). An "anti-individualist" approach acknowledges that "some of a subject's propositional attitudes depend for their individuation on features of the subject's social or physical environment."[18] Goldberg, then, focuses here on the layperson's social and physical environments as informing the concept individuation process. Next, I will flip this focus to inquire about the social resources that experts draw upon in order to be considered experts at all. More broadly, there is an important sense in

[17] Goldberg, "Experts, Semantic and Epistemic," 594.

[18] Ibid., 593.

which the ability to successfully persuade others requires social resources that are not necessarily acquired through rational reason giving but rather through various social and political dynamics.

Argumentation, Persuasion and Social Resources

As the discussion above illustrates, epistemologists have demonstrated the ways in which knowledge acquisition is an inherently social process. That is, in order to come to know something, we inherently rely on others. This is a foundational level at which coming to know something requires social resources.

We ended with the dilemma posed by cases where experts disagree. This dilemma moves us to a broader conversation regarding social epistemology and public reason, namely, the role of experts in public debates. This is an especially important topic when considering public debates about science and technology, because in these areas there may *seem* to be no need for social or political resources in order to determine what is fact. Science and technology are often portrayed as fields in which the truth is not affected by social dynamics and politics.

However, in his detailed discussion of science and argumentation, William Rehg insists that "[l]ike other areas of human endeavor, the sciences exist and develop as social practices – exercises in embodied social rationality."[19] Exploring questions related to cogency, especially in scientific arguments, Rehg sees the cogency of arguments as sitting "at the boundary between psychological effect and rational content."[20] Thus, in

[19] Rehg, *Cogent Science in Context*, 3.

[20] Ibid., 7.

order to assess the cogency of an argument, even in scientific matters, we cannot rely on rational content alone while ignoring other psychological and rhetorical aspects.

For example, he points out that the discovery process in the sciences is part of the argument being made by scientists, and that argumentative practices in the sciences are partly material practices: "At the very least, one must get one's instrumentation and observational methods to function properly."[21] Most importantly, beyond these material resources, in order for a scientific argument to be accepted, the scientist must garner social recognition: "Experimentation ultimately aims beyond the lab, however: experimental practices are heavily oriented toward the production of public knowledge, and to reach that goal findings have to be presented in a convincing manner as publicly acceptable arguments."[22] Rehg illustrates this point with a detailed account of how social dynamics in the actual process of scientific research are at play at Fermilab, one of the top laboratories in the United States. This includes the importance of rhetoric in writing and presenting findings, the role of credit in science practices, the politics of collaboration, and more.[23] Therefore, Rehg explains, analyzing the scientific procedure as part of scientific arguments would involve "all the ways of critically testing and discussing hypotheses […], laboratory procedures, meetings of a research team, referee

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[21] Ibid., 18. Interestingly, Martin Heidegger also stressed the material aspects of scientific inquiry, over half a century before Rehg, in a posthumously published work from 1944–5 named "Conversations on a Country Road." The work is written as a three-way conversation between a "researcher" (a physicist), a "scholar" (a traditional philosopher), and a "sage" (which brings forth Heidegger's ideas). The relevant point in the discussion initially revolves around Kant's distinction between intuition and thought. As Borgmann describes this section of Heidegger's work, "[t]he Researcher assimilates thought to theory and intuition to experiment, and he gives primacy to theory, whereupon the Sage stresses the crucial role of the technology of experiments, and within four pages the dispute is about whether technology is applied science or science is applied technology" (Borgmann, "Technology," 426).

[22] Rehg, *Cogent Science in Context*, 19.

[23] For Rehg's fascinating account of Fermilab, see: Ibid., 163–194.

procedures, conferences, published debates" and not simply an assessment of a study's results.[24]

The role of rhetorical effect seems especially important in cases of arguments that challenge entrenched conventions with new hypotheses. Thus Rehg considers Marcello Pera's assertion (with Kuhn) that "scientists cannot get by with deductive and inductive arguments alone, but must at times resort to rhetorical arguments, that is, persuasive arguments that are 'neither formally stringent nor empirically compelling'."[25] Similarly, Bruno Latour has forcefully pointed to these social processes in science discussions. On the role of rhetoric in scientific discussion, he comments that "the goal of scientific persuasion is to transform statements with a qualifying 'modality' (e.g., 'There is evidence for x'… into unqualified factual statements (e.g., 'x is y')."[26] When analyzing the text of scientific research, Latour finds that its "rhetorical aim is to overwhelm and isolate the skeptical reader by demonstrating the sheer number of 'allies' and resources the author can enroll in support of the article."[27] Latour goes so far as to compare the strategic use of references in scientific texts to "Byzantine political schemes."[28]

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[24] Ibid., 26.

[25] Ibid., p. 58.

[26] Ibid., p. 72.

[27] Ibid.

[28] Ibid., 73. In a sense, Latour poses a challenge in the spirit of Thrasymachus from Plato's *Republic* for a Habermasian framework, since Latour understands "the apparent cogency of arguments in terms of the network of actants (human and nonhuman) with which arguments are allied and through which they can successfully travel," and thus rejects "any conception [of cogency] that would depend on the distinction between right and might" (Ibid., 77). Although one cannot neatly distinguish between discourse and rhetoric, and deem only discourse suitable as what informs the "better argument," one can avoid relativistic concerns about truth once we distinguish between truth and justification. We can be realists about truth (as Habermas self-identifies), but still argue that justification (and hence claims to knowledge and the acquisition of the force of the better argument) sometimes draw on rhetorical resources.

What Rehg, Latour, and others are pointing to is that – in Rehg's words – "to transform a controversial claim into fact requires *social* resources beyond the laboratory. Specifically, the researchers must get other people, groups, and institutions interested in the claim."[29] Hence, the following section aims to inquire into the social resources underlying expert roles and argumentation processes in the public sphere. To begin, it is worth focusing on the very emergence of a controversy as such. How does a topic gain recognition as controversial (that is, as a topic in which a disagreement is publicly acknowledged)? Previous chapters have laid out Habermas's understanding of the flow of communication in the public sphere, and discussed how digital media has changed media power. However, to a large degree we are still left with the problem I posed to Feenberg in Chapter Two, namely, how do we account for the agency of those trying to influence the public conversation, but have been marginalized from it; those who would like to problematize an issue that appears uncontroversial?

Peter Cramer is helpful in showing that it takes social resources not only to present an argument in a controversy, but also to frame a controversy as such.[30] He studied when and how topics of public discourse are framed as controversies in various media outlets. Controversies here are understood as ''a problematic event or situation that sound reasoning should be used to resolve."[31] He finds that controversies are framed by news agencies either as (1) natural phenomena, (2) historical events, or (3) "pragmatic

[29] Ibid., 75. See examples in pp. 75–79.

[30] Andrea Rocci and Marta Zampa, "Peter A. Cramer: Controversy as News Discourse," *Argumentation* 27 (2013): 327–336.

[31] Ibid., 333.

events." When depicted as natural phenomena, controversies are seen as events that unfold outside of human agency. When depicted as historical events, the emphasis is on the occurrence of a particular discursive event in a particular time. The third category – controversies as pragmatic events – depicts a series of events as an unfolding dialogue. Cramer argues that in such cases, the news coverage itself provides a cohesive narrative that constitutes the series of events as one "controversy."[32] Cramer adds that journalists, perhaps in contrast with other agents shaping the public sphere, have an institutional goal, not of resolving public controversies, but of helping to create them by naming them and enacting them through the texts they publish.[33]

Cramer's emphasis on the role of journalists in framing – sometimes constituting – public controversies as such, is not entirely new to our discussion. This may remind the reader of Habermas's notion of "media power" (discussed in Chapter 5) and his "sluice" model (described in Chapter 4), as depicting the way journalists take up topics which are discussed at the periphery and bring them into the center of public debate. Benhabib explains that in Habermas's discursive model of public space the public sphere comes into effect when all affected by general social and political norms of action engage in a practical discourse and evaluate the validity of these norms (this is founded on Habermas's discourse ethics, as discussed in Chapter 3).[34] It is the autonomy of the

[32] Ibid., 330–333.

[33] Ibid., 329.

[34] Seyla Benhabib, "Models of Public Space: Hannah Arendt, the Liberal Tradition, and Jürgen Habermas" in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, MA: MIT Press, 1992), 87.

public sphere from market relations or government control that makes this communicative freedom possible.[35]

However, this view of the public sphere brings with it a difficulty: the public sphere is supposed to be able to bring to the fore hitherto undiscovered and un-discussed forms of domination, while at the same time being free of them to begin with. For example, what are we to make of the need for a public sphere free of market relations in a society permeated by these very relations; a society in which questions of value are transposed into questions of consumer preferences? In fact, was this not Doppelt's critique of Feenberg's example of the Minitel as discussed in Chapter 2, namely, that democratic values were conflated with market directives?

Indeed, in his discussion of the role of the constitutional courts, Habermas hints that securing equitable participation in the discursive process requires attention to encroachment on public and private autonomy by the economic system just as much, if not more, than encroachment by government and the administrative system.[36] However, his approach does not conceptualize the public sphere as a possible sphere of active collective or individual resistance. In other words, his procedural paradigm ultimately emphasizes procedures for determining rights through discourse more than processes of joint action as a political community. Hence, the ability of members of the community to problematize and thematize issues that seem uncontroversial still remains in question. To examine this question further, I will turn to a brief discussion of the overlap and contrasts between the approaches Hannah Arendt and Habermas have taken to address this

[35] Habermas, *Between Facts and Norms*, 269–270.

[36] Habermas, *Between Facts and Norms*, 263–264.

problem. As we will see, Arendt departs from Habermas's vision according to which a rational public sphere can account for the emergence of the new and the marginalized.

