The Interplay of Morality, Law, and Democratic Legitimacy in Habermas's Political Philosophy

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ABSTRACT

Abstract— This paper explores Jürgen Habermas's discourse on the relationship between morality, law, and democratic legitimacy within modern societies. Habermas critiques Kantian and Rawlsian moral theories, advocating for a "dialogical" framework of practical reason. His work underscores the limitations of morality as a cohesive force in culturally diverse societies, and he proposes law, backed by political institutions, as a necessary complement to morality. In Between Facts and Norms, Habermas articulates the dual nature of law as both a fact and a norm, stressing that its legitimacy depends on rational discourse and public participation. This legitimacy rests on his discourse ethics, which integrates deliberative democracy with the legal system, emphasizing the democratic process as crucial for maintaining both private and public autonomy. The study sheds light on Habermas's nuanced approach to law as an instrument for social integration while affirming the role of morality in shaping democratic institutions.

Keywords*: Discourse Ethics, Deliberative Democracy, Legitimacy of Law, Moral and Legal Norms.*

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INTRODUCTION: THE PLACE OF MORALITY AND LAW IN HABERMAS'S PHILOSOPHY

Habermas's political ideas are contained in his writings like Time and Transition, Between Naturalism and Religion and Between Facts and Norms. He situates the moral point of view within the communication framework of a community of selves (Habermas, 2008; Nyarks, 2012; Nyarks, 2022). He moves Kant's categorical imperative beyond its 'monological' reflection by demanding that one emphatically take into consideration the viewpoints of all who would be affected by the adoption of a certain moral action or normative claim (Honneth & Joas, 1991). In a similar vein, he 'lifts' Rawls' veil of ignorance and demands that people participate in a discourse where all are fully aware of the other's perspectives and interpretation. This move toward a 'dialogical form of practical reason' is incumbent upon 'postmodern societies' where an irreducible plurality of 'goods' conditions and limits the horizon for moral conversation (Cavalier & Ess, 2006; Nyarks & Campus, 2022). Morality comes to represent duties and obligations within a just society - a society in which 'rights' trump competing 'goods' in circumstances of conflict.

In traditional societies shared ethos worked as a binding force to coordinate actions. While modern societies are too complex, differentiated and multicultural, in the original programme of discourse ethics, Habermas is of the opinion that under modern conditions moral discourse is the primary mechanism of social integration. But in late 1980's, he realized the inefficiency of morality to fulfill the social function (Rehg¸ 2023). It is very difficult to solve conflicts and maintain social order in culturally heterogeneous societies, where an increasing variety of groups and subcultures, each having its own distinct traditions and values exist, with the help of moral discourse. Hence Habermas looks for an alternative - i.e. by political institutions and laws. This doesn't mean that he dropped the moral theory in favour of his political and legal theory (Edgar, 2014; Udoh & Umotong, 2013). To him politics and law can function only with the help of morality and so political and legal theory work in tandem with moral theory. In his book Between Facts and Norms. Habermas says that the rule of law cannot be had or maintained without radical democracy (Edgar, 2014).

Habermas holds that moral norms only have a weak motivational force. They are guided by conscience (Munro, 2020; Udo & Udoh, 2023). One cannot force anyone to be good. Law is supported by coercive power of the state (including the police and the courts) hence, it carries more motivational force in the impersonal relations among citizens than moral norms in modern societies. Even if one does not follow the law out of conscience, one cannot be forced to follow it. Hence, Habermas is of the opinion that it becomes necessary to compliment morality with law. Habermas believes that law is as legitimate as morality. It is legitimised in rational discourse or at least capable of legitimation (Tully¸ 2017). Obedience to law in society results from respect for it just as there is respect for morality. He is, however, also cognisant of the instrumentality of law and how one can have an instrumental approach to law. However, the instrumentality of law can exist even if the citizen does not relate to it in an instrumental fashion. One

can choose when faced with law whether to relate with it in an instrumental manner or otherwise.

