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Anchored to Human Rights: On the Normative Foundation of Habermas’s Public Sphere

Introduction

What axiologies give legitimacy to the public sphere which in turn allows ordinary people to achieve their political emancipation? How is it that they maintain their original normative weight in the changeable conditions of society and state? What are the qualities that emancipate people politically? What kind of events and social conditions intensify the need for self-determination strongly enough for people to issue a challenge to authoritarian powers? What attributes of the public sphere cause it to be the principle of the democratic state? These questions are issues in political theory, which acknowledges the collective will of the people as the only source of righteousness underpinning modern states. Each alludes to the assumption, fundamental to modern thinking about state and authority, that political emancipation which allows individuals and groups to participate in setting up the hierarchy of priorities vital to their collective life is a natural human need; it belongs to the

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basic freedoms of a person, and is demanded by human rights. This paper explores the normative foundation of Habermas's public sphere in its relation to human rights. It strives to determine the nature of those moral orientations that justify his conception of the public sphere and reinforce the idea of politically active self-conscious citizenship. To get a comprehensive picture of these issues, one needs to consider the evolution Habermas's public sphere underwent, and the circumstances under which modifications were made.

Crafting the concept

Habermas was the first to succeed in conceptualizing “the public sphere” by creating its archetype as an arena of collective, political will formation established by those who had no official role in the state. Unlike Dewey¹ who deals with the public primarily as a group of people mobilizing to respond to specific issues which affect them and Arendt² who focuses on public action as creative and culture-forming, or Koselleck³ who exposes the hypocrisy of modern, reasoned critique and public opinion, Habermas identifies a stable locus of “publicness”—the public sphere—and thus makes it a major issue of concern.⁴ Due to its character as a domain of communicative interaction between people, the idea of the public sphere is pointed out as the most

¹ John Dewey, “The Public and Its Problems,” in *The Later Works 1925–1953* Vol. 2: 1925–1927, ed. Jo Ann Boydston, Bridget A. Walsh (Carbondale: Southern Illinois University Press, 1988), 235–372.

² Hannah Arendt, *Human Condition* (Chicago: The University of Chicago Press, [1958] 1998), 22–73.

³ Reinhard Koselleck, *Kritik und Krise. Eine Studie zur Pathogenese der bürgerlichen Welt* (Freiburg: Suhrkamp Verlag, [1959] 1973), 11–48, 93–103.

⁴ Craig J. Calhoun, “The Problematic Public: Revisiting Dewey, Arendt, and Habermas,” *The Tanner Lectures on Human Values* 32 (2013): 69, 100.

central in his entire social theory and the most representative thereof. The notion of a society capable of making use of its self-determination faculties, mobilized and released in the medium of the public sphere, has delineated paths in his scientific journey.⁵ As an icon and prime mover of civic common sense, the public sphere is an axis around which other issues developed by Habermas concentrically revolve: discourse, the interdependence of practical and cognitive interests, crises of legitimacy, the ideal speech situation, claims of validity, etc.

Habermas takes up the issue of the public sphere motivated by a yearning to save that vital human disposition, namely, rational self-determination. His early works containing detailed components of the public sphere bear the marks of practical and normative approaches.⁶ Habermas was building up his model of the public sphere while in

⁵ Jürgen Habermas, “Öffentlicher Raum und politische Öffentlichkeit. Lebensgeschichtliche Wurzeln von zwei Gedankenmotiven,” in *Zwischen Naturalismus und Religion: Philosophische Aufsätze* (Frankfurt: Suhrkamp Verlag, 2005), 16; Douglas Kellner, “Habermas, the Public Sphere, and Democracy: A Critical Intervention,” 2009, 1–17, accessed February 6, 2023 <http://www.gseis.ucla.edu/faculty/kellner/kellner.html>; Robert C. Holub, “Habermas Among the Americans: Modernity, Ethics, and the Public Sphere,” *German Politics & Society*, no. 33 (Fall 1994): 11; Peter Dews, “Faktizität, Geltung, Öffentlichkeit,” *Deutsche Zeitschrift für Philosophie* 41, no. 2 (1993): 362; Peter U. Hohendahl and Patricia Russian, “Jürgen Habermas: ‘The Public Sphere’ (1964),” *New German Critique* no. 3 (Autumn 1974): 45.

⁶ Jürgen Habermas, “Über den Begriff der Politischen Beteiligung,” in *Student und Politik. Eine soziologische Untersuchung zum politischen Bewußtsein Frankfurter Studenten*, ed. Jürgen Habermas, Christoph Oehler, Ludwig von Friedburg, Friedrich Weltz (Neuwied: Luchterhand Verlag [1961] 1969), 11–55; Jürgen Habermas, *The Structural Transformation of the Public Sphere. An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger, Frederick Lawrence (Cambridge: Polity Press, [1962] 2015); Jürgen Habermas, “The Public Sphere. An Encyclopaedia Article (1964),” trans. Sara Lennox, Frank Lennox, *New German Critique* no. 3 (Autumn 1974): 49–55; Jürgen Habermas, “Verwissenschaftlichte Politik und öffentliche Meinung,” in *Technik und Wissenschaft als “Ideologie”* (Frankfurt: Suhrkamp Verlag, [1963] 1968), 120–145.

search of a remedy for the society of a newly founded Bundesrepublik eroded by the civic torpor whose ossifying effects rendered it politically inert. His illustrative, updating reconstruction of the mechanism that was to liberate the potentials of common sense in the eighteenth-century bourgeoisie was designed to rekindle in West German society the spirit of self-conscious citizenship and reawaken in it the will for active, rational self-determination.⁷

The normativity that provides the basis for Habermas's public sphere consists of three elements systematically bound together. These are: (1) the Greek *polis*, viewed as a domain of attaining a higher, refined form of life; (2) the bourgeois humanity that was cultivated in the privacy of the modern conjugal family whose structures and unique psychological conditions created circumstances favorable to the individual internalization of private autonomy and bolstered ordinary people's will to participate in public life; and (3) the milieu of civic communication based on openness, making possible the institutional link between state and society, which also guaranteed the unhindered participation of citizens and provided for the rationalization of political rule.⁸ These three elements make up the fundamental norm of Habermas's public sphere which professes that self-determination carried out in the medium of an open and unrestrained communication elevates humanity; it serves the practical interests of life and provides for the continuity of the state's processes, whose only sovereign are the people.