Similar to Habermas's seminal work in *The Structural Transformation of the Public Sphere,* Hannah Arendt has also analyzed the decline of the public sphere within her own theoretical framework.[37] Through her analysis of the "rise of the social," Arendt has pointed to the institutional differentiation of modern societies into the narrowly political realm on the one hand and the economic market and the family on the other.[38] For Arendt, "the social" is that realm of human interaction that interposes itself between the household and the political state. As Benhabib explains, the expansion of the social, in which what was in "the shadows of the private households" enters into the social realm and the emerging economic market, "meant the disappearance of the universal, of the common concern for the political association, for the *res publica*, from the hearts and minds of men… Individuals no longer 'act' but 'merely behave' as economic producers, consumers, and urban city dwellers."[39] For Benhabib, this strand of Arendt's thought emphasizes "the original meaning of politics" and the "lost distinction between private and public."[40]

For Arendt, the public sphere is the space of appearance where human beings share a common world. What is more, it is in this sphere that humans share meaningful

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[37] See: Peg Birmingham, "Hannah Arendt: Rethinking the Political," in *The History of Continental Philosophy, Volume 5 - Critical Theory to Structuralism: Philosophy, Politics and the Human Sciences*, ed. David Ingram (Durham: Acumen Press, 2010).

[38] Benhabib, "Models of Public Space," 74.

[39] Ibid., 75.

[40] Ibid., 77.

speech and action, and it is the sphere that allows for critical thinking.[41] For Arendt "thinking" is twofold. Its first aspect consists in a process in which one wonders, questions, and deliberates with oneself. In an essay written shortly after the publication of *Eichmann in Jerusalem* Arendt writes:

> The presupposition for this kind of judging is not highly developed intelligence or sophistication in moral matters, but merely the habit of living together explicitly with oneself, that is, of being engaged in that silent dialogue between me and myself which since Socrates and Plato we usually call thinking.[42]

This aspect of thinking, then, requires an ability to *disengage* from the public sphere.[43]

The second aspect of "thinking," in some ways counterpoised against the first, implies the ability to think from the standpoint of someone else.[44] That is, to deliberate implies that alternative viewpoints can and should be considered in a certain matter. As Bernstein emphasizes, for Arendt "thinking is essential for the formation of conscience," since "unless one 'stops and think[s],' unless one develops the capacity to '*think from the standpoint of somebody else*,' then it becomes all too easy to succumb to evil."[45] It is the

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[41] We find a similar idea in Kant's thought. He writes: "Of course it is said that the freedom to *speak* or to *write* could be taken from us by a superior power, but the freedom to *think* cannot be. Yet how much and how correctly would we *think* if we did not think as it were in community with others, to whom we *communicate* our thoughts, and who communicate theirs with us!" (Immanuel Kant, "What Does It Mean to Orient Oneself in Thinking?" in *Religion and Rational Theology*, eds. Allen W. Wood and George Di Giovanni [New York: Cambridge University Press, 1996], 16).

[42] Cited in: Richard Bernstein, "Arendt on Thinking," in *The Cambridge Companion to Hannah Arendt*, ed. Dana Villa (New York: Cambridge University Press, 2002), 285.

[43] On this Bernstein remarks: "'The frequently observed fact that conscience itself no longer functioned under totalitarian conditions of political organization' is explicable when we realize that totalitarian regimes seek to eliminate the very possibility of the solitude required for independent thinking" (Ibid., 281). The text in inner quotation marks is Bernstein's quote of Arendt's essay "Philosophy and Politics."

[44] Arendt was deeply impressed by Kant's three "maxims of common human understanding," which are: (1) Think for yourself; (2) Think from the standpoint of others; (3) Think consistently (Kant, *Kant's Critique of Judgment*, pp. 171–172). Arendt emphasizes the second maxim in: Hannah Arendt, *Lectures on Kant's Political Philosophy* (Chicago: University of Chicago Press, 1992), 122.

[45] Bernstein, "Arendt on Thinking," 281, 285.

public sphere that enables this aspect of thinking. This is in part why what Arendt has coined "the banality of evil" can be prevented only through a public discourse that provokes thinking. In what could be taken as a warning against a superficial public discourse, Arendt writes that "thoughtlessness - the headless recklessness or hopeless confusion or complacent repetition of 'truths,' which have become trivial and empty – seems to me among the outstanding characteristics of our time."[46]

More than Habermas, Arendt is explicitly concerned with the effects the decline of the public sphere and the rise of the social have on political *action* and the possibility for the politically new to arise. While Habermas's notion of communicative action in the public sphere conceptualizes action as a registering and circulation of ideas and arguments, Arendt sees action as holding the promise for more than discursive influence in the public realm. She writes:

> It is decisive that society, on all its levels, excludes the possibility of action, which formerly was excluded from the household. Instead, society expects from each of its members a certain kind of behavior, imposing innumerable and various rules, all of which tend to "normalize" its members, to make them behave, to exclude spontaneous action or outstanding achievement.[47]

One reading of Arendt's assertion that "the *raison d'etre* of politics is freedom, and its field of experience is action" would be that action is juxtaposed here with discussion.[48] However, it seems that Arendt's conception of action includes a more complex understanding of the relationship between action and discourse. Some scholars have argued that, for Arendt, though politics is action, action signifies both "deeds and

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[46] Arendt, *The Human Condition*, 5.

[47] Arendt, *The Human Condition*, 40.

[48] See: Hannah Arendt, *Between Past and Future* (New York: The Viking Press, 1961), 146.

words."[49] What is more, others have claimed that action for Arendt is to be understood as "speech in public about public affairs," thus not far removed from Habermas's framework.[50]

But there are places in which Arendt clearly distinguishes action from speech, as in her analysis of the Greek public realm, which, she argues, was composed of *praxis* (action) and *lexis* (speech).[51] Though she does admit that "most political action, in so far as it remains outside the sphere of violence, is indeed transacted in words,"[52] Arendt believed that the significance of action is that it brings forth the possibility of a new beginning, whether it be a moral revolution or a political one. Action for her is unpredictable, surprising, yet essential for politics.[53]

For Arendt, the public sphere, and the ability to act in it, is closely tied to freedom. In fact, she argues that "to *be* free and to act are the same."[54] It is in the public sphere that speech and action manifest their full qualities for facilitating our appearance in the human world, and for disclosing our unique personal identities. In public we can be distinct, without being other (in an alienating sense). These qualities, Arendt emphasizes, only come to the fore when we are *with others*.[55] This gathering in public is of no small

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[49] See: Jerome Kohn, "Freedom: The Priority of the Political" in *The Cambridge Companion to Hannah Arendt*, ed. Dana Villa (New York: Cambridge University Press, 2002), 124.

[50] See: George Kateb, "Political Action: Its Nature and Advantages," in *The Cambridge Companion to Hannah Arendt*, ed. Dana Villa (New York: Cambridge University Press, 2002), 132.

[51] Arendt, *The Human Condition*, 25.

[52] Ibid., 26.

[53] Ibid., 201; see also Kohn, "Freedom: The Priority of the Political," 123.

[54] Arendt, *Between Past and Future*, 153.

[55] Arendt, *The Human Condition*, 179–180.

consequence for Arendt: "Power comes into being only if and when men join themselves together for the purpose of action, and it will disappear when, for whatever reason, they disperse and desert one another."[56]

The public sphere must enable actors to appear as who they are, among other actors who appear in the same way, and facilitate collaborative action. Arendt eloquently describes this action in the public sphere: "Because of its inherent tendency to disclose the agent together with the act, action needs for its full appearance the shining brightness we once called glory, and which is possible only in the public realm."[57] This approach helps clarify what is at stake if we fail to thematize the role of the public sphere as a site of political action, a sphere not understood only in terms of rational argumentation. As Villa points out, Arendt's concern about the consequences of a regularized, consensual politics is put forth in *On Revolution*. In her analysis of post-revolutionary America she demonstrates how the rise of "a representative system transforms the public sphere, substituting voting and judicial decision making for spontaneous, agonistic action." She argues that as politics settled in a routine and lost their "glory" and their "revolutionary spirit," the public sphere was abandoned as a site for truly *political* struggles (such as constitutional questions) in favor of a pursuit of private and group interests. "Big questions" are no longer asked, system-changing demands are no longer put forth, and truly political acts are no longer undertaken, resulting is an essentially passive, depoliticized citizenry.[58] Arendt goes so far as to say that "action can be judged only by

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[56] Hannah Arendt, *On Revolution* (New York: The Viking Press, 1963), 175.

[57] Arendt, *The Human Condition*, 180.

[58] Dana Villa, "Postmodernism and the Public Sphere," *The American Political Science Review* 86, 3

the criterion of greatness because it is in its inherent nature to break through the commonly accepted and reach into the extraordinary."[59]

As we continue to consider the ways in which digital media have impacted public reason in the public sphere, let us consider what a richer critical theory of the public sphere, which draws on Habermas and Arendt, would include. First, it seems we would get a more complex conception of power, since the two thinkers approach the nature of political power very differently. As Habermas explains in *Between Facts and Norms*, in the democratic rule of law, political power is differentiated into communicative power and administrative power.[60] In this framework, the role of the administration is to translate values reached in communicative freedom into an actually existing system of law and administration.[61]

In his consideration of Arendt's conception of power, Habermas reminds his readers of her emphasis that "power cannot be stored up and kept in reserve for emergencies, like the instruments of violence, but exists only in its actualization … Power is actualized only where word and deed have not parted company, where words are not empty and deeds not brutal."[62] Habermas points out that Arendt focuses on

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(September, 1992): 717. In this context Kateb reminds us that for Arendt, "politics is all the more authentic when it is eruptive rather than when it is a regular and already institutionalized practice, no matter how much initiative such a practice accommodates" (Kateb, "Political Action," 134–135).