Law differs from morality in a number of ways. Adherence to law often results from moral or pragmatic reasons. Law requires enforcement and is positive in its being in the sense that it is codified and effected in society by a legal community (Neumann¸1996; Udoh, 2013). The positivity of law necessitates that it can be applicable within a given community which can be local, national, regional or global. The subjects of law are identified and defined by law itself and are a posteriori to the coding of law. Morality may apply to any domain, but law has its field of application. Even though law and morality differ from one another, Habermas links them through the discourse principle (Udoh, 2013b; Udoh, 2014). For Habermas, the discourse principle is neutral to both morality and law and it refers to action norms in general. He defines the discourse principle thus: "Just those norms are valid to which all possibly affected persons could agree as participants in rational discourses". (Baynes, 2015, p.107) Here action norms refer to both moral and legal norms. Habermas's discourse ethics provides a universalisation principle to deal with moral norms. It also provides for the democratic process when it deals with the legal system, however the uiversalizability of discourse ethics in the context of law may only refer to the 'universal' consent to the norms formulated by a legally constituted polity. As in the case of moral norms again it is rational discourse that imparts validity and legitimacy to legal norms according to Habermas.

LEGITIMATION OF LAW

Habermas develops his theory of deliberative democracy in critical dialogue with other theories. The chief argument of Habermas in his work, Between Facts and Norms, is that law cannot be reduced to mere facts nor can it be made part of morality (Oquendo¸ 2002; Okide, 2019). For Habermas, law is both fact and norm, positioning himself between the legal positivist and natural law traditions. He rejects legal positivism because it reduces law to social facts that one can only relate to in an instrumental fashion. Perceptives derived from a legal positivistic stance do not guarantee legitimacy but merely reduce legal norms to legality and sabotage the dimension of legitimacy (Baxter¸ 2011; Okide, 2020). Advocates of the systems theory of law such as Niklas Luhmann posits the primacy of the system in law wheerby its association with morality deemed negligible. For Luhmann, the agents of law are merely observers who judge the merit of law by its efficiency as a means of systematic integration. For him, law has no association with morality, it is rather an object or a social fact at best. Habermas discredits this view as 'the social disenchantment of law' as he finds it incapable of reasoned judgements with which the validity of legal categories can be confirmed or denied.

Habermas, likewise, takes a critical stance vis-a-vis the natural law tradition. The natural law theorist reduces law to moral principles and ignores the positive nature of law – its body of codes framed and set up through meticulous planning and

deliberation (Chernilo¸ 2013). For representatives of this school of thought, like John Locke, the bearers of natural law and rights are pre-political beings. Habermas, on the other hand, sees the legal subjects and bearers of rights being constituted as such by the law. For Habermas, the citizen or the person is not a Rousseaudian noble savage, a pre-political individual who can be considered in isolation (Somers¸1995). Rights enjoyed by the person are derived from their being individuals of a society engaged in social relations wherein their personhood too has been constituted by the social relations. In this intersubjectivist perspective there can be no society without law as morality alone will not integrate society. For Habermas, rights are derived from law and persons are legal subjects engaged in lawmaking.

Nevertheless, for Habermas, law is not divested of the dimensions of legitimacy and morality. Against the position held by legal positivists, he holds that law can have a 'moral' core. He also, however, distances himself from the natural law tradition stating that law cannot, merely be in service to morality. According to him, law is both a matter of legality and legitimacy. His theory of deliberative democracy purports then to reconcile legality with legitimacy (Okide, 2021). Habermas is keenly interested about the general phenomena of a 'public space' since he believed in the mysterious power of intersubjectivity to unite disparate elements without eliminating the differences between them. It is in the public space that social integration takes place. Habermas is of the opinion that the political public sphere of a democratic community acquires an especially important symptomatic role in the integration of society) Okide, 2022). In his own words, "the process of public opinion and will formation alone can foster and reproduce a fragile form of collective identity among citizens which can no longer become personally acquainted"(Habermas, 2022, p. 22). He recommends therefore a critical-rational discussion of public issues by private persons.