Habermas laid out his notion of the public sphere in two, admittedly separate, but substantively conditioned unveilings: a historical and

⁷ Michael Haller, "'Strukturwandel der Öffentlichkeit' von Jürgen Habermas," interview by Hans Ulrich Probst, Radio SRF 2 Kultur, March 14, 2012, audio, 7:01–9:45, <https://www.srf.ch/audio/reflexe/strukturwandel-der-oeffentlichkeit-von-juergen-habermas?id=10215778>.

⁸ Roman Yos, *Der junge Habermas: Eine ideengeschichtliche Untersuchung seines frühen Denkens 1952–1962* (Berlin: Suhrkamp Verlag, 2019), 485–486.

critical one at the outset of the 1960s, and a systematic state-legal one at the commencement of the 1990s. To explore its normativity with the aim of finding out to what extent his conception of the public sphere is ingrained in human rights requires a balanced juxtaposition of these two parts.

Bourgeois Ethos—the Kingdom of Universal Morality

Habermas sets his model of the public sphere amid the intellectual and political culture of the early bourgeoisie. He assimilates its paradigmatic axioma of individual self-determination, viewed as a prerequisite condition for all who might have wished to live their lives in a genuine, non-replicative mode. This kind of axioma provided theoretical grounds for projects of liberating in people those emancipatory prime movers that reinforced them in striving to attain fulfilment according to their own aspirations. The idea of self-determination, paradigmatic to modern theories of liberty, makes up a central premise of Habermas's public sphere. He portrays the latter as an open arena of debate in which those participating recognize each other as equal and—regardless of the prevailing authorities' expectations—individually decide how to arrange and live their own lives.

The public sphere came into existence through an unprecedented series of events which initiated the social and political configuration of modernity. These are: the appearance of a free market of information, commodity exchange and socially organized labor; the earlier unknown separation of private and public domains; the rise of a nation state with its regular administration and constant demand for funds; the proliferation of intellectual culture initiated in the Republic of Letters and subsequently boosted by print capitalism. However, the direct setting in which the public sphere took its original form was the early liberal market. Under the mercantile-cameralist interventionism, the mar-

ket changed from being the domain of free activities conducted by individuals at their own risk and expense into a trouble spot of authoritative encroachments on ordinary people's privacy. This type of state interference aroused self-protective reactions on the part of people which in turn proved to be the seeds of the formation of the bourgeois public sphere. This formation manifested itself in spontaneous acts of protest, in which the economically affluent and intellectually mature groups of bourgeois collectively challenged the state's appropriation of the "sacred" sphere of privacy, i.e., the freedom to exchange via market commodities and socially organized labor⁹ and the freedom to publicly utter one's opinion uncontrolled by press censorship.¹⁰

That variety of growing friction between the absolutist state and the people reflects a polarization of pressure that bolstered social determination in forming the public sphere: the absolutist state equipped with institutional coercive measures puts pressure on the ordinary people equipped solely with the self-consciousness of having basic freedoms which all natural persons share in common. The origins of the public sphere set in the early market economy make concrete the axiom of

⁹ "Mercantilism did not at all [...] favor state enterprise; rather, its commercial policy, albeit in a bureaucratic fashion, promoted the establishment and dissolution of private businesses run in a capitalist manner. The relationship between the authorities and the subjects thereby assumed the peculiar ambivalence of public regulation and private initiative. In this way the zone in which public authority, by way of continuous administrative acts, maintained contact with private people, was rendered problematic [...] Accordingly, broad strata of the population, especially in the towns, were affected in their daily existence as consumers by the regulations of mercantilist policy. Not the notorious dress codes but taxes and duties and, generally, official interventions into the privatized household finally came to constitute the target of a developing critical sphere." Habermas, *The Structural Transformation*, 24.

¹⁰ "When, from 1729 on, the *Hallenser Intelligenzblatt* [...] published learned articles [...] the Prussian King was moved to take the development into his own hands. Even the use of one's own reason as such was subjected to regulation." Habermas, *The Structural Transformation*, 25.

self-determination mentioned above. The context of the market conjoins civic self-determination with vital interests of life whose implementation was an indispensable condition for the maintaining of everyday existence.

The motif of endangered existence, perceptible in the rudimentary stage of the public sphere, helps clarify the determination accompanying those who had collectively formed it. The risk inherent in the formation of the public sphere explains its character and purpose: the intellectual potential brought into the public sphere along with civic determination must never be utilized for testing novel ideas; it is to ensure the selection of well-tried options and the implementation of proved strategies which effectively help eliminate systemic risks from the processes of life. According to Habermas, any kind of detached neutrality of the public sphere toward the vital interests of life would be contrary to its very *raison d'être*.¹¹

Why had Habermas chosen bourgeois culture to be the matrix of his public sphere model? The hermeneutical key to his conception of the public sphere is to be found in his early work on the relations between *theorie* (knowledge) and *praxis* (interest), “Erkenntnis und Interesse.”¹² Its major point is that our knowledge is directed by what we need in practice to exist.¹³ It was a bourgeois world in which knowledge and human interests historically formed a unity in accordance with the

¹¹ Habermas, “Über den Begriff der Politischen Beteiligung,” 47–49.

¹² Wolfgang Jäger, *Öffentlichkeit und Parlamentarismus: Eine Kritik an Jürgen Habermas* (Stuttgart: Verlag W. Kohlhammer, 1973), 67; Sennett Richard, “The Public Realm,” *BMW Stiftung Herbert Quandt*. 2008, accessed February 6, 2023. <https://intentscantvidesnervioses.wordpress.com/2013/08/28/the-public-realm-richard-sennett>.

¹³ Jürgen Habermas, “Erkenntnis und Interesse,” in *Technik und Wissenschaft als “Ideologie”* (Frankfurt: Suhrkamp Verlag, [1965] 1968), 161–162; Jürgen Habermas, *Knowledge and Human Interests*, trans. Jeremy J. Shapiro (Boston: Beacon Press, [1968] 1971); Bernhard Badura, “Ein neuer Primat der Interpretation? Zum Problem der Emanzipation bei Jürgen Habermas,” *Soziale Welt* 21/22, no. 3 (1970/1971): 321–329.

assumptions brought up by Habermas. Drawing on the modern notions of the universe and transcendental visions, knowledge awakened in people the need for self-determination and served the further accomplishment of specific practical ends. Making use of his intellectual potential to defend basic freedoms, the burgher empirically personified that specific association of knowledge and practical interest.