[59] Arendt, *The Human Condition*, 205. This of course raises the question of whether great action must also live up to a moral standard, or can an action bearing any moral status be truly great. To this, as Kateb points out, Arendt would reply that "Authentic politics cannot be great, however, if it is too cruel; the reason is that too much cruelty or wickedness of any kind tarnishes glory… Nothing too awful can be great, but nothing great can be innocent" (Kateb, "Political Action," 139).

[60] Habermas, *Between Facts and Norms*, 136.

[61] Ibid., 187.

[62] Arendt, *The Human Condition*, 200 (also cited in Habermas, *Between Facts and Norms*, 149–150).

political action as a "founding act," which coincides with the role he may ascribe to communicative power (insofar as communicative power is the process of forming a common will). He questions whether Arendt can explain how the actors who appear on the public stage and produce power through action can "produce legitimate law through the formation of communicative power, as well as how they legally secure this practice, that is, the exercise of their political autonomy."[63] In other words, Habermas argues that Arendt does not include in her conception of political power what follows after the foundational act, namely, the administration of power on a sustained (and legitimate) basis. What he proposes is that law is the medium that transitions communicative power into administrative power.

These different approaches can be reconciled and utilized in concert if we consider the ways in which they both entail a critique of domination in the public sphere. As Benhabib points out, there is a sense in which Arendt's view of the public realm is procedural (and to that extent is in agreement with Habermas's procedural paradigm). According to this reading, what is important for both is the way in which public discourse and political action take place, and not so much what they are about.[64] Habermas himself draws a similar connection, asserting that Arendt's distinction between power and violence parallels his distinction between actions based on consensus (power) versus actions based on purposive self-interest (violence). Thus, there is a direct connection between communicative freedom and an undistorted public sphere.[65]

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[63] Habermas, *Between Facts and Norms*, 149.

[64] Benhabib, "Models of Public Space," 80.

[65] Habermas, *Between Facts and Norms*, 147–148.

This account demonstrates how Arendt's conception of action in the public sphere provides a complimentary perspective to Habermas's picture. However, it is important to note the ways in which Habermas's approach has an emphasis that complements what is missing in Arendt for a critique of domination. As Benhabib points out, Habermas's procedural approach highlights the questions of what comes up for public discussion, what is a matter of public concern and that the struggle to make something public is a struggle for justice.[66] Benhabib stresses that the procedural approach to democracy shows that the distinction between issues of justice as opposed to disagreements on the good life (think of abortions, or pornography, for example) can only be made as a result of public discussion, not beforehand. For her, "democratic politics challenges, redefines, and renegotiates the divisions between the good and the just, the moral and the legal, the private and the public."[67]

It can be argued that Arendt always leaves open the possibility for, indeed calls for, the new. But she does not seem to provide a way to allow for the new as an ongoing, legitimate form of democratic procedure. She does not thematize the way in which concerns of justice can rightly raise what was hitherto considered private into the shining light of the public realm.

Finally, it seems that more than Arendt, it is Habermas who acknowledges the complexities in defining *who* or *what* is the legitimate political actor in the public sphere. In *Between Facts and Norms* Habermas points to Sunstein, who, when discussing guidelines for judicial review, asserts that the courts should construe statutes so that

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[66] Benhabib, "Models of Public Space," 79–80.

[67] Ibid., 83.

politically unaccountable actors would be prohibited from deciding important issues of public interest.[68] This relates directly to the impact of the economy on public debate, and raises questions, such as what role corporations should be allowed to play, and at what point does their influence raise them to the point of "decision makers." One can think of the impact that technological, editorial and corporate decisions made by Google, Facebook, or the New York Times and Fox News, have on the public sphere and the discourse conducted within it (this is just one example of what we will want to think about toward the end of this work, when considering the future role of technology in the democratic public sphere).

In conclusion, it seems within the spirit of both Habermas and Arendt to assert that a theory of the public sphere is an ongoing task, since its structures and boundaries are dynamic. Although there is a sense in which Villa is correct to denote the Arendtian approach as a politics of mourning, of a commemoration of a politics lost,[69] it is all the more in accord with Arendt's thinking to anticipate what has yet to appear on the public stage (and in this respect her approach can be considered a politics of natality). Even as the power generated in the public sphere is regularized through legitimate institutions, this process must always be carried out with a revolutionary spirit which remains vigilant against those forces which threaten to make mere speech impotent and to maintain the mere registering of words and opinions in the circulation of public debate as a comfortable illusion.

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[68] Habermas, *Between Facts and Norms*, 252.

[69] Villa, "Postmodernism and the Public Sphere," 719.

Chapter Five discussed the potential advantages and challenges that digital media pose to political access and increased participation. Relatedly, what is important for this chapter is to question how participation in the argumentation processes can be meaningful and consequential. The public appearing of a plurality of actors demands that there be a public place where one is truly seen and heard. In the words of Nancy Fraser, "participation [in the public sphere] means being able to speak in one's own voice."[70] To this end, formal inclusion and access do not suffice, since informal barriers to participatory parity may still persist. Moreover, the semblance of inclusion may be a barrier in itself, since it provides the illusion that there is no domination to be uncovered and addressed.[71]

One sense in which Rehg's analysis of argumentation can lend itself to a critical theory of technology is that he proposes to overcome the problems in Habermas's process idealizations through an analysis of the practical context in which discourses take place. Attention to practical conditions and material processes lend themselves to concrete analyses of the situatedness of technologies, the discourses they enable and the discourses about them. To address the concerns regarding inclusivity raised above by Fraser, Rehg suggests that the principle of inclusiveness remains indeterminate until we identify: (a) a specific group or individual, that (b) has been arbitrarily (or malevolently) and systematically excluded, but that nonetheless (c) can make a relevant contribution.[72]

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[70] Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy" in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, MA: MIT Press, 1992), 126.

[71] Ibid., 118–121.

[72] Rehg, *Cogent Science in Context*, 227.

Another sense in which the attention to the extra-rational processes inherent in argumentation is helpful, and was discussed above, is that such attention allows for an expanded understanding of discursive processes in the public sphere, and especially the place of action in those processes. These actions includes "anarchic" processes in the public sphere, cases such as civil disobedience or other informal ways of generating arguments. Stephen White and Evan Farr have given an interesting account of the non-consensus-oriented aspects of Habermas's thought, what they refer to as "no-saying" in Habermas.

The case of civil disobedience poses an interesting challenge to Habermas's democratic theory. For Habermas, in the transfer of the tension between ideal norms of discourse and the empirical unfolding of real discourses (the tension between the facticity of social relations and the validity of normative claims) to the social realm, the need to coordinate action involves the need for social integration. As we saw in Chapter 4, when looking for a legitimate medium that will serve as a sort of bridge between facts and norms, thus maintaining a valid social order, Habermas argues that in modern societies, the medium that operates in the space of tension between social facts and social norms – thus providing a coordinating medium and hence a means of social integration – is law. If this is the case, then how can the deliberate breaking of the law in cases of civil disobedience be justified?

To answer this question, White and Farr have carefully analyzed the (few) texts in which Habermas addresses these questions, and suggest that Habermas understood protesters who participate in civil disobedience "to be the enactors of an ongoing

constitutional project."[73] This view seems to imply that we understand civil disobedience as an "embodied argument." Such an interpretation seems more compatible with the usual reading of Habermas's consensual model, according to which the disobedience is merely a step on the way to a rational consensus. For Habermas, the legal form derives its force not from political domination, but rather from its origin in democratic will-formation. It is by appealing to this genesis that law can serve as a source of solidarity.[74]

In this reading, the resort to disobedience is warranted due to its being a last resort for those excluded from meaningful participation. What White and Farr point out, however, is that civil disobedience comes in some sense "after the fact," after a norm has been accepted (not by all, but, ideally, through a legitimized social process). Thus, it is not a typical putting forth of an (embodied) argument in a discursive exchange. To this the Habermasian might still respond that, again, a constitutional democracy is an ongoing project, and therefore there is no "after the fact."

But what White and Farr interestingly argue is that an important role of no-saying such as civil disobedience is to invigorate the political imagination in a society in which established norms are deeply entrenched (recall the concern for agency vis-à-vis entrenched technologies mentioned in Chapter Two). The no-sayers are in some sense attempting to rekindle a discussion about norms that for many seem to already be settled. In this light no-saying has a dimension that is Arendtian in a precise sense: it is a beginning. It attempts to create a public space that hitherto has been abandoned. It is an attempt to raise an objection in a conversation that is *not* taking place, but should be.

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[73] Stephen. K. White and Evan R. Farr, "'No-saying' in Habermas," *Political Theory* 40 (2012), 40.

[74] Habermas, *Between Facts and Norms*, 28–31. See also: Rasmussen, "How is Valid Law Possible?," 28.

Conclusion

This chapter delved deeper into a moral concept that is at the center of Habermas's discourse theory, namely, that in ideal speech situations it is the force of the better argument that ought to prevail. The discussion began with the more prevalent interpretations of argumentation, which emphasize rational reason giving. As the chapter progressed, we critically examined the concept and limits of rational argumentation, and investigated extra-rational forms of argumentation and discourse. What this investigation highlighted was that what is considered the "better" argument often entails components that are not rational per se, including rhetorical devices, social and political power, and the recruitment of other resources that persuade others. The chapter especially highlighted the ways in which this dynamic holds even when considering science and technology research, which may seem immune to such influences at first. This chapter will prepare a foundation for Chapter Seven, which will examine the role digital media may play in processes of argumentation in the democratic public sphere. Like the technologies themselves, arguments are designed by drawing on social resources, and the ways in which arguments are presented involve values. By uncovering and exposing these dynamics, we broaden our understanding of what public reason is, and what we can expect of it.