HABERMAS'S CONCEPT OF POLITICS

Habermas distinguishes two basic spheres of politics: the informal and the formal. The informal political sphere consists of a network of spontaneous, 'chaotic' and 'anarchic' sources of communication and discourse. This sphere may be called 'civil society' (Pietrzak¸ 2024, p.21). Examples of civil society include voluntary organisations, political associations and the media. The identifying marks of civil society are that it is not institutionalized and that it is not designed to take decisions. By contrast, politics in the formal sense concerns institutional arenas of communication and discourse that are specifically designed to take decisions (Okide, 2023). Prominent examples include parliaments, cabinets, elected assemblies, and political parties. Note that it a mistake to think that this formal political sphere is identical with the state. For the state is not just a collection of institutions for making policy and taking decisions, it is also an administrative system, a bureaucracy that is steered, to use Habermas's term, by the 'medium of power'.

This two-track conception of informal and formal spheres gives the basic framework of Habermas's conception of politics. In civil society, members of the

political community participate in discourse, reach understanding, make compromises and form opinions on matters of particular and general concern. Habermas calls it a process of individual opinion-and will-formation (Hendriks¸2006). In the formal political sphere, by contrast, the designated representatives of the members of the political community take decisions, pass laws, formulate and implement policies.

According to Habermas a political system functions well when its decision-making institutions are porous to the input of civil society, and it has the right channels through which input from below(civil society and public opinion) can influence its output(policies and laws) (Erman¸2018). In practice, democratic states achieve this balance better than non-democratic systems. Healthy democratic institutions will tend to produce policies and laws that are in tune with discursively formed public opinion, and thus rational or justifiable. This is desirable in itself, and it is also functionally desirable, since modern subjects will tend to abide by policies and laws whose rationale they accept. A rational society is likely to be stable one. So there are good moral and instrumental reasons why modern subjects prefer to live under democratic institutions (Brennan & Hamlin, 2000).

One must take great care when talking of the ability of democratic systems to come up with justifiable reasons. In the political sphere, the notion of what is justifiable is much broader than it is within the individual domains of theoretical, moral, and ethical discourse. Political justifications comprise a variety of considerations in addition to the epistemic and moral criteria (the validity dimensions of truth and rightness) that govern theoretical and moral discourse respectively. For example, ethical and pragmatic considerations come into play alongside common sense factors such as what can be achieved by fair procedures of compromise and negotiation. Political discourse is like a workshop in which, once the more demanding procedures of moral and ethical discourses have been tried and have failed, a whole range of other experiments can be made in order to achieve solutions that are broadly speaking rational and consensual (Uloma, et al., 2019).

HUMAN RIGHTS AND POPULAR SOVEREIGNTY

Habermas, as is his wont, combines two political conceptions that are usually taken to be alternatives: liberal-democracy and civic republicanism (Rawls¸1995). Each conception he argues, pivots on a single idea: liberal democracy on the idea of human rights, and civic republicanism on the idea of popular sovereignty. (In actual fact, both conceptions are conjunctions of certain aspects of liberalism and of democracy. In the former liberalism takes precedence over democracy, in the latter liberalism is subordinate to democracy.) Habermas notes that each conception privileges a certain interpretation of autonomy: liberal-democracy privileges individual or private autonomy (that is, individual self-determination), while civic republicanism privileges collective, public, or political autonomy (that is, the self-realization of the political community).

Habermas states that human rights protect the private autonomy of the individual. On the liberal-democratic view individuals have pre-political interests, and a set of rights that protects their freedom to pursue their interests, compatibly with everyone else's similar freedom to pursue theirs (Moka-Mubelo & Moka-Mubelo, 2017). Freedom here is conceived as an opportunity. The value of one's freedom lies in the opportunities it affords one, which one may take up or decline as one please, not in one's actual exercise of that freedom. Commonly this view goes hand in hand with the idea of a minimal state that leaves each subject free to pursue her own life as she sees fit, whilst intervening only to resolve the conflicts that arise when one person's freedom impinges on another's. Citizenship or participation in the political community is thus not seen as valuable in itself, but only instrumentally valuable as a means of securing these rights and opportunities.

In order to do this fairly the state must remain neutral with regard to the values and conceptions of the good pursued by its members. Thus the idea of human rights is a moral idea that is inevitably biased against any value or world view that is inconsistent with basic rights and liberties for all (Godfrey, 2024). For this reason, many communitarian and republican critics of liberal democracy dispute its supposed neutrality. For their part, most liberals deny that the state must or even can remain neutral in respect if the outcomes or consequences of its policies and laws. Habermas's conception of political community combines central ideas of liberal-democracy and civic republicanism (Khan¸ 2013). Western democracies have arisen from two different traditions that are intension with each other. Rather than an uneasy compromise (Geuss) he sees democracy as a way of harnessing the productive tension for socially useful ends Liberal democracy and the idea of human rights, Civic republicanism on the idea of popular sovereignty.