In the bourgeois rationality, Habermas finds a historical materialization of genuine civic common sense which he considers universal. It grows out of the modern conceptions of the human being, the universe, and the moral order rooted in a commonly shared belief about the apotheosis of individuality—they are reiterated in the paradigmatic predicates of the time, protecting the basic liberties and rights of every natural person, viewed as self-evident and sacred. This kind of common sense is characterized by people's ability to mobilize the scattered individual aspirations and make them effective in countermoves against the absolutist state; it is verified in an uncompromising allegiance to the vital interests of life, indispensable to securing the continuity of existence. Habermas has faith in the ordinary people's self-consciousness and their determination. He believes that, inspired by the prime mover of modern common sense, they overcome the natural fear of the consequences that may result from non-compliance with the state authority, and openly make a demand for self-determination. In the specific constellation of socio-economic, political, and intellectual conditions of modernity, he discerns a historical moment in which genuine civic reason reveals itself in its most pure and desirable form. The effective emancipative strivings of the bourgeoisie proved that that particular sort of common sense was not just a theoretical postulate but turned out to work well in practice. In the bourgeois ethos, therefore, Habermas finds a repository of that perennial notion of sound public reason whose new incarnation he was trying to reinstate in the West German society of the Adenauer era.

Habermas's conception of the public sphere turned out to be a scholarly success. From its first unveiling, it became the subject of numerous

studies and critical approaches.¹⁴ What makes it attractive, among other things, is its suggestive visualization of that aforementioned counterpoint in which official state power and ordinary people measure one's potential of ruling—a consequence of the state's inroad into the realm of people's individual freedom. What enhances the powerful expression of this unexpected meeting of the two is its historicity which Habermas reconstructs and demonstrates with tremendous care.¹⁵

The specific conditions of modernity, the unprecedented set of socio-economic and ideological facets in which the bourgeois public sphere began pulsating, made up the civilizational *kairos*, whereby the intuitive beliefs about individual freedom as an innate and “sacred” right of every human being were articulated in the form of an uncompromising claim. However, it was not accidental. Modern times were the “golden age” of

¹⁴ Barbara Füllgraf, “Strukturwandel der Öffentlichkeit, Jürgen Habermas,” *Gesellschaft, Staat und Erziehung: Blätter für politische Bildung und Erziehung* 9, no. 6 (1964): 440–441; Helmut Kuhn, “Strukturwandel der Öffentlichkeit, Jürgen Habermas,” *Historische Zeitschrift* 198 (1964): 94–96; Günther Bohring, “Review of Strukturwandel der Öffentlichkeit, by Jürgen Habermas,” *Deutsche Zeitschrift für Philosophie* 14, no. 11 (1966): 1422–1427; Peter Häberle, “Öffentlichkeit und Verfassung: Bemerkungen zur 3. Aufl. Von Jürgen Habermas. Strukturwandel der Öffentlichkeit (1968),” *Zeitschrift für Politik. Neue Folge* 16, no. 2 (1969): 273–287; Niklas Luhmann, “Öffentliche Meinung,” *Politische Vierteljahresschrift* 11, no. 1 (März 1970): 2–28; Keith M. Baker, “Defining the Public Sphere in Eighteenth-Century France: Variations on a Theme by Habermas,” in *Habermas and the Public Sphere*, edited by Craig Calhoun, 181–211 (Cambridge MA: The MIT Press, [1992] 1996); Lennart Laberenz, ed. *Schöne neue Öffentlichkeit: Beiträge zu Jürgen Habermas' »Strukturwandel der Öffentlichkeit«* (Hamburg: VSA Verlag, 2003).

¹⁵ Lloyd S. Kramer, “Habermas, History, and Critical Theory,” in *Habermas and the Public Sphere*, 237–240; Geoff Eley, “Nations, Publics, and Political Cultures: Placing Habermas in the Nineteenth Century,” in *Habermas and the Public Sphere*, 289–339; David Zaret, “Religion, Science, and Painting in the Public Spheres in Seventeenth-Century England,” in *Habermas and the Public Sphere*, 224–229; Hans J. Kleinstüber, “Habermas and the Public Sphere: From a German to a European Perspective,” *The Public* 8, no. 1 (2001): 100.

individual freedom and corresponding negative rights. Both had found an ally in theoretical postulates of the time and in the norms of universal morality that ruled over the pre-constitutional order of the world. The “mechanism” generating the public sphere starts with the confrontation of two determined players: the state whose determination is driven by its established institutional *status quo*, and the people powered by the justified demands for respecting fundamental liberties that stem from the most elementary layers of human subjectivity.

Consequently, a claim of respect for the sanctity of fundamental liberties makes up the normative substratum to which Habermas’s public sphere is anchored. Formed in those spontaneous self-protective reactions, the public sphere appears as a new, informal and—in the intuitive bourgeois self-understanding—wholly justified authority able to secure individual freedom in its most self-evident form (self-sufficiency).¹⁶

Bourgeois Autonomy, *Volkssouveränität* and Accessibility to the Public Sphere

What kind of freedom does Habermas salvage in his model of the public sphere? The answer is to be found in the claims and actions of burghers: the demand that the state should not interfere in the freedom of market activities and free circulation of public opinion, as well as the claim of unhindered self-government. From this binary nature of demand and action emerges an autonomy that combines negative and reflexive freedom.¹⁷

¹⁶ Charles Taylor, *A Secular Age* (Cambridge MA: The Belknap Press of Harvard University Press, 2007), 185–196.

¹⁷ Axel Honneth, *Das Recht der Freiheit: Grundriß einer demokratischen Sittlichkeit* (Berlin: Suhrkamp Verlag, [2011] 2015), 44–81.

The first kind of freedom consists in being able to act according to one's own motives and preferences, with no external constraints and no compulsion to subject them to the approval of others (*Selbstbestimmung*)—this type of freedom is secured by fundamental rights (*Menschenrechte*). The second type of freedom manifested in the capacity for rational and constructive self-realization (*Selbstverwirklichung*) is secured by the right of collective sovereignty (*Volkssouveränität*). Habermas points out the moments in which both types of freedom complementarily permeate each other; then he implicitly admits that both originate from and boil down to the indivisible subjectivity of a human being, whose fundamental freedoms are secured in the processes of collective self-realization.¹⁸

The notion of self-determination does not end with the demands for negative freedom—these demands are followed, complemented, and balanced by the great potentials of reflexive and positive freedom.¹⁹ The connotative network of “self-determination” (autonomy vs heteronomy) encompasses such terms and personal attributes as: universality, egalitarianism, critical thinking, sincerity, self-realization,²⁰ a sense of dignity, integrity, independence, responsibility, self-knowledge, and assertiveness.²¹ The *sine qua non* of autonomous self-determination is the readiness to activate mental powers and various levels of will that enable one to resist the exertions of environmental pres-

¹⁸ Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge MA: The MIT Press, [1992] 1998), 84–104.