The chapter ended with a discussion of the role of social and political action in public reason. This is brought to some extreme in the case of civil disobedience. As I suggested, civil disobedience can be understood not as the shutting down of discussion, but rather as the rekindling of a discussion that has been silenced, or that has not yet been had. What we see is the re-emergence of the dialectic from Chapter Four – while we call

for a Habermas-inspired argumentation process about the value-laden dimensions of technology design, we find that the determination of the better argument in this debate is not what we traditionally consider fully rational.

This chapter sets the stage for the next, and final chapter, which will examine the role of digital technologies in the multi-layered process of public reason described above. In particular, Chapter Seven will focus on whether and how digital technologies and their design expand or contract the political imagination, and whether they provide avenues for challenging the status quo, that enrich the ongoing constitutional project that Habermas envisions.

CHAPTER SEVEN

PUBLIC REASON IN THE DIGITAL AGE: TECHNOLOGY AND DELIBERATIVE DEMOCRACY

Introduction

Chapters Three and Four provided an overview of what we might refer to as Habermas's conception of public reason. According to Habermas, the validity of moral norms (Chapter Three) and the legitimacy of political norms (Chapter Four) can only be confirmed by an intersubjective and counterfactually ideal process of discourse and argumentation. That is, we discover and establish these norms based on an inclusive and free (noncoercive) process where all can participate as free and equal participants.

From this account of public reason, the following concern arose: If we are to rely on the public use of reason to examine the designs of technologies insofar as they embody values and have political consequences, then we must examine the role technology plays in facilitating or hindering an open and inclusive democratic public sphere in which these questions can be discussed. Hence, Chapter Five surveyed high hopes that many parties have for the role digital technologies may play to open up access to democratic participation. That chapter then demonstrated the barriers that still stymie participatory parity in the public sphere with respect to these technologies. This pointed to the need to delve deeper into argumentation processes and public reason in the digital age.

Therefore, Chapter Six set the stage for further investigation, by delineating basic concepts concerning argumentation, with an emphasis on highlighting the social and political nature of what we consider "good" or "successful" arguments. The chapter ended with a focus on civil disobedience. Civil disobedience is an example of political action that rekindles a public conversation about an issue that seems settled from the legal point of view, or raises awareness to political possibilities currently being marginalized from public light.

This chapter will continue the thread of Chapter Six. The question for this chapter will be the role digital technologies can play in rekindling this political imagination, and design issues which accompany such a discussion. I argue that it is consistent with Habermas's understanding of the theorist's role as philosopher to suggest that it is *not* the role of the philosopher to put forth a list of recommendations for public policy. Such would be the role of the theorist as public intellectual. A Habermasian approach requires that we not make prescriptions about what Internet designs are good for democratic deliberation. Those must be decided in actual deliberations among citizens. The role of the theorist here, rather, is twofold:

- *First*, to provide norms that guide this deliberation among citizens. Such norms are of two kinds: procedural norms to guide the deliberation itself and some substantive norms, which are justified in cases where the design will affect the nature and possibility of future deliberations. In a sense, this goes back to Habermas's Democracy Principle: ensuring effective (meaningful and consequential) participation in discursive processes of opinion- and will-

formation, while legally guaranteeing the forms of communication through which these processes take place.

- *Second,* to point out matters that need to be addressed in such deliberations. That is, to expose as political what is seen as technical. This requires a political imagination, being able to imagine alternatives to the current state of affairs. Presenting such alternatives may be a role for the theorist too, but then the theorist does so as a participant in the deliberative process.

The role of the philosopher, then, is to outline a vision for what a democratic *process* in the public sphere ought to look like. The focus for the Habermasian is procedural. Hence, I will highlight not particular recommendations, but the overarching need to *politicize* the digital public sphere – that is, to expose the political nature and consequences of digital designs. With Feenberg, I argue for a critical analysis of particular designs – which would be in accord with Feenberg's "micro" approach to a critical theory of technology. In the words of Evgeny Morozov, "those relying on a post-Internet approach will trace how these technologies are produced, what voices and ideologies are silenced in their production and dissemination, and how the marketing literature surrounding these technologies taps into the zeitgeist to make them look inevitable."[1]

But contrary to Feenberg's focus, I argue that we should also look at the macro systems and discourses that shape the digital public sphere – questions regarding policy, ownership, and more. For example, there have been – and continue to be – heated debates about issues of privacy on the Internet. There are major concerns that data about citizens

[1] Evgeny Morozov, *To Save Everything, Click Here: The Folly of Technological Solutionism* (New York: PublicAffairs, 2013), 356.

are being collected and used in a variety of ways, often without the explicit knowledge of the citizens. Though these are worthwhile concerns, they have overshadowed what I take to be a more foundational concern: publicity. While we are overwhelmingly concerned with the loss of privacy, we have neglected the process in which the digital public sphere has lost its public nature. This process is in accord with the liberal and neo-liberal ethos, which takes as its primary concern the right of the individual to maintain her own private sphere of autonomy. However, as I will discuss below, the public autonomy of citizens to shape the digital public sphere and meaningfully participate in it is being stymied in various ways. As Morozov warns, "the new digital infrastructure, thriving as it does on real-time data contributed by citizens, allows the technocrats to take politics, with all its noise, friction, and discontent, out of the political process. It replaces the messy stuff of coalition-building, bargaining, and deliberation with the cleanliness and efficiency of data-powered administration."[2]

When brought to its extreme, we see that lack of privacy and lack of publicity are two sides of the same coin. A society in which there is no privacy at all is clearly totalitarian. But so is a society in which no participatory public sphere exists. When we overly emphasize citizens' private autonomy – their right to pursue their own private interests with little regard for a meaningful concept of the public good – we risk losing citizens' ability (and motivation) to actively shape their social conditions. In other words, when citizens see themselves merely as "users," the Arendtian "social" sphere has taken over the "political."

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[2] Evgeny Morozov, "The Real Privacy Problem," *MIT Tech Review*, October 22, 2013, 2014, http://www.technologyreview.com/featuredstory/520426/the-real-privacy-problem/

The discussion in this chapter will unfold in three parts: the *first* section (1) will discuss existing challenges to the expansion of the public sphere in the digital age. This section will consider various ways in which digital technology is closing our political minds. The *second* section (2) will examine various topics that should be the subject of public deliberation, when considering ways in which digital technologies and systems could be designed toward deliberative-democratic ends. Finally, the *third* section (3) will briefly discuss the function of digital civil disobedience and its role in the contemporary public sphere.

Are Digital Technologies Closing Our Political Minds?

As mentioned, Chapter Five focused mostly on socioeconomic barriers that digital technologies still pose to participatory parity in the democratic public sphere. In this section, the discussion will focus on a different set of concerns, namely, concerns that digital technologies may be contracting the political imagination. From a different angle than the one presented in Chapter Five, this section again presents concerns as to whether digital technologies provide avenues for challenging the status quo, or do they impoverish the civic deliberation regarding the ongoing constitutional project that Habermas envisions.

Concerns about how technology might close the political mind are not new. Such concerns were certainly raised in the tradition of critical theory early on. For example, when considering the effects of mass culture Adorno wrote:

> What is new about the phase of mass culture compared with the late liberal stage is the exclusion of the new. The machine rotates on the same spot... For only the universal triumph of the rhythm of mechanical production and reproduction promises that nothing changes and nothing unsuitable will appear.[3]

[3] Waldman, "Critical Theory and Film," 56.

One might conclude from this that Adorno attributed this harm to the political imagination to capitalism. However, Adorno makes clear that he attributes this effect to the technical standardization itself: "Its basic standardization is certain to prevail in some way or other under non-capitalist forms of production. Technical standardization leads to centralized administration."[4]

Decades later, Sherry Turkle has pointed to important consequences of software design. She remarks that since the 1980s users of computers and their software have become less and less interested in understanding how the software works and put more emphasis on functioning effectively *within* the software design. In a sense, users put more emphasis on striving to play the game well than on questioning the rules of the game. Fostering this type of attitude no doubt has political impacts. In Turkle's words, it can compromise our "sense that understanding is accessible and action is possible."[5] Again, the issue Turkle raises here is the impact of technology on our political imagination. The invigoration of the political imagination is especially important in a society in which established norms and conventions are deeply entrenched. The more digital media gains

[4] Ibid., 57. Adorno goes on to express his concern about the conformist citizenry produced by the culture industry:

> It has recently become customary among cultural officials as well as sociologists to warn against underestimating the culture industry while pointing to its great importance for the development of the consciousness of its consumers. […] All of this, however, is harmless and, according to them, even democratic since it responds to a demand, albeit a stimulated one. It also bestows all kinds of blessings, they point out, for example, through the dissemination of information, advice and stress reducing patterns of behavior. Of course, as every sociological study measuring something as elementary as how politically informed the public is has proven, the information is meager or indifferent. Moreover, the advice to be gained from manifestations of the culture industry is vacuous, banal or worse, and the behavior patterns are shamelessly conformist (Adorno, *The Culture Industry*, 102–103).

[5] Sherry Turkle, "From Powerful Ideas to PowerPoint," *Convergence* 9, 2 (Summer 2003): 20–24.

"momentum" (a concept discussed in Chapter Two), the more important it is to concern ourselves with the values and norms its designs embody.