Politics is the expression of 'the freedom that springs simultaneously from the subjectivity of the individual and the sovereignty of the people' (Honig, 2023, p. 468). Habermas denies three key liberal assumptions:

1. that rights belong to pre-political individuals;
2. that membership in the political community is valuable merely as a means to safeguard individual freedom;
3. that the state should remain neutral in respect of the justification of its policies or laws, where neutrality implies avoiding appeal to values and ethical considerations.

Habermas rejects three key civic republican assumptions:

1. that the state should embody the values of the political community.
2. That state and society can be understood on the model of a large assembly or parliament.
3. that participation in the community is the realisation of these values;
4. that subjective rights derive from and depend on the ethical self-understanding of the community "Popular sovereignty is not embodied in a collective subject, or a body politic on the model of an assembly of all citizens, it resides in '"subjectless" forms of communication and discourse circulating through forums and legislative bodies.'

However, in its republican form this idea assumes that society can be construed as a single culturally homogeneous people who gather together in an assembly. Given the size, and the internal differentiation and complexity, not to mention the cultural pluralism of modern society, this idea has to be modified. Nowadays, democratic decision-making bodies (Habermas also calls these 'strong public Melucci & Avritzer, 2000) form "the core structure in a separate, constitutionally organised political system." The republic is not a model for society at large nor even "for all government institutions" and society cannot be conceived as a parliament or assembly write large, because "the democratic procedure must be embedded in a context it cannot itself regulate" (Habermas, 1996: 305). Formal political institutions must be open to open to the "input from below" so that their decisions, policies and laws will be tend to be rational and to find acceptance. This is where the system of rights comes in. Habermas argues that 'the system of rights states the conditions under which the forms of communication necessary for the genesis of legitimate law can be legally institutionalised' (Edet, et al., 2024).

THE DUAL STRUCTURE OF LAW

A law is legitimate when it has a point, or when there are appreciable reasons for obeying it. A law is positive when it is laid down or imposed by some lawmaker (and coercible when it can be). Laws have a third feature too: they must be coercible. A legal norm is valid only when all these components are present.

THE LEGITIMACY OF LAW

Habermas formulates his notion of legitimacy in the principle of democracy. The democratic principle states that: Only those laws count as legitimate to which all members of the legal community can assent in a discursive process of legislation that has in turn been legally constituted. The democratic principle arises from the 'interpenetration' of principle

(D) and the legal form.

According to (D), amenability to consensus is a mark of the validity of a norm. The mark of a norm's legitimacy is this: Legitimate laws have to be able to win the assent of all members of the legal community, not as outcome of a rational discourse of all concerned, but of a legally constituted process of legislation.

Habermas's theory can be summarised with the following schema. If a political norm is valid, then:

a. Its violation is punishable by some legitimate sanction

b. There exists generally effective and legitimate mechanism for applying it – (punishable here implies the existence of the police and the judiciary as organs of the state).

c. The members of the legal community generally know that a. and b. obtain.

d. This is sufficient to ensure average compliance.

In addition to the conditions set out in (I), if a political norm is valid, then:

(II) a. It has some intrinsic rationale or point independent of (I).
b. Its rationale connects with the common good of the legal community and its members.
c. Its rationale is open to view and generally understood.
d. In virtue of a, b, and c the law is such that members of the legal community have good reason to obey it.

This scheme helps is to distinguish between the validity (I + II), the legitimacy (II) and what Habermas calls the facticity or positivity of a political norm (I). Habermas claims that both the facticity (I) and legitimacy (II) are jointly sufficient conditions of the validity of a political norm, and that each is individually necessary. This means that the validity of a political norm (or law) is a much richer and more complex notion than that of the validity of practical norms in general, which notion of validity is that contained in (D) and is equivalent with acceptability in an ideally prosecuted discourse. It is important that (II) is independent of (I), insofar as (II) contains no reference to (I), but the reverse is not the case since (I) explicitly refers to (II), which signals the primacy of legitimacy over facticity. The primacy of legitimacy is not just a conceptual point, it tallies with the sociological fact that in modern, postconventional, democratic societies, social order and the burden of social integration rest primarily (but not only) on the legitimacy of its laws and institutions.