¹⁹ Isaiah Berlin, “Two Concepts of Liberty,” in *Liberty: Incorporating Four Essays on Liberty*, ed. Henry Hardy (Oxford: Oxford University Press, [1969] 2002), 178.

²⁰ Christoph Meneke, “Innere Natur und soziale Normativität. Die Idee der Selbstverwirklichung,” in *Die kulturellen Werte Europas*, ed. Hans Joas, Klaus Wiegandt (Frankfurt: Fischer Taschenbuch Verlag, 2005), 304–352.

²¹ Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1988), 6–20.

sure, low instincts, obsessions, fear, neurosis, momentary pleasure, disordered desires and fits of affection, as well as receptiveness to obligations that fulfill higher values. Autonomous self-determination is realized in the ability to make a rational choice, presence of mind, integrated personality, coherence, intellectual innovation and balanced self-discipline;²² it entails the ability to sublimate sensual desires according to the values of a higher order, and the readiness to shape one's will in accordance with the imagined ideal. Autonomy does not apply to petty subjects. It is verified in decision-making that confirms the fundamental options once taken, well-established intentions and lasting life plans;²³ it is verified also in the capability of making unbiased judgments about the actual states of things and of comprehending the reasons for one's own actions.²⁴ By activating the potentials of intellectual and psychological powers, experience, and axiological orientations, autonomy enables one to acquire self-determination that ensures the durability of existence.

The fundamental liberties and corresponding rights form the normative basis for Habermas's model of the public sphere—their violation exceeds the critical mass of social discontent and triggers a series of events whose new layouts make space for the public sphere to come into being. However, they are by no means the only components of its normative foundation. Self-protective reactions, viewed as responses to external stimuli, are usually isolated, taken to put an end to tem-

²² Joel Feinberg, *The Moral Limits of the Criminal Law: Harm to Self* (Oxford: Oxford University Press, 1986), 45–51; Ernst Tugendhat, "Der Begriff der Willensfreiheit," in *Theorie der Subjektivität*, ed. Konrad Cramer, Hans Friedrich Fulda, Rolf-Peter Horstmann, Ulrich Pothast (Frankfurt: Suhrkamp Verlag, 1987), 374–376.

²³ John Christman, "Autonomy, History, and the Subject of Justice," *Social Theory and Practice* 33, no. 1 (January 2007): 1–6.

²⁴ Paul Benson, "Autonomy and Oppressive Socialization," *Social Theory and Practice* 17, no. 3 (Fall 1991): 385–401; "Free Agency and Self-Worth," *The Journal of Philosophy* 91, no. 12 (December 1994): 654–655.

porarily arising threats. However, securing the durability of such a complex ontic unit as the public sphere²⁵ in the changeable conditions of society and state required actions that were constructive and focused on the long-term. Thus, the question about the origins of the public sphere inevitably brings to mind questions about the factors that contributed to its durability. Once brought into being, the public sphere owes its survival to the capability of collective self-determination. We find it in the civic conduct of the “card-carrying” burghers, namely, those who—according to Habermas—felt directly entitled to form the public sphere by standing up against authoritarianism and actively participating in the public sphere.

However, in choosing bourgeois culture as the most ideal setting that illustrates the political significance and critical function of the public sphere, Habermas may seem to make the latter a hostage of the bourgeois ideology—he points out that the public sphere was formed only by those burghers who enjoyed the social position of “private men,” resulting from two admittedly different but complementary conditioned personal statuses: *homme* and *Bürger*. The *homme* status associated with the possession of faculties that qualified one as a holder of cultivated personality (*Bildung*) was viewed as giving insight into the world of knowledge and universal human culture, and as an intellectual basis for comprehending the necessity of non-compliance with the unjustified deprivation of fundamental freedoms. The *Bürger* status is associated with owning capital property (*Besitz*), where the threat of top-down interference of the mercantilist policy was the reason for direct confrontation between bourgeois property owners and the state.²⁶ Consequently, it was only the “card-carrying” burgher who per-

²⁵ Shmuel N. Eisenstadt, “Public Spheres and Civil Society in Selected Pre-Modern Societies: Some Comparative Observations,” *Comparative Sociology* 5, issue 1 (2006): 2.

²⁶ “The status of private man combined the role owner of commodities with that of head of the family, that of property owner with that of ‘human being’ *per se*.” (Habermas

sonified these two qualities; in Habermas's model of the public sphere, there does not seem to be much room for anyone deprived of that "exclusive" position resulting from the double status of *homme-Bürger*. This pertains to women of all strata and to plebeian circles, in which parallel counter-publics existed outside of the mainstream.²⁷

Bourgeois ideology, elitism, and masculinism were pointed out as flaws that contradict in Habermas's model the fundamental property of every modern public sphere, namely, unrestricted accessibility.²⁸ This allegation, although empirically indisputable, does not seem to matter

[1962] 2015: 28); "The three elements of voluntariness, community of love, and cultivation were conjoined in a concept of the humanity that was supposed to inhere in humankind." Habermas, *The Structural Transformation*, 47. "As a privatized individual, the bourgeois was two things in one: owner of goods and persons and the human being among the others, i.e. *bourgeois* and *homme*." Habermas, *The Structural Transformation*, 55.

²⁷ Negt Oskar, Alexander Kluge, *Public Sphere and Experience: Toward an Analysis of the Bourgeois and Proletarian Public Sphere*, trans. Peter Labanyi, Jamie Owen Daniel, Assenka Oksiloff (Minneapolis MN: The University of Minnesota Press, [1972] 1993), xlv-xlvi, 2–15; Peter U. Hohendahl, *The Institution of Criticism*, trans. Marc Silberman (Ithaca: Cornell University Press, 1982), 250–253; Neil Saccamano, "The Consolations of Ambivalence: Habermas and the Public Sphere," *MLN* 106, no. 3, German Issue (1991): 685–698; Craig J. Calhoun, "The Public Sphere in the Field of Power," *Social Science History* 34, no. 3 (Fall 2010): 309–310; Craig J. Calhoun, *The Roots of Radicalism: Tradition, the Public Sphere, and Early Nineteenth-Century Social Movements* (Chicago: The University of Chicago Press, 2012), 129–134.