Jodi Dean is also concerned with the ways in which digital media can shape our perceptions of our political agency. Though we witness many online initiatives for social change, Dean worries that digital media offer relatively passive ways of civic involvement, which nevertheless give the actor a (false) sense of accomplishment. Such actors may engage in political activism by forwarding a YouTube video to a friend, joining a "group" on Facebook, or commenting on a blog. On this phenomenon Dean writes:

> Theorists and activists emphasize singular websites, blogs, and events. Such spikes in the media sphere may well seem impressive, but they conform to the dictates of broadcast media spectacle, momentary eruptions that anchor people to their screens, calling upon them to register their opinions, to contribute. They don't provide alternative practices of collective engagement, challenge corporate ownership of the telecommunications infrastructure, or redirect financial flows toward the most disadvantaged. […] The emphasis on networked communication strategies displaced political energy from the hard work of organizing and struggle.[6]

Dean concludes that a cyber-centered understanding of political participation promotes little more than "the rule of the wealthy, the protection of a governmental elite who serves their interests, and the constant chatter and opining of everyone else in the circuits of communicative capitalism."[7]

Dean's concern can also be found in philosophers who precede her and the digital age, with whom we began in Chapter One. For example, when Heidegger writes about "curiosity" (*die Neugier*) – characterized by restlessness and constant distraction – as a

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[6] Dean, *Democracy and Other Neoliberal Fantasies*, 39–40.

[7] Ibid., 41.

fundamental component of contemporary society, he refers to the overload of information brought about by the prevalence of communication outlets, including radio, magazines, popular literature, and more.[8] In a lecture titled "Fundamental Concepts" during the summer semester of 1941, Heidegger put this concern more bluntly:

> That people occasionally "read a book" is a Philistine kind of accounting, quite aside from the fact that we have to ask whether people today who often get their "education" only from lists, magazines, radio reports, and movie theaters, whether such discombobulated, purely American individuals still know and are able to know what it means "to read."[9]

Dean's concern regarding the semblance of the new as a perpetuation of the same also echoes Adorno, who wrote:

> What parades as progress in the culture industry, as the incessantly new which it offers up, remains the disguise for an eternal sameness; everywhere the changes mask a skeleton which has changed just as little as the profit motive itself since the time it first gained its predominance over culture.[10]

One example of a phenomenon that raises concerns that digital technologies may close the political mind is that of "algorithmic regulation." Like many terms used in this evolving field, this one too has a variety of definitions. Some refer to "algorithmic regulation" as the regulation of algorithms used in various contexts – for example, the regulation by government of algorithms used in high speed electronic trading in financial markets – an issue that has become ever more pertinent after the 2008 collapse of the financial markets. But this is not the meaning I intend here.

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[8] Martin Heidegger, *Being and Time* (New York: SUNY Press, 1996), 159–162.

[9] Borgmann, "Technology," 422.

[10] Adorno, *The Culture Industry*, 100.

For the purposes of this discussion, I refer to algorithmic regulation as the use of algorithms to regulate public behavior and policy. The most important aspect of this algorithmic regulation is that the algorithm is designed to replace human decision-making and judgment. The argument for algorithmic regulation is that in a time when it is possible to collect vast amounts of data about human beings, their identities, their behavior and preferences, algorithms are well positioned to use this data *efficiently* to organize human social life. Instead of going through the lengthy and messy legislative process, and even more costly and messy process of law enforcement – why not simply embed the regulation in a technical system that is not transparent enough to be readily challenged?

Algorithmic regulation is used in a wide variety of areas of social and political life. I will present just a few examples, which exemplify a range of concerns raised by these practices. First, algorithmic regulation is sometimes used with the intention of promoting interest in civic issues. In such cases, an Internet provider may purposely inject information about civic issues it has chosen – anything from hunger in Africa to homelessness in Chicago – into the web-browsing experience. For example, if the user searches for a restaurant in her area with search terms such as "best Chicago restaurants," the algorithm will pick up on the food-related search. Then, the search results will show restaurants in her area intertwined with stories about food insecurity in Chicago and hunger in Africa. The intent is to promote citizen interest in important issues, even when the citizen did not express this interest on her own. *Prima facie*, this seems like a good thing. It seems that not only does the technology not close the citizen's mind – it opens it up to information to which she may otherwise not be exposed.

The problem with this type of technology design is that citizens' interests in civic issues are directed by a pre-designed technical system in which they are only passive participants. The *deliberation* regarding which issues ought to be highlighted is taken out of the hands of citizens. The messy process of public discussion is replaced with "efficient" and "smart" digital processes. Evgeny Morozov comments on this:

> [I]f citizens willingly approach Internet companies, ask them to inject some serendipity and global caring into their algorithms, and then willingly use these services precisely because they want serendipity and caring, then it might be possible to think of ways to justify such interventions… But if citizens come to care about Bosnia or Rwanda or Syria not because they believe in the importance of humanitarian intervention or deliberately seek out news about those lands but because some combination of budges and algorithms has made such caring all but inevitable, this seems like a tacit acknowledgement that deliberation and morality no longer command any respect in our political life and that now it all boils down to Skinnerian experimentation as to what combination of incentives – not arguments! – yields the desired action.[11]

We see a different kind of algorithmic regulation in web sites like Twitter or YouTube. These are especially interesting case studies, since such websites consider themselves (and advertise themselves) as neutral "platforms" from which all can speak. In fact, Tarleton Gillespie has conducted a study focused on the political significance of the term "platform" when discussing such technologies. He explains that a platform evokes the connotation of a "'raised, level surface' designed to facilitate some activity that will subsequently take place. It is anticipatory, but not causal. It implies a neutrality with

[11] Morozov, *To Save Everything, Click Here*, 296. Morozov also points to political theorist Ruth Grant, who argues in her book *Strings Attached* that "the turn toward incentives is harmful from the civic point of view, since it tends to lead citizens to construe their responsibilities too narrowly" (Ibid., 304).

regards to the activity… [I]t suggests a progressive and egalitarian arrangement, promising to support those who stand upon it."[12]

Gillespie explains that as the term "platform" becomes a "discursive resting point" and becomes widely used, it shapes the popular understanding of what these technologies are. Quoting Bourdieu, Gillespie argues that such terms "sanction and sanctify a particular state of things, an established order, in exactly the same way that a constitution does in the legal and political sense of the term." He explains that not only do such terms conserve the status quo of these technical designs, but they also distort our understanding of how these "platforms" shape public discourse online.[13]

One of Twitter's most famous (and researched) features is "Trends."[14] This feature is supposed to inform its users as to which terms and names are currently most popular (most discussed) on the site. Seeing as Twitter is consistently among the top ten most visited web sites on the Internet, the Trends feature has a considerable role in raising topics from the periphery into the spotlight of the public sphere. One might think that Twitter merely *tracks* "trends" and reports them to users, but the reality is of course more complicated. The algorithms that determine "trends" are designed in a particular way – they are not "natural" but man-made.

An illustrative controversy regarding Twitter Trends erupted when activists involved in the Occupy Wall Street movement noticed that the "hashtag"

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[12] Tarleton Gillespie, "The Politics of 'Platforms'," *New Media & Society* 12, 3 (2010): 350. See also the MIT Press book series titled "Platform Studies," edited by Ian Bogost and Nick Montfort.

[13] Ibid., 348–349.

[14] See for example: Mor Naaman, Hila Becker and Luis Gravano, "Hip and Trendy: Characterizing Emerging Trends on Twitter," *Journal of the American Society for Information Science and Technology* 62, 5 (May 2011): 902–918.

#occupywallstreet was not "trending" on Twitter, despite being widely discussed on the site and other media outlets. Activists began accusing Twitter of censorship. Gillespie commented on this, that "[t]he interesting question is not whether Twitter is censoring its Trends list. The interesting question is, what do we think the Trends list is, what it represents and how it works, that we can presume to hold it accountable when we think it is "wrong?" What are these algorithms, and what do we want them to be?"[15]

Gillespie explains that the absence of #occupywallstreet from Twitter's Trends listing is a product of what the Trends algorithm is designed to identify:

> Trends has been designed (and re-designed) by Twitter not to simply measure popularity, i.e. the sheer quantity of posts using a certain word or hashtag. Instead, Twitter designed the Trends algorithm to capture topics that are enjoying a surge in popularity, rising distinctly above the normal level of chatter. To do this, their algorithm is designed to take into account not just the number of tweets, but factors such as: is the term accelerating in its use? Has it trended before? Is it being used across several networks of people, as opposed to a single, densely-interconnected cluster of users? Are the tweets different, or are they largely re-tweets of the same post?[16]

Again we see that the way the technology is designed – in this case the algorithm – embodies a certain view of the world as it should be, not just the world as it is. While the Trends feature seems to offer the user a quantitative and exhaustive analysis of what is being talked about, it in fact provides a vision of what is worth highlighting in public discussion. Morozov explains that we risk missing the fact that algorithms like Trends *shape* deliberation in the public sphere, if we naively accept that such algorithms only reflect data, or the natural unfolding of the network. For example, "a term that has

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[15] Tarleton Gillespie, "Can an Algorithm Be Wrong? Twitter Trends, The Specter of Censorship, and Our Faith in the Algorithms Around Us," Oct 19, 2011, http://culturedigitally.org/2011/10/can-an-algorithm-be-wrong/

[16] Ibid.

trended before has a higher threshold before it can trend again. The implication is that the algorithm prefers novelty in public discourse over phenomena with a longer shelf-life."[17] Moreover, what "trends" on Twitter is heavily influenced by tweets by major columnists and news sites, which is no different than these parties' influence via traditional media. Analysis shows that Twitter trends rarely arise without such endorsements.[18]

The final example of algorithmic regulation I will discuss is taken from the practice of immigration policy. With the flow of people across boarders at such high volume, there is an increasing push by governments to find "efficient" ways to monitor this flow. In some cases, it is determined that the human check by the immigration officer is either too prone to mistakes, or too time-consuming, or both. Hence, many ports of entry have been using algorithms which take in information about the person who wishes to enter, and provides an output in the form of approving or denying entry. In many cases, the immigration officer herself is uninformed as to the reasons behind any particular decision. The officer has relinquished her judgment to the automated system. It is the opaque algorithm – which is impossible to challenge or contest – that regulates the inward flow of people.[19]

Similarly, Morozov points to a study on the transparency of automated prediction systems by Tal Zarsky. An expert on the politics and ethics of data mining, Zarsky notes

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[17] Morozov, *To Save Everything, Click Here*, 150–152.