HABERMAS'S DISCOURSE THEORY OF MORALITY, POLITICS, AND LAW

Habermas's two enduring interests in political theory and rationality come together in his discourse theory of deliberative democracy. He tries to show how his highly idealized, multi-dimensional discourse theory has real institutional value in complex, modern societies. In that context, argumentation appears in the form of public discussion and debate over practical questions that confront political bodies (Owa, 2024). The challenge, then, is to show how an idealized model of practical discourse connects with real institutional contexts of decision-making. Habermas summarizes his idealized conception of practical discourse in the "discourse principle" (D), which one might state as follows: A rule of action or choice is justified, and thus valid, only if all those affected by the rule or choice could accept it in a reasonable discourse. Although he first understood (D) as a principle of moral discourse, he now positions it as an overarching principle of impartial justification that holds for all types of practical discourse (cf. 1990a, 66, 93; 1996b, 107). As such, it simply summarizes his argumentation theory for any question involving the various "employments of practical reason" (1993, chap. 1). (D) thus applies not only to moral rightness and ethical authenticity, but also to the justification of technical-pragmatic claims about the choice of effective means for achieving a given end. Each type of practical discourse then involves a further specification of (D) for the content at issue. In developing his democratic theory, Habermas has been especially concerned with two such specifications: moral discourse and legal-political discourse. In distinguishing these two types of discourse, Habermas tackles the traditional problem of the relationship

between law and morality. He also shows how to bring ethereal discursive idealizations down to institutional earth. We start with his account of moral discourse.

HABERMAS'S THEORY OF DEMOCRACY

The central task of Habermas's democratic theory is to provide a normative account of legitimate law. His deliberative democratic model rests on what is perhaps the most complex argument in his philosophical corpus, found in his Between Facts and Norms (1996b; German ed., 1992b; for commentary, see Baynes 1995; Rosenfeld and Arato 1998; vomSchomberg and Baynes 2004). Boiled down to its essentials, however, the argument links his discourse theory with an analysis of the demands inherent in modern legal systems, which Habermas understands in light of the history of Western modernization. The analysis thus begins with a functional explanation of the need for positive law in modern societies. Societies are stable over the long run only if their members generally perceive them as legitimate: as organized in accordance with what is true, right, and good. In pre-modern Europe, legitimacy was grounded in a shared religious worldview that penetrated all spheres of life. As modernization engendered religious pluralism and functional differentiation (autonomous market economies, bureaucratic administrations, unconstrained scientific research), the potentials for misunderstanding and conflict about the good and the right increased—just as the shared background resources for the consensual resolution of such conflicts decreased. When we consider this dynamic simply from the standpoint of the (D)-principle, the prospects for legitimacy in modern societies appear quite dim.

Sociologically, then, one can understand modern law as a functional solution to the conflict potentials inherent in modernization. By opening up legally defined spheres of individual freedom, modern law reduces the burden of questions that require general (society-wide) discursive consensus. Within these legal boundaries, individuals are free to pursue their interests and happiness as they see fit, normally through various modes of association, whether that pursuit is primarily governed by modes of strategic action (as in economic markets), by recognized authority or consensual discourse (e.g., within religious communities; in the sciences), or by bureaucratic rationality (as in hierarchically organized voluntary enterprises). Consequently, modern law is fundamentally concerned with the definition, protection, and reconciliation of individual freedoms in their various institutional and organizational contexts. The demands on the legitimation of law change with this functional realignment: to be legitimate, modern law must secure the private autonomy of those subject to it. The legal guarantee of private autonomy in turn presupposes an established legal code and a legally defined status of equal citizenship in terms of actionable basic rights that secure a space for individual freedom. However, such rights are expressions of freedom only if citizens can also understand themselves as the authors of the laws that interpret their rights— that is, only if the laws that protect private autonomy also issue from citizens' exercise of public autonomy as lawmakers acting through elected

representatives. Thus, the rights that define individual freedom must also include rights of political participation.