²⁸ Joan B. Landes, *Women and the Public Sphere in the Age of the French Revolution* (Ithaca: Cornell University Press, 1988), 7, 40, 127, 147–148; Benjamin Nathans, "Habermas's 'Public Sphere' in the Era of the French Revolution," *French Historical Studies* 16, no. 3 (Spring 1990): 634–635; Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," in *Habermas and the Public Sphere*, 128–137; Mary P. Ryan, "Gender and Public Access: Women's Politics in Nineteenth-Century America," in *Habermas and the Public Sphere*, 267; Marie Fleming, "Women and the 'Public Use of Reason'," *Social Theory and Practice* 19, no. 1 (Spring 1993): 29, 33, 38, 42–43; Amy Allen, "The Public Sphere: Ideology and/or Ideal?," *Political Theory* 40, no. 6 (December 2012): 822.

as much theoretically as critiques allege. (1) Elitism, preconditioned by education and ownership, belongs undoubtedly to the bourgeois package—the bourgeois package, however, was a product of modernity that by its very definition turns down all elitism stemming from ascriptive hierarchies.²⁹ (2) The central feature of Habermas’s concept of the public sphere is its emancipatory potentials released by natural human beings in acts of opposition to the unjustifiable deprivation of fundamental freedoms. In sharing the same humanity, plebeians have these potentials too. The lack of property, however, does not create any immediate context that would have spurred them into a nonconformist encounter with the state. The bourgeois setting is significant insofar as it conveys the reasons for which those potentials were released. (3) Habermas’s concept of the public sphere contains self-transforming powers inherent in its specific mode of criticism that was not a response to some respective “other,” but originated from dissenting opinions within the debates. Assimilation of this mode of debate by parties of those excluded transformed bourgeois structures of the public sphere from within, opening it gradually for new participants. (4) Habermas’s public sphere must be studied in its evolution embedded in the transformation of state and economy. Crucial for bourgeois decision-making was the social independence of property owners. This public subjectivity changes with the transition of the state that shifts from its nomocratic form in the Hegelian sense towards a democratic rule of law. An equivalent of that bourgeois autonomy is bestowed on citizens in the social-welfare state guarantees and the expansion of democratic control to the economy.³⁰ In summary, the claim to partic-

²⁹ Ferdinand Tönnies, *Fortschritt und soziale Entwicklung: Geschichtsphilosophische Ansichten* (Karlsruhe: Verlag G. Braun, 1926), 5–26; Shmuel N. Eisenstadt, “Multiple Modernities,” *Daedalus* 129, no. 1 (Winter 2000): 7–8.

³⁰ Jürgen Habermas, “Further Reflections on the Public Sphere,” trans. Thomas Burger, in *Habermas and the Public Sphere*, 425–435.

ipation based on both knowledge entrusted to all mankind and on private ownership systemically open to all in a free market economy intrinsically includes evolutionary potentials that unavoidably enable a prospective “growing out” of spatio-temporally determined elitism, leaving it behind as anachronistic.

Responsible self-determination on the assumption of positive autonomy, which is accomplished in strategic and sustainable actions, ensures that the continuity of existence does not end with civic non-conformism; it is included from the outset in the faculties of consciousness and intellect. The public sphere might have come into being with the burghers’ determination to demand safeguards of their individual freedom against the state’s unjustifiable interference; however, it managed to weather further upheavals caused by changing conditions of state and society, only because it drew on the emancipated, enlightened and rational consciousness. That particular sort of consciousness was a product of the refined intellect, sublimated culture, and individually internalized sensibility—all included in the *homme* status.³¹ *Homme* epitomizes then the ideal image of a burger whose integrated personality made him able to explore the most rudimentary layers of himself, and so to release the prime movers for self-determination contained within it. Habermas’ detailed description of the *homme* qualities can be found in his meaningful portrayal of the literary public sphere and his findings concerning the novel way of experiencing intimacy within a conjugal bourgeois family. The refined intellect and culture of discussion, as well as the affectivity of intrafamily relations, all this created the formal basis for public debate with the following characteristics: any ascriptive advancements and dominations were excluded; the spirit of critical rationality prevailed over authoritarian enforcement of righteousness; the rule of participant

³¹ “The principle of popular sovereignty could be realized only under the precondition of a public use of reason.” Habermas, *The Structural Transformation*, 107.

equality was in force; and well-founded arguments were viewed as the supreme and the only authority. In those types of debates organized by ordinary people congregating privately in coffeehouses, salons, reading clubs and scientific societies (all semi-public “institutions” of an emerging bourgeois civil society), one can find the embryonic form of popular sovereignty (*Volkssouveränität*).

Habermas’s public sphere comes into being in self-preserving acts of individual freedom; this leaves on it a liberal mark of negative rights. From its very onset, however, it unfolds and flourishes fed by the capacity of collective emancipation, and this, on the other hand, lends the public sphere a republican mark of political self-determination rights. The inextricable combination of these two traditions helps Habermas overcome their classic dichotomy.³² Liberalism focuses on individual human rights, emphasizing their antithetical relation to popular sovereignty; republicanism, by contrast, focuses on popular sovereignty, stressing their mutual compliance. Transcending the dichotomy of liberalism and republicanism assumes reaching beyond these two one-dimensionalities. Habermas accomplishes this in his discursive theory of right by pointing out an isomorphic relationship between individual rights and popular sovereignty. He brings liberal and republican positions together in the procedure of democratic lawmaking; this particular procedure arranges the individual rights and popular sovereignty in their respective positions to each other, and it also defines the character of their reciprocal interaction. Habermas draws on Kant’s *Rechtslehre*; he adopts a modified conjunction of innate moral rights and legitimate lawmaking, and assimilates the one-level circular model of justification.³³

³² Habermas, *Between Facts and Norms*, 99–110.

³³ Immanuel Kant, *Grundlegung zur Metaphysik der Sitten: Der Rechtslehre zweiter Theil: Das öffentliche Recht*, ed. J. H. von Kirchmann (Berlin: L. Heimann Verlag, [1797] 1870), § 46, 47.

The starting point of Kant's theory of right is universal morality i.e. innate rights [*Moral*]; (a) they give rise to a legislative authority [*Gesetzgebung*], the legislative authority in turn guarantees all individual subjective (civil) rights [*Ethik*] as a legal confirmation of moral rights; (b) private autonomy originating in innate rights is both the *sine qua non* of the legislative authority (*political autonomy*) and its outcome; (c) innate rights comprise both private autonomy as a freedom of acting and political autonomy as the principle of legislation. Habermas's theory of right originates in discourse, i.e. the rights to the liberty of subjective acting [*Diskursprinzip*]; (a) it engages universal morality [*Moral*] necessary to produce the normative (legal) code which gives rise to legislative authority [*Gesetzgebung*]; (b) in the procedure of democratic lawmaking, the rights of subjective acting (private autonomy) belong to a different order than the rights of political autonomy—the first ones give opportunity to make use of communicative freedom, but at the same time they are exempt from the obligation of doing it; the second ones guarantee the unrestrained access to making use of communicative freedom.³⁴ The interdependence of private and public autonomy in the process of political lawmaking is the basis for the thesis of their co-originality. This thesis helps Habermas transcend the one-dimensionality of liberalism and republicanism on a conceptual level.