[18] Ibid., 155.

[19] Matthew Longo, "Sovereignty in the Age of Securitization: A Study of Borders and Bordering in the US after 9/11" (paper presented at the Critical Theory Roundtable, St Louis, Missouri, October 18–20, 2013).

that "data mining might point to individuals and events, indicating elevated risk, without telling us why they were selected." Zarsky adds:

> A non-interpretable process might follow from a data-mining analysis which is not explainable in human language. Here, the software makes its selection decisions based upon multiple variables (even thousands) … It would be difficult for the government to provide a detailed response when asked why an individual was singled out to receive differentiated treatment by an automated recommendation system. The most the government could say is that this is what the algorithm found based on previous cases.[20]

One main problem with algorithmic regulation from the deliberative-democratic point of view is that it avoids the deliberation about values embedded in the algorithm's design. In most cases the algorithms operate in the background, and are intentionally designed to go undetected. Morozov's concern is that "once laws and norms become cast in technology, they become harder to question and revise. They just fade into the background and feel entirely natural; indeed, they are often seen as an extension of the built environment rather than the outcome of deliberate planning by some wise social engineer."[21] He adds that "[s]omething about the experience of living in the polis with other human beings is essentially irreducible to formulaic expression and optimization techniques. Thinking and deliberation are unavoidable; even the most perfect algorithms won't spare us those – not without impoverishing our political culture as a result."[22]

Technology Design for Deliberative Politics

Jürgen Habermas warned as early as 1963 that "…an exclusively technical civilization… is threatened…by the splitting of human beings into two classes—the social engineers

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[20] Morozov, "The Real Privacy Problem."

[21] Morozov, *To Save Everything, Click Here*, 200.

[22] Ibid., 138.

and the inmates of closed social institutions."[23] But many in the tech development community long for a time when "politics" will be taken out of social life, and technology will step in to order society. For example, in a 2009 article tellingly titled "The United States of Google," journalist Jeff Jarvis wrote that "if geeks take over the world – and they will – we could enter an era of scientific rationality in Washington."[24]

One of the most remarkable manifestations of this advocacy for a technology-based, de-politicized polis, was published in the New York Times in late 2013. The article – titled "Silicon Valley Roused by Secession Call" – depicts a speech delivered by a Stanford University computer science lecturer and Silicon Valley genomics entrepreneur named Balaji Srinivasan. In his speech, Srinivasan argues that aspiring Silicon Valley tech entrepreneurs should disavow the existing political system, and instead create an alternative, technology based society outside the United States. While this may seem ludicrous, one ought to consider that it reflects some of the zeitgeist among a community that designs the technologies that shape our lifeworlds:

> [Srinivasan] told a group of young entrepreneurs that the United States had become "the Microsoft of nations": outdated and obsolescent. When technology companies calcify, Mr. Srinivasan said, you don't reform them. You exit and launch your own. Why not do so with America? In practice, this vision calls for building actual communities that would be beyond the reach of the state that Silicon Valley's libertarians despise….What Mr. Srinivasan called "Silicon Valley's ultimate exit," he explained, "basically means build an opt-in society, ultimately outside the United States, run by technology."[25]

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[23] Jürgen Habermas, *Theory and Practice* (London: Heinemann, 1974), 282.

[24] Jeff Jarvis, "The United States of Google," *Bloomberg Businessweek Magazine*, January 28, 2009, http://www.businessweek.com/stories/2009–01–28/the-united-states-of-google

[25] Anand Giridharadas, "Silicon Valley Roused by Secession Call," *The New York Times*, October 28, 2013, http://www.nytimes.com/2013/10/29/us/silicon-valley-roused-by-secession-call.html?_r=4&

Of course, these technology-revering voices are met with critics. Discussing the potential commercial success of a gadget marketed by Google, media studies researcher Ian Bogost writes that the question regarding the market popularity of this particular device "has already been precluded by the question of whether we will allow a few large private technology companies like Google to determine by decree how we behave in contemporary society. And the answer seems to be yes." Bogost adds that "[u]ntil we can stop and ask what are the social values that we want to live under and what are the types of progress that we want to invest in, then we will end up with only the kinds of progress that big companies like Google with lots of money to do whatever they want can pursue."[26] Along similar lines, Evgeny Morozov questions Google's "open platform" rhetoric, suggesting that "[i]nstead of celebrating what Google does for openness, it's important to investigate what openness does for Google."[27]

One way to remedy the de-politicization of technologies, is to design technologies which – to go back to the terms used by Albert Borgmann – do not function as devices. That is, invoking Heidegger and to some degree Don Ihde (as discussed in Chapter One and Two), such designs do not aim to move the functioning of technologies into the background. One such school of design has been coined "adversarial design." Drawing on the thought of theorists such as Carl Schmitt, Chantal Mouffe, as well as the agonistic politics of Hannah Arendt, this approach to design is inspired by antagonistic views of

[26] Zoe Corbyn, "Google Glass – Wearable Tech But Would You Wear It?," *The Guardian*, April 5, 2014, http://www.theguardian.com/technology/2014/apr/06/google-glass-technology-smart-eyewear-camera-privacy

[27] Morozov, *To Save Everything, Click Here*, 92.

society that see political norms and arrangements as constantly challenged.[28] Adversarial designers "embrace the idea that their goal is not limited to making people use their devices; it's also to make people think with their devices."[29]

Agonistic views of politics see conditions of disagreement, confrontation, and dissensus as fundamental to democracy. Mouffe explains that "[w]hat is specific and valuable about modern liberal democracy is that, when properly understood, it creates a space in which this confrontation is kept open, power relations are always being put into question and no victory can be final….[T]here is no place where reconciliation could be definitively achieved."[30]

Carl DiSalvo has conceptualized adversarial design as a theory of design that encourages designing objects and spaces that open up opportunities to examine and challenge existing beliefs and practices. According to DiSalvo, "[f]or democracy to flourish, spaces of confrontation must exist, and contestation must occur. Perhaps the most basic purpose of adversarial design is to make these spaces of confrontation and provide resources and opportunities for others to participate in contestation."[31]

DiSalvo distinguishes between "designs for politics" and "political designs" – himself aiming for the latter. In this conceptual framework, "designs for politics" are

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[28] Adversaries should not be conflated here with enemies. This is one difference between Mouffe and Schmitt, among others. DiSalvo explains that "rather than framing the conflict as among enemies that seek to destroy one another, the term adversary is used to characterize a relationship that includes disagreement and strife but that lacks a violent desire to abolish the other" (Carl DiSalvo, *Adversarial Design*, [Cambridge, MA: MIT Press, 2012], 6).

[29] Morozov, *To Save Everything, Click Here*, 338.

[30] Chantal Mouffe, *The Democratic Paradox*, (London: Verso, 2000), 15–16.

[31] DiSalvo, *Adversarial Design*, 5.

product designs that aim to ease the access to the political process (for example, improving access to information or to voting). The purpose of such designs is often to support and improve the mechanisms and procedures of government. In contrast, "political designs" aims to expose and challenge. Instead of providing answers, such designs raise questions. Instead of making existing practices more efficient, political designs question existing practices, and open up spaces for exploring alternatives.[32] DiSalvo explains that by "revealing the conditions of political issues and relations, adversarial design can identify new terms and themes for contestation and new trajectories for action." He adds that whereas "design for politics strives to provide solutions to given problems within given contexts, political design strives to discover and express the elements that are constitutive of social conditions."[33]

One area of design on which DiSalvo focuses, is information design. That is, the design of software or things that convey information (maps, websites, and other designs). For example, when thinking about designs for politics, we might think of a website that shows crime rates in various areas of a city. This may seem like a straightforward and useful thing, as it provides access to information that could in turn inform how we vote, for example. But DiSalvo reminds us that information is a product that has already been designed: "information is data that have been given structure and shape, transplanted and contextualized in a way that allows them to be used as the basis for understanding or action."[34] Therefore, DiSalvo provides examples of information designs that challenge

[32] Ibid., 8–9.

[33] Ibid., 13.

[34] Ibid., 30.

users to ask more questions about the issues at the root of the information displayed, and allow users to manipulate the data to find answers to questions they may have.[35]

Political design can be implemented in everyday things, including objects as mundane as parking meters. Morozov points to a new parking initiative that was implemented in Santa Monica in 2012. In the newly designed parking meters, the meter would reset every time the parked vehicle left the parking spot (so there could be no funds left over for the next driver). This new "smart" system, also took the information about the vehicle's departure, and put it into a database, so that drivers could see where parking spots are made available. The system was meant to promote "efficiency."[36]

But we may consider an alternative design for the parking meters. Suppose the same driver is about to leave the parking spot. But instead of the meter automatically resetting, the driver is given (for example) four options of how to handle the funds that remain in the meter. The driver could (1) leave the funds in the meter, thus benefiting the next driver to park in that spot; (2) decide to donate the funds to a charitable cause; (3) decide to claim the funds back into her own account; or (4) decide to assign the funds to the local municipality toward fixing roads, bridges and other transportation projects. Such a hypothetical design is certainly feasible from the technical point of view. This design would transform the engagement with the meter from one of following rules to one of debating moral and political choices as a citizen in a community.

One objection might go back to Habermas's conception of law, as described in Chapter Four. For Habermas, law is ultimately legitimated by appeal to its origin in

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[35] See DiSalvo's discussion of "Million Dollar Blocks" and "They Rule" as examples: Ibid., 9–12, 36–37.