As Habermas understands the relation between private and public autonomy, each is "co-original" or "equiprimordial," conceptually presupposing the other in the sense that each can be fully realized only if the other is fully realized (Bohman, 1994). The exercise of public autonomy in its full sense presupposes participants who understand themselves as individually free (privately autonomous), which in turn presupposes that they can shape their individual freedoms through the exercise of public autonomy. This equipri-mordial relationship, Habermas believes, enables his discourse theory to combine the best insights of the civic republican and classical liberal traditions of democracy, which found expression in Rousseau and Locke, respectively (1998a, chap. 9).

Habermas (1996b, chap. 3) understands these rights of liberty and political participation as an abstract system of basic rights generated by reflection on the nature of discursive legitimation (articulated in the D-Principle) in contexts shaped by the functional demands on modern law (or the "form" of positive law). Because these rights are abstract, each polity must further interpret and flesh them out for its particular historical circumstances, perhaps supplementing them with further welfare and environmental rights. In any case, the system of rights constitutes a minimum set of normative institutional conditions for any legitimate modern political order. The system of rights, in other words, articulates the normative framework for constitutional democracies, within which further institutional mechanisms such as legislatures and other branches of government must operate. The idea of public autonomy means that the legitimacy of ordinary legislation must ultimately be traceable to robust processes of public discourse that influence formal decision-making in legislative bodies.

Habermas summarizes this requirement in his democratic principle of legitimacy: "only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted" (1996b, p. 110). As he goes on to explain, this principle articulates the core requirement for "externally" institutionalizing the different types of practical discourse that are relevant for the justification of particular laws. Decisions about laws typically involve a combination of validity claims: not only truth claims about the likely consequences of different legal options, but also claims about their moral rightness (or justice), claims about the authenticity of different options in light of the polity's shared values and history, and pragmatic claims about which option is feasible or more efficient. Legitimate laws must pass the different types of discursive tests that come with each of these validity claims. Habermas also recognizes that many issues involve conflicts among particular interests that cannot be reconciled by discursive agreement on validity but only through fair bargaining processes.

This strong orientation toward cognitive validity qualifies Habermas's version of deliberative democracy as an "epistemic" theory. This puts his democratic principle in a rather puzzling position. On the one hand, it represents a specification of the discourse

principle for a particular kind of discourse (legal-political discourse). This makes it analogous to the moral principle (U), which specifies (D) for moral discourse. As a specific principle of reasonable discourse, the democratic principle seems to have the character of an idealizing presupposition insofar as it presumes the possibility of consensual decision-making in politics. For Habermas, reasonable political discourse must at least begin with the supposition that legal questions admit in principle of single right answers (1996c, 1491–95), or at least a set of discursively valid answers on which a fair compromise, acceptable to all parties, is possible. This highly cognitive, consensualist presumption has drawn fire even from sympathetic commentators.

One difficulty lies in Habermas's assumption that in public discourse over controversial political issues, citizens can separate the moral constraints on acceptable solutions, presumably open to general consensus, from ethicalpolitical and pragmatic considerations, over which reasonable citizens may reasonably disagree. As various critics have pointed out, this distinction is very hard to maintain in practice, and perhaps in theory as well.

On the other hand, the democratic principle lies at a different level from principles like (U), as Habermas himself emphasizes (1996b, 110). The latter specify (D) for this or that single type of practical discourse, in view of internal cognitive demands on justification, whereas the former pulls together all the forms of practical discourse and sets forth conditions on their external institutionalization. From this perspective, the democratic principle acts as a bridge that links the cognitive aspects of political discourse (as a combination of the different types of idealized discourse) with the demands of institutional realization in complex societies. As such, the democratic principle should refer not to consensus, but rather to something like a warranted presumption of reasonableness. In fact, in a number of places Habermas (2008) describes democratic legitimacy in just such terms, which we might paraphrase as follows: citizens may regard their laws as legitimate insofar as the democratic process, as it is institutionally organized and conducted, warrants the presumption that outcomes are reasonable products of a sufficiently inclusive deliberative process of opinion- and will-formation.