Consequently, the matrix of Habermas's public sphere is neither a mere compound of "pure" nonconformists whose "citizenship" manifests itself in the form of an uncompromised eagerness for defending fundamental freedoms endangered by unjustifiable interference of authoritarian powers, nor is it solely made up of ambitious visionaries of an ideal socio-legal order whose autonomous "citizenship" is exclusively carried out in the participatory creation of living conditions

³⁴ Joshua Cohen, "Reflections on Habermas on Democracy," *Ratio Juris* 12, no. 4 (December 1999): 392.

according to their own aspirations. The substance of Habermas's public sphere is made up of self-conscious and reasonable citizens, who integrate in themselves both predispositions.³⁵

Liberal Democracies—the Kingdom of Legalism

Since the bourgeois public sphere came into being prior to the creation of the modern constitution, when absolutist regimes till held a monopoly on all kinds of legalism, the only possible basis of its normative anchor was universal morality, with its enlightened paradigmatic praise of individuality and with the demand of inviolability of fundamental freedoms accompanied by corresponding rights. Universal morality was, therefore, the only conceivable normative basis that might have offered support for the justifiable demands of ordinary people in their confrontational clashes with the state. As the public sphere originates from universal moral claims, the primacy of fundamental freedoms—as the only available “appellate tribunal” that additionally forms a normative substance of these claims—seems self-evident. The first unveiling of Habermas's public sphere—based on the belief that an autonomous burgher driven by critical common sense can issue a challenge to authoritarian powers—belongs to the order of universal morality. It is from there that Habermas derives those two lucid categories: *homme* and *citoyen-Bürger*. Moral imperatives pertain to universal human values, such as individual freedom or the right to the unrestrained disposal of one's property; therefore, they are intuitively recognized, regardless of time and space. The autonomy of morality is then realized in the world of individual decision-making in which nat-

³⁵ Jürgen Habermas, *Auch eine Geschichte der Philosophie Band 2: Vernünftige Freiheit. Spuren des Diskurses über Glauben und Wissen* (Berlin: Suhrkamp Verlag, 2019), 762.

ural persons, by means of their natural intellect, correctly identify the standards of regularity and righteousness. The normativity regulating morality is, therefore, clear-cut and uniform; the standard of good is recognized intuitively; moral rights imply symmetrical duties; the moral imperatives fulfill individual self-control. In this lucid, symmetrical and intuitive world of universal morality, both the emergence of the bourgeois public sphere itself and its functions seem understandable and self-evident.³⁶

This clear-cut bourgeois setting of the public sphere began to alter after the “linguistic turn” and changed definitively at the beginning of the 1990s. This shift occurred as a consequence of Habermas’s having taken a new stance on the democratic state, which differed from his previous stance. He does not view it any longer as an administrative, bureaucratic apparatus prone to colonize ordinary people’s autonomy and susceptible to crises that distort its fundamental premises.³⁷ He perceives it first and foremost as a milieu of authentic legitimacy and a locus of crafting a rightful political power. This shift in Habermas’s approach to the democratic state marks the second unveiling of the public sphere, which is systemic and state-legal in nature. He portrays it as an intrinsic part of the political system in modern democratic rule of law (state).

This change occurred as a result of Habermas’s partially giving credence to Luhmann’s argument that in advanced capitalism the life-world composed of informal interactions and spontaneously shared values (*Lebenswelt*) is left to the mercy of specialized instrumental functionalism, systemic structures of control, regulation and expertise. All these factors generate a kind of pervasive suction power which, according to Luhmann, leaves no room for maneuvering to collective

³⁶ Habermas, *Between Facts and Norms*, 124.

³⁷ Jürgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (Boston: Beacon Press, [1973] 1975), 45–86.

identities that draw on individual subjectivity and intuitively comprehensible traditional axiologies, such as the bourgeois one.³⁸ Habermas accepts Luhmann's argument: the diagnosis of modern-day society cannot be reduced solely to the lifeworld, constituted by language, culture, personality and informal interactions; it should also include the system. Although the system, a compound of strategic activities arbitrated by the media of money and political power, makes encroachments on ordinary people's lifeworld causing loss of meaning, anomy and psychopathologies, it has become an undeniable part of social reality, and for this reason, Habermas admits, it cannot be ignored.³⁹ Habermas's new approach to the state is a turn toward realism. It suggests that the efficiency of the public sphere fit for tackling the expansiveness of systems does not rely on the individual determination of those eager to struggle to safeguard their basic freedoms. The public sphere is an intrinsic part of a complex democratic structure, so its efficacy as a "tribunal" of civic scrutiny and a *locus* of self-determination depends first and foremost on how strong its position has been established in the line-up of players of the political system. Consequently, if dealing with the public sphere is not to be a mere nostalgic reproduction of ideal figures of a bygone age but rather to bolster self-determination with a new strength, then it must accommodate itself *de rigueur* to the protocols in the world of systems.

Under systemic conditions, Habermas's public sphere retains its original normative sense by making room in public debate for voluntary associations, set up spontaneously within civil society to safeguard the vital interests of life.⁴⁰ This adoption of the Tocquevillian

³⁸ Niklas Luhmann, "Öffentliche Meinung," *Politische Vierteljahresschrift* 11, no. 1 (März 1970): 2–28.

³⁹ Jürgen Habermas, *The Theory of Communicative Action. Volume 2: Lifeworld and System: A Critique of Functionalist Reason*, trans. Thomas McCarthy (Boston: Beacon Press [1981] 1987), 125, 142–145.

⁴⁰ Habermas, *Between Facts and Norms*, 366–368.

belief that the people gathering together around the interests of their common concern in “the free concurrence of will” makes up the essence of the democratic life⁴¹, shifts the idea of self-determination through rational reasoning from direct confrontation of an individual with the oppressive powers to a reciprocal exchange of argumentative opinions uttered by those participating on an equal basis in debates carried out within the framework of an association. The association’s organizational complexity fits well into the order of a systemic world. Its prime movers stemming from the members’ conjoint individual stances united in one collective body make up a societal counterbalance to the systemic powers and offer protection against their colonizing effects. The demands articulated in the association’s unification and the stances resolved in it each time are median outcomes of individual opinions on a particular issue and so they constitute a systemic equivalent of those stances which bourgeois individuals had adopted in their confrontational approaches toward the absolutist autocracy.