[36] Morozov, *To Save Everything, Click Here*, 318–321.

democratic will-formation based in communicative action. At the same time, law creates a framework in which actors can legitimately act strategically and are "unburdened" of the need to interact communicatively. In an analogous way, one might argue here that the meter as designed in Santa Monica is an embodiment of a law (or ordinance), sanctioned by the democratic process of electing the mayor and city council, who in turn make decisions about the function of the meter "for the citizens." The argument here is that political designs such as the one proposed would unduly "burden" citizens with decisions they would rather not have to make every day.

The response to this legitimate concern could come at two levels. On the philosophical level, the political designer would have to bite the bullet and acknowledge that such designs are indeed disruptive, and less efficient. But then again, that's their purpose. They are meant to provide opportunities for citizens to reflect on their values and the consequences of their actions. At its extreme, it is the same argument as to why we should tolerate the messy process of deliberative democracy instead of reverting to a more "efficient" system where there is no deliberation at all. It is a matter of balancing the practicalities of everyday life, including the limits on citizens' time, motivation and cognitive capacities to give proper attention to such decisions.

The need for balance brings us to the second level at which we can respond – the practical one. At this level we could examine the technical possibilities for maintaining the more political design of the meters, while allowing the concern for the burden on citizens to inform design decisions. For example, we could allow citizens to choose one of the options as their default option, which would only change if they took action to change it (so their deliberation would happen only that first time).

The question now is - what can the example of parking meters tell us about the design of our Internet infrastructure (by infrastructure I refer to the physical infrastructure that makes the Internet possible, but also the software and the laws that govern its operation)?

First, we must change the discourse about the Internet. Referring back to Sherry Turkle's comment quoted above, we must encourage a discourse that questions the basic rules currently governing the Internet. The Internet is not a force of nature, and could be designed to fit our communal aspirations. However, such an attitude is often not heard in debates about these issues. For example, Eric Schmidt – Google's top executive, asserted that policymakers "should work with the grain of the Internet rather than against it," as if the way the Internet operates is a given fact. Similarly, Rebecca MacKinnon – a scholar of digital politics asserted that "without a major upgrade, [our] political system will keep on producing legal code that is Internet-incompatible," as if politics need to conform to the given structure of the Internet, and not the other way around.[37] There are even those who go so far as to argue that politicians should "stay out" of technology discussions. Hence a column by digital media journalist Paul Venezia, titled "Why Politicians Should Never Make Laws About Technology."[38] This is of course silly. Who would make decisions about laws governing technology if not our elected representatives? The technology corporations themselves?

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[37] Morozov, *To Save Everything, Click Here*, 23.

[38] Paul Venezia, "Why Politicians Should Never Make Laws About Technology," *Infoworld*, January 3, 2012, http://www.infoworld.com/article/2618454/government/why-politicians-should-never-make-laws-about-technology.html

An example of a fundamental question that has never been seriously debated is, who should own the infrastructure of the Internet? Currently, while the Internet is regulated through the legal and administrative system, it is nevertheless entrusted to private companies for everything from physical infrastructure (companies such as AT&T and Verizon) to search services (Google, Yahoo!) and every other aspect of the Internet.

But why should that be a given? Should we not at least consider whether it would be better to entrust at least some components of this valuable infrastructure to the public (in its form as government)? After all, Chapter Five described at length various concerns that arise from the private ownership structure of the Internet, including concerns for the upholding of constitutionally protected rights. Moreover, we have long-term experience with government ownership and operation of an indispensible communication and information network – the United States Postal Service – where little concern has arisen that the government will act maliciously to undermine the privacy and rights of its citizens.

Furthermore, in Chapter Two I pointed to the distinction between decisions based on democratic values and decisions based on consumer preferences. Morozov gives the following example, referring to "Kickstarter," which is a "crowdfunding" site that allows users to raise funds from the site's visitors for a project they would like to implement – often fundraising for artistic projects such as film or music. He points out that Kickstarter and the National Endowment for the Arts are not only two ways of funding art; they also bring about different art. A Danish academic studied how crowdfunding impacts what gets funded. Crowdfunding is likely to fund "campaign and issue-driven films… A documentary exploring the causes of World War I probably stands to receive less online

funding – if any – than a documentary exploring the cause of climate change… [Hence], it would be a mistake to treat the two approaches as producing the same content through different means."[39]

It is helpful to examine the Internet as an infrastructure resource that enables the production of various social goods (similar to roads, or even water). One of the primary goods it enables from the vantage points of this study, is vibrant discussion as part of a democratic public sphere. The question, then, is, how should this infrastructure be managed? Brett Frischmann has produced an in-depth analysis of infrastructure, focusing on the social value of shared resources. Frischmann points out that most debates about infrastructure resources focus on the supply-side of these resources (how much the government should invest in roads, for example). However, he argues that what is often overlooked is the demand-side of the equation – usually because "infrastructure users, as voters and consumers, may not adequately signal social demand for infrastructures… At bottom, demand-side problems arise because we do not fully appreciate the social value that infrastructures provide."[40] Hence, it is not enough to rely on the "free market" to decide what infrastructures we "need" based on consumer preferences. In many cases, setting up infrastructure will be followed by its usage, but the demand for this infrastructure will not be signaled to the free market in advance.

Frischmann argues that in many cases, there are great benefits to managing infrastructure as a commons. For Frischmann, commons management "refers to the

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[39] Morozov, *To Save Everything, Click Here*, 28.

[40] Brett M. Frischmann, *Infrastructure: The Social Value of Shared Resources* (New York: Oxford University Press, 2012), xi.

situation in which a resource is accessible to all members of a community on nondiscriminatory terms, meaning terms that do not depend on the users' identity or intended use."[41] He explains that commons management is often an efficient way of supporting public participation in a range of activities that are socially valuable. Hence, he sees commons management as serving two important public functions: "First, it diffuses pressure within both market and political systems to "pick winners and losers" and leaves it to users to decide what to do with the opportunities (capabilities) provided by infrastructure. Second, it functions like an option – a social option. When there is high uncertainty about which users or uses will generate social value in the future… managing the infrastructure as a commons sustains the generic nature of the infrastructure, precludes optimization for a narrower range of activities, and avoids social opportunity costs associated with path dependency."[42]

It is important to note, as Frischmann does, that commons management need not necessarily mean that the infrastructure is owned (or even directly managed) by the government. In fact, Frischmann asserts that the Internet in its current set up is in fact predominantly managed as a commons.[43] It is a model of private firms managing infrastructure as commons. He warns, however, that they do so because they see it as advantageous to do so from their perspective as profit-driven enterprises. Indeed, their view might change.[44]

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[41] Ibid., 7.

[42] Ibid., xv.

[43] See especially: Ibid., 340–348.

[44] Frischmann does not go so far as to discuss government ownership of Internet infrastructure.

One policy area in which this commons management is in fact in danger of significant change is in the question of "net neutrality" (as discussed in Chapter Five). Early on Google stated publicly that it supports net neutrality, stating in 2008 that it "would affirm that the Internet should remain an open platform for innovation, competition, and social discourse."[45] However, in 2010 Google moved away from its commitment to "openness" when it made an agreement with Verizon regarding traffic management on mobile networks.[46] Such deals confirm the suspicion that relying on market incentives to maintain commons management of infrastructure is a risky strategy from the perspective of the public good.

What is more, most companies that own the basic Internet infrastructure are *de facto* monopolies, duopolies or otherwise hold a dominating share of the market (think of telecom companies such as Verizon and AT&T, Google and Yahoo in search operations, Amazon in e-commerce and so on). Hindman points out that this creates enormously high barriers to entry into online operations.[47] As he explains, "part of the claim here is that changing the *infrastructure* that supports participation can alter the *patterns* of participation."[48]

Internet ownership structures and regulation of the digital economy are examples here of technical and policy design issues that require deliberation, if digital technology is to support a deliberative democratic public sphere of the sort Habermas envisions. There

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[45] Gillespie, "The Politics of 'Platforms'," 356.

[46] Morozov, *To Save Everything, Click Here*, 29.

[47] Hindman, *The Myth of Digital Democracy*, 84–86.

[48] Ibid., 16.

are of course many other "big picture" conversations we should have as a public: *transparency* would be another example. There are many voices calling for increased transparency online. But is that *always* a good thing? For example, public court documents can be accessed with proper requests. But some argue that these should be available and searchable online, to make access easier, and more "democratic." However, it is not clear that the social benefits of such proposals outweigh the harms. Should court records be *easily* accessed online? Should you be able to find them in search engine results? Consider the harm to a defendant who was found not guilty, but whose record of standing trial forever haunts her on the Internet – exposing her to the possibility of having information taken out of context, among other harms.[49] There are other examples of negative feedback effects resulting from open data. Consider for example transparency in data about neighborhood crime. Residents of high crime areas might be reluctant to report crimes if this reporting publicly contributes to the neighborhood's reputation, home values, and other effects. In such cases, the negative feedback effect (open data resulting in less reporting) would mean that the fact that the data is published online might influence the quality of future data.[50]

Others call for transparency in the deliberation of decision-makers – for example, publishing online the deliberations, not just decisions, of the Federal Reserve. Studies have shown that such transparency has a negative effect on the voicing of dissenting opinions in such deliberations. Morozov cites a 2008 study that compared levels of dissent voiced before and after the institution of new transparency requirements at the

[49] See Morozov's discussion in *To Save Everything, Click Here*, 76.

[50] Ibid., 98.