The presumption of reasonable outcomes thus rests not so much on the individual capacities of citizens to act like the participants of ideal discourse, but rather on the aggregate reasonableness of a "subjectless communication" that emerges as the collective result of discursive structures—the formal and informal modes of organizing discussion (1996b). This means that democracy is "decentred," no longer fully under control of its own conditions and no longer based on a congruent subject of self-legislating discourse.

Habermas dubs his position an "epistemic proceduralism." The position is proceduralist because collective reasonableness emerges from the operation of the democratic process; it is epistemic insofar as that process results in collective learning. The latter presupposes a fruitful interplay of three major discursive arenas: the dispersed communication of citizens in civil society; the "media-based mass

communication" in the political public sphere; and the institutionalized discourse of lawmakers. When these arenas work well together, civil society and the public sphere generate a set of considered public opinions that then influence the deliberation of lawmakers (2009). In light of the above ambiguity in the status of (D), however, one might want to take a more pragmatic approach to democratic deliberation. Such an approach (e.g., Bohman 1996; McCarthy 1998) understands deliberation as less a matter of settling disputes over the cognitive validity of competing proposals than a matter of developing legal frameworks within which citizens can continue to cooperate despite disagreements about what is right or good.

PUBLIC SPHERE AS IDEA AND IDEOLOGY

It is in his work, The Structural Transformation of Public Sphere that Habermas launched his notion of public sphere. It is based on the phenomenon that emerged in 18th century Europe, characterised by the gathering of people voluntarily in public spaces, independent of economic and political systems, to make use of the their own reason in unconstrained discussion ensuing in a shared culture of participation and an inquiry for the common good. Soon these gatherings began to form an identity of their own (Habermas, 1989a). And although such public spheres exercise in the course of time political and social future, they could be identified with any particular political institution. Such a public sphere was an informal sphere of sociality located somewhere between bourgeois civil society and the state or government.

For Habermas the public sphere is an idea as well as an ideology at the same time. Adorno defines ideology socially necessary illusion or socially necessary false consciousness. Here Habermas is in agreement with Adorno. Ideologies are on this view the false ideas or beliefs about itself that society somewhere systematically manages to induce people to hold. However ideologies are also functional false beliefs that serve to buttress social institutions and are therefore socially necessary. The relevance of Haberman's theory of democracy which the enunciates through the explication of the relation of law to morality in the present day world political scenario, is reflected in his critique of despotisms and hegemonic power of the United States and in his exhortations upon European states and citizens to forge an common European foreign policy to balance it. Also, for Habermas the notion of the public sphere seems to be the only alternative against the hegemonic power of the United States. Habermas, J. (1989a) observes:

> The public sphere is a realm in which opinions are exchanged between private persons unconstrained (ideally) by external pressures. Theoretically open to all citizens and founded in the family, it is the place where something approaching public opinion is formed. It should be distinguished both from the stage, which represents official power, and from the economic structures of civil society as a whole. Its function is actually to mediate between society and state; it is the arena in which the

public organizes itself, formulates public opinion, and expresses its desires via-a-vis the government (p. 167).

CONCLUSION

In conclusion, Jürgen Habermas's political philosophy offers a nuanced approach to understanding the complex relationship between morality, law, and democratic legitimacy in modern societies. Through his discourse theory of democracy, Habermas emphasizes the interdependence of law and morality, arguing that neither can exist in isolation if societies are to achieve genuine legitimacy and social integration. He rejects both legal positivism, which reduces law to mere social facts, and natural law traditions, which conflate law with morality, positioning himself between these traditions. For Habermas, law is not only a set of coercive norms but also a process grounded in rational discourse, where legitimacy arises through the active participation of citizens in democratic processes. His conception of deliberative democracy is rooted in the principle of universalizability and the idea that legitimate laws must be able to win the rational assent of all those affected by them. Habermas's exploration of the public sphere further reinforces his commitment to democratic ideals, envisioning a space where citizens engage in rational-critical debate, free from external influences, to pursue the common good. Ultimately, his work provides a robust theoretical framework for understanding the conditions necessary for legitimate governance, the role of law in mediating social order, and the essential contribution of rational discourse in upholding democratic ideals.

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