Swapping the historio-critical lens of perceiving the public sphere for that of the systematic state-legal one does not take anything away from its essence. Exploring the relationship that links the public sphere with state institutions and democratic procedures makes it possible to grasp the unique duality of its normative foundation and to spell it out in systematic narratives, with a systemic vocabulary. In transferring from the bourgeois world to the political system and the democratic rule of law, Habermas’s public sphere entails another significant change concerning the sources of legitimacy, which normalizes all vital issues of life. In the bourgeois world, legitimacy was rooted in universal morality and its pre-established higher-ranking moral law, viewed as the source of binding rules and a justification measure for all demands being made. In the democratic rule of law, however, legit-

⁴¹ Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield, Delba Winthrop (Chicago: University of Chicago Press, [1835/1840] 2000), 489–492.

imacy stems from legalism. Legalism in its typical manner establishes the binary nature of the public sphere's normative foundation; it also portrays the relationship between fundamental freedoms and collective self-determination in its own way, which differs from the bourgeois one. Even though legalism and morality govern their respective orders, they both complementarily consolidate in democratic procedures. Moral discourses, norms and judgments relate to the autonomy of a natural person bound by the norms of the individual conscience. In so doing, they serve one specific type of rationality, obligation, and judgment. Morality rules over and regulates the order of individual, personal decision-making. Legalism, by contrast, is bound to the principle of democracy, which institutionalizes the practice of citizens and serves political ends.⁴² Habermas argues, however, that in drawing on the large reservoir of civic rationality preserved in an ideologically heterogeneous society, legalism takes over moral rationality as well.

What marks the society of a systemic world is the ideological pluralism and the breaking down of traditional axiologies that used to integrate people around particular collective identities. That prerequisite normative legitimacy provided earlier by traditional axiologies Habermas discovers anew in the basic assumption of his discourse theory which reads: in the processes of communicative value and norm creation viewed by all as processes of identity formation in ongoing self-improvement (*Lernprozesse*), everyone is given the same equal opportunities to participate. This belief about universal and equal opportunities for participation in the discourse crowned with consensus makes up a solid and unchallengeable source of normativity in the ideologically diversified society of the systemic world. Habermas does not treat discourse as a rival to traditional axiologies, but considers it the

⁴² Habermas, *Between Facts and Norms*, 112–118; Krzysztof Kędziora, “Habermas on Rawls and the Normative Foundations of Democracy,” *European Journal of Social Theory* 24, no. 4 (2021): 555–558.

natural “human” generator of collective identity. Consequently, the consensus attained in discourse he views as the only authority empowered to form a collective will in a “postmetaphysical” systemic society.⁴³

Habermas’s conception of collective identity contains the core components of the public sphere, this time as an inherent part of a democratic state. These are: generality, equal opportunities, universality of norms, the idea of a global society, democratization, and refined political self-consciousness. In the democratic rule of law, the public sphere and politics in general move from the level of formal institutions—the state, market and culture—to the level of informal new collective identities, i.e., groups of civic initiatives that bypass official channels of communication and standardized mechanisms of collective will formation. As noted above, in the systemic world, the public sphere ceases to be an easily identifiable counterbalance to oppressive powers. It takes on a new objective, namely, the function of changing the interpretation of the needs that people become collectively aware of.⁴⁴

Normativity of the Public Sphere in Liberal Democracies

The citizen of a democratic state invariably remains a natural human being, that is, a moral subject. Citizenship, however, gives the natural person an additional legal subjectivity, constitutionally guaranteed, which inextricably weaves into the moral one, making citizenship a moral-legal tandem. This stating of the obvious delineates further steps

⁴³ Jürgen Habermas, “Können komplexe Gesellschaften eine vernünftige Identität ausbilden?,” in *Zur Rekonstruktion des historischen Materialismus* (Frankfurt: Suhrkamp Verlag, 1976), 115–121.

⁴⁴ Peter U. Hohendahl, *The Institution of Criticism*, trans. Marc Silberman (Ithaca: Cornell University Press, 1982), 278–279.

in the present study, which now proceeds to explore the normative foundation of Habermas's public sphere on the ground of legalism. It also illuminates the "topology" of the public sphere's normative layers, which preserve their original core, despite the public sphere alone taking different forms to match up to constantly changeable conditions of communication.

Habermas demonstrates that in modern-day liberal democracies, the public sphere with all its communication capacity is linked to the principle of democracy due to which it gives the ordinary discursive practices of citizens an institutional form and serves political ends. In the bourgeois world, the public sphere was an informal, semi-private assembly attracting natural persons, indivisible in their life and historical complexity. By referring their current life situations to the moral norm of a higher rank that defined standards of righteousness in the bourgeois world based on universal morality, those people intuitively identified their natural liberties and rights. In modern-day democracy, the public sphere gathers citizens in their specific spacio-temporal legal particularities; if the legitimacy safeguarding citizens' liberties and rights stems from a social consensus achieved by means of a democratic procedure and codified in positive law, then the hot spots of civic attention are first and foremost the prerequisites for achieving that consensus, as well as the final content of positive law, on which depend all essential issues of life. Positive regulation serves then as a mediation tool for the processes of a democratic procedure. Besides incorporating morality as a component of its own system and integrating socially by making possible interactions of anonymous and systemically mediated people (from outside the direct informal relations within the lifeworld), positive law fulfills the vital requirement of self-determination which is that subjects of the law can come to think of themselves as its authors.⁴⁵

⁴⁵ Habermas, *Between Facts and Norms*, 104, 111, 120.

PRIVATE CIVIC AUTONOMY: LAWMAKING

Habermas points to two paths through which civil autonomy can be accomplished: private and public. Privately carried out civic autonomy creates a domain that gives shelter and makes possible the implementation of individual basic liberties and their respective negative rights (*Menschenrechte*). Individual basic liberties invariably belong to the same realm of universal morality in which pre-constitutional bourgeois autonomy was ingrained—in the context of civil autonomy, however, they obtain the additional “value-added” status of civil rights.