Federal Reserve. The study found that "Fed policymakers appear to have responded to the decision to publish meeting transcripts by voicing less dissent," thus conforming more to some of the Fed chair's proposals. Morozov points to a distinction between transparency as a good in itself and transparency as a means to some other social good – such as accountability.[51] He adds that "all attempts to measure and describe, say, the openness of a government already start with some basic, even if implicit and invisible, model of what governments are and what they ought to be. To fully understand whether promoting government transparency in a particular context is a worthy undertaking, we need to make these models – that is, the underlying theoretical assumptions about what could and should be measured – explicit."[52] This dissertation has made explicit the theoretical framework we are aiming for – a robust deliberative democracy – and so the public conversation would center on the ways in which transparency works in service (or in disservice) to this goal. Such public deliberation would examine what in fact is important for us to have access to from the perspective of democracy. Political campaign financing might one area to explore in that conversation.[53]

Finally, how should we think about transparency when it is aimed not at government, but corporations that structure the Internet public sphere? Since online search is such a dominant way of accessing information, should we require public audits of search algorithms when a company holds a certain share of the search market? Should

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[51] Ibid., 80–81.

[52] Ibid., 88.

[53] For more on the complex issue of transparency in campaign financing see especially: Morozov, *To Save Everything, Click Here*, 73, 96. See also: Deborah G. Johnson, Priscilla M. Regan and Kent Wayland, "Campaign Disclosure, Privacy and Transparency," *William & Mary Bill of Rights Journal* 19, no. 4 (2011): 959–982.

we require Twitter to tell us how it determines what is "trending"? Should we require Facebook to tell us how it determines what we see on our "news feed"? If such transparency would divulge trade secrets, should we at least require that an audit of these technologies be conducted by a public agency such as the FCC? These too are important questions for public deliberations as we consider the ways in which digital technologies structure the public sphere.

A Note on Civil Disobedience in the Digital Age

As discussed in Chapter Six, the extreme of democratic deliberation is civil disobedience. This is also true in deliberation through the use of digital media and about digital media. In recent years we have witnessed various groups utilizing digital media to challenge established legal authorities, often doing so outside the law. Consider for example the form of political activism that has come to be known as "hacktivism" (hacker-activism). Hacktivists try to disrupt the functioning of websites and the ability of other users to access their targeted websites. One of the prevalent forms of hacktivism is Distributed Denial of Service (DDoS) attacks. Though DDoS attacks may vary in method, their general principle is to overwhelm the target website's technical infrastructure such that it can no longer effectively service the website. A famous example of an activist group utilizing these methods is "Anonymous" – a loosely tied collective of anonymous hackers and "Internet freedom" advocates whose self-proclaimed mission is to tear down digital-age barriers to free expression. In an online "Anonymous" manifesto released in June 2011, an anonymous voice proclaims: "We must tear down the barriers that have existed to this day only because we allowed them to. The revolution must be televised. We must

utilize the tools that we have and apply them with existing technology: computers, cell phones, internet and media."[54]

However, here again we see that the same technology can be used toward a range of political ends. As reported by the Internet and Democracy Project at Harvard University, DDoS attacks were launched against leading Russian independent media, election monitoring and blogging sites in the weeks leading up to the December 2011 elections in Russia. Due to the diffused nature of DDoS attacks, it is difficult to hold anyone accountable for such attacks, and so oppressive regimes can hardly be formally accused. What is more, governments and other powerful entities are often much more effective in executing DDoS attacks due to the technical means at their disposal.[55]

There are other highly public strategies of civil disobedience using digital means. One such action, discussed already in Chapter Five, is the dissemination of classified information by the website WikiLeaks. From one perspective, the WikiLeaks affair was no different than other cases of civil disobedience: an individual or group challenged government policy by committing an illegal act. However, it seems that there is more going on here. As Slavoj Zizek writes:

> What WikiLeaks threatens is the formal functioning of power. The true targets here weren't the dirty details and the individuals responsible for them; not those in power, in other words, so much as power itself, its structure. We shouldn't forget that power comprises not only institutions and their rules, but also legitimate ('normal') ways of challenging it (an independent press, NGOs etc) –

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[54] See: Timothy Karr, "Anonymous Declares Cyberwar Against 'The System'," *The Huffington Post*, June 3, 2011, accessed February 13, 2012, http://www.huffingtonpost.com/timothy-karr/anonymous-declares-cyberw_b_870757.html

[55] See a report of the Internet & Democracy Project (a research initiative at the Berkman Center for Internet & Society at Harvard University): Hal Roberts and Bruce Etling, "Coordinated DDoS Attack During Russian Duma Elections," *The Internet and Democracy Project*, December 8, 2011, http://blogs.law.harvard.edu/idblog/2011/12/08/coordinated-ddos-attack-during-russian-duma-elections/

> as the Indian academic Saroj Giri put it, WikiLeaks "challenged power by challenging the normal channels of challenging power and revealing the truth."[56]

The WikiLeaks affair rekindled the political imagination in at least two ways: First, like most acts of civil disobedience, it challenged the status quo with respect to government transparency. But more importantly for this discussion, it raised the question of what constitutes a use or misuse of existing technology when it comes to public deliberation about government policy.

A similar affair occurred when Edward Snowden began leaking classified government information in June 2013. Such actions use technology to highlight a topic in public debate. However, another effect that actions of digital civil disobedience often have is highlighting technology itself as a topic for public debate.[57] They are actions of disclosure, of opening up systems that have been closed off to the public, exposing the possibilities and malleability of technical systems. In a sense, the hacktivist movement counteracts the privacy movement, by politicizing what seems merely technical. As philosopher Peter Ludlow wrote in a blog post, "Hacking is fundamentally about our having the right and responsibility to open up the technologies of our everyday lives, learn how they work, repurpose those technologies."[58] Indeed, in her decade-long

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[56] Slavoj Zizek, "Good Manners in the Age of WikiLeaks," *London Review of Books* 33, no. 2, January 20, 2011, http://www.lrb.co.uk/v33/n02/slavoj-zizek/good-manners-in-the-age-of-wikileaks

[57] Danah Boyd (who serves as Principal Researcher at Microsoft Research; Research Assistant Professor in Media, Culture, and Communication at New York University; Fellow at Harvard's Berkman Center for Internet and Society), has argued that online leaking of information is one of the most important forms of civil disobedience in our time. See: Danah Boyd, "Whistleblowing Is the New Civil Disobedience: Why Edward Snowden Matters," *apophenia*, July 19, 2013, http://www.zephoria.org/thoughts/archives/2013/07/19/edward-snowden-whistleblower.html

[58] Peter Ludlow, "What the Unabomber Got Wrong," *Leiter Reports*, October 17, 2013, http://leiterreports.typepad.com/blog/2013/10/what-the-unabomber-got-wrong.html

anthropological study of hackers, Coleman writes that hackers "extend as well as reformulate key liberal ideals such as access, free speech, transparency, equal opportunity, publicity and meritocracy."[59]

Conclusion

This dissertation has examined the unique place of digital technology in the democratic public sphere. We began by surveying various theories of technology in the last century, and concluded this survey with Andrew Feenberg's critical theory of technology. Importantly, Feenberg – and others – have emphasized the political nature of technology design. This view is echoed by Langdon Winner, who writes in his work "The Politics of Artifacts" that an artifact "has political qualities or properties in the sense that it brings about a reconstruction of social roles and relations and forces us into specific power relationships."[60]

The main lacuna I identified in Feenberg's analysis is that he does not provide a political-theoretical framework through which we can think about designing technologies toward democratic ends. Realizing that technologies are malleable is an important beginning, but to what end? For example, how do we distinguish between consumer preferences and citizen empowerment? While Feenberg argued for a political focus on technologies at the micro level, I proposed a more comprehensive political-theoretical framework to guide efforts toward democratic ends. As this discussion has shown, one

[59] E. Gabriella Coleman, *Coding Freedom: The Ethics and Aesthetics of Hacking* (Princeton: Princeton University Press, 2013), 3.

[60] Smits, "Langdon Winner: Technology as a Shadow Constitution," 149.

cannot resort to reliance on micro changes, since these changes play out within a framework that limits some options and encourages others.

I then argued that the Habermasian political-philosophical framework is well positioned to inform discussions about the role of technology in society, since it focuses on communication and deliberation – precisely what Feenberg sees as the foundation of the design process. Therefore, I outlined the philosophical underpinnings of Habermas's discourse ethics, followed by a delineation of Habermas's procedural paradigm of law and democracy. Once the structures of Habermas's vision for a deliberative democracy were presented, we were better positioned to explicate the tension inherent in the discussion about technology and deliberative democracy. This is the tension between technology as the object of discourse and technology as a significant medium through which this discourse takes place.

The articulation of this tension set our path forward: showing how digital technologies impact our Habermasian understanding of the public sphere (for example, the changing understanding of media power) and examining how technology designs have particular effects on deliberation and public reason in the democratic process. I have argued that the role of the philosopher here is to politicize technologies and the digital public sphere they create. I have emphasized strong currents in public discourse that aim to de-politicize the public sphere in the sense that they discourage the conversation about the technology's design and its effects. To democratize technology ultimately means uncovering the political implications of particular designs. Users may demand certain designs, but this does not mean that they are driven by considerations of democracy.

In the end, avoiding such larger questions when thinking about technology and design would be akin to focusing on particular designs of cars without attending to the question of who ought to build roads, what kinds of roads, and where should those roads go. My aim here was to offer a road map.

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VITA

Asaf Bar-Tura was born and, for the most part, raised in Israel. Before attending Loyola University Chicago, he attended Ben Gurion University in Beer Sheva, Israel, where he earned a dual Bachelor of Arts degree in Philosophy and Politics & Government (*cum laude*) in 2006.

While at Loyola, Bar-Tura received the university President's Medallion in 2012, served as a research mentor to an undergraduate student in 2013, and received the Arthur J. Schmitt Dissertation Fellowship for the 2013–14 year. A paper he presented at the 2014 Loyola University Chicago Graduate School Research Symposium won the Best Paper Award in the Interdisciplinary Methods category.

Currently, Bar-Tura is the Chicago Director of The Posse Foundation. He lives in Evanston, Illinois with his wife and two children.