In a democratic system, the main civic entitlement is everyone’s right to individual participation in the democratic processes of law-making—unlimited access to it makes up the legal principle of a state. This process in a democratic state is carried out in the form of discursive communication set up by all enfranchised members of the society. To create law discursively with binding force, however, an undefined communication needs to obtain first the status and rank of an institution. Participants face the necessity of changing its nature by converting it from being informal talk into an element of the democratic process. According to Habermas, this kind of conversion that elevates casual communication to the rank of a democratic institution is only possible through the agency of the legal code, established previously by participants affiliated in free associations created specifically for this purpose. These associations are brought into being by the same participating individuals who in doing so liberate themselves and actively make use of their fundamental liberties, that is to freely associate with others. Precisely in this active making use of individual liberties, which engenders the core element of (negative) autonomy prerequisite for setting up the legal code producing free associations, Habermas discerns both: (1) the moment of activating the driving force comprised in the individual liberties, which gives an impulse to initi-

ate the process of lawmaking, and (2) the moment in which these liberties, as the source of that impulse, become incorporated into civic autonomy, making up the core of its substance.⁴⁶ In this way, individual basic liberties—the first constituent of the normativity that underpins Habermas’s public sphere—with all their moral weight of negative self-determination, find a place and maintain their original sense in a liberal democracy.

PUBLIC CIVIL AUTONOMY:
DEMOCRATIC PROCEDURE

Civil autonomy carried out publicly makes up the domain in which the second component of the public sphere’s normativity is preserved and implemented, namely, the freedom of emancipative, collective, political self-rule (*Volksouveränität*), ingrained in the Aristotelian idea of political liberty of the ancients. The exercise of collective self-rule invariably belongs to the same world of universal morality whose imperatives in bourgeois conditions had brought about the liberation of those intellectual potentials that had been developed in debates held in coffeehouses, salons, and scientific societies. Within the framework of civil autonomy, however, this type of freedom acquires an additional status of civic entitlements. In a democratic state system, the most significant of all the areas in which collective self-rule can be made use of is the process of crafting legislation. This occurs in acts of rational discursive communication, as only in rational communication can there be produced legitimacy recognized as binding in a post-metaphysical society. Again, for discursive communication to become a valid instrument of self-legalization, it must have first obtained the status and rank of a legal institution, and this happens through the medium of the legal code, already created. In this way, the legal code

⁴⁶ Habermas, *Between Facts and Norms*, 122–125.

antecedent to communication, established by the force of individual liberties activated previously to it, lends the citizens' communication the status of an institution, and transforms it from an informal conversation into a principle of democracy. Hence, institutionalized communication as a principle of democracy also lends an institutional form to the freedom of communicative self-rule.

The process of democratic lawmaking, which originates from individual liberties and develops in consecutive stages—free associations, legal code, the institutionalization of communication discourse, activating of communication, freedoms of emancipating collective political self-rule, up to the point of the creation of law—makes up a coherent sequence of mutually conditioning actions. This complementary interrelation between the legal code and the procedure of lending communicative discourse an institutional form is mirrored in the system of a democratic state, and it is equivalent to the bourgeois harmonizing interrelation of individual liberties (*Menschenrechte*) and the freedom of collective political self-rule (*Volkssouveränität*). In his claim about the co-originality of private and public autonomy, Habermas unifies these two components, which joined together compose the normative foundation his public sphere rests upon. The medium of their integrative combination is the institutional realm of a democratic state: legalism.⁴⁷

⁴⁷ “Subjects who want to legitimately regulate their living together by means of positive law [...] participate in the production of law only as legal subjects; it is no longer in their power to decide which language they will use in this endeavor. Consequently, the desired internal relations between “human rights” and popular sovereignty consists in the fact that the requirement of legally institutionalizing self-legislation can be fulfilled only with the help of a code that simultaneously implies the guarantee of actionable individual liberties. [...] This shows how private and public autonomy reciprocally presuppose one another in such a way that neither one may claim primacy over the other.” Habermas, *Between Facts and Norms*, 455; *ibid.* 127–130.

Conclusion

The normativity of Habermas's public sphere draws on two universal aptitudes for self-determination: one reflected in basic human rights (*Menschenrechte*), and the other translated into popular sovereignty (*Volkssouveränität*). The first one is categorical and makes a claim for removing any possible encroachments on the individual freedom of a person who in her/his view is self-sufficient in deciding on her/his own life, according to her/his own preferences. The second one makes a claim for unrestrained freedom that allows ordinary people to exercise self-governance, through getting together with the aim of discursively setting up a political hierarchy of priorities, that is, of sustaining their permanence as community, with respect to commonly shared notions of rightness and good. Self-determination of that sort belongs to the domain of universal morality, which in the absence of rightful legalism kept in order the pre-constitutional world of natural human beings.

These two variants of self-determination joined together make up the milieu in which the vital interests of life are identified. The interests of life delineate the paths in mankind's development by offering ways out of predicaments caused by structural (systemic) incongruities. As for interests, it is the emancipative one that particularly makes itself felt in the public sphere.

Specifically, the necessity of finding structural solutions to protect the vital interests of life in situations of conflict intensifies the need for self-determination. The latter, however, does not end with resisting the forces that colonize ordinary people's everyday life. It is complemented by responsible decisions that are in accord with lasting life plans and previously adopted strategies.

Habermas's public sphere retains its original normativity also in a democratic (rule of law) state, where legalism replaces universal morality in producing legitimate regulations to comply with. The com-

municative qualities of the public sphere, which make possible the free circulation of opinions, are also utilized in the democratic procedures as an instrument for identifying the collective will. The historically tried-and-tested marriage of the public sphere and interests turns it into the *topos*, in which informal talks are converted into a civic discourse in the rank of an institution. In this way, becoming an integral part of the law-making process in a democratic state, the public sphere brings to it intact the charge of its original normativity.



**Anchored to Human Rights:
On the Normative Foundation of Habermas's Public Sphere**

SUMMARY

This paper explores a normative layer of Habermas's public sphere in its relation to human rights. His public sphere came into being as a result of a spontaneous nonconformity manifested by the early bourgeoisie's reaction to an absolutist regimen making inroads in the realm of basic human liberties; it managed to survive the changeable conditions of society and state thanks to its participants' capability of cultivating collective self-determination, fed from the outset by the intellectual claims of modernity. Thereafter, the link between Habermas's public sphere and human rights bifurcates, leading concurrently to liberal individual rights (*Menschenrechte*) and to the republican freedom of popular sovereignty (*Volkssouveränität*). Further revisions and corrections transpose that simple dualism from the clear-cut bourgeois world of universal morality into the realm of legalism and the protocols *de rigueur* in the world of systems. Habermas integrates individual human rights and popular sovereignty in the procedures of a democratic state, overcoming this ostensibly irreconcilable duality in his genuine claim about the co-originality of civil autonomy. This thesis institutionally unifies universal pre-constitutional morality, with legalism regulating the democratic world of legal subjects (citizens) and their constitutionally guaranteed entitlement.

Keywords: Habermas, public sphere, self-determination, human rights, popular sovereignty, morality, legalism

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