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How To Straighten a Crooked Timber

Abstract
The dream of a peaceful world order has occupied minds of many great thinkers. Recently, Jurgen Habermas has offered a new version of it. This paper will attempt to investigate what Habermas has been elaborating on the relevant features of deliberative democracy since the publication of his *Between Facts and Norms*. The analysis will specifically focus on his formulation of mutual relationship between public and private autonomy as the fundamental base for his cosmopolitan scheme. This will be tied to his new concept: Constitutional patriotism arguing for the necessity of a shift from national to a cosmopolitan constitutional order based on institutionalisation of human rights on a global scale.

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How To Straighten a Crooked Timber

Almost two hundred years ago, at the birth of the modern era, Kant formulated one of the earliest and a very systematically constructed version of a peaceful world order. In *Perpetual Peace* (in Reiss, 1991: 93-130), he proposed a cosmopolitan rule of law under which a federal union of different nations would gather until it included all the peoples of the earth and became a world republic. Even though he was sceptical enough for the capacity of men to realise this dream and he famously confessed that "nothing straight can be constructed from such crooked timber as that which man is made of" (in Reiss, 1991: 46) he was hoping that by the rule of this cosmopolitan legal order natural rivalries and antagonisms would be constrained, and in time men would move towards greater agreement over the principles of justice.

Two hundred years later, Habermas revived this Kantian dream. He believed that Kant's idea has managed to survive and must be reformulated in the light of the contemporary global situation (1998: 165). However, Habermas' criticised two main aspects of Kant's model. Kant's federation proposed only a voluntary association of the states without any legal binding so that their sovereignty were not threatened. Kant also was not concerned too much about how democratic the states' regimes were. He accepted that the states could become members of the federation as long as they were republics without being democratic or egalitarian. Habermas cautioned that Kant's idea was inconsistent since preserving the sovereignty of the states within the federation would be in conflict with maintaining

peace in the long run. If peace is to be promoted states should be under obligation to abide a system of rights based on the implementation of human rights on a global scale. He also emphasised that it is not enough simply to converge different republican traditions to achieve a worldwide peace for it requires a similar system of rights in every member state (1998: 165-170).

In his reformulation, Habermas advocates a model of cosmopolitan legal order which privileges individuals as the bearers of rights and does not allow the autonomy of citizens to be pre-empted by the sovereignty of states, thus the nation states under his scheme are expected to subordinate their sovereignty to the common political principles of the cosmopolitan order up to a degree that citizens of any nation state would be able to appeal to any coercive legal authority even if it is their own government. To ensure the implementation of this order, Habermas even goes on to propose the creation of supranational political institutions with greater executive and judicial powers. In a sense, Habermas' scheme starts where Kant's stops, that is, Habermas, as oppose to Kant, perceives the unquestionable sovereignty of nation states as the real burden in the creation of a peaceful world order. Thus, his cosmopolitan scheme is fundamentally more ambitious and demanding than Kant's proposal, but also equally controversial. It is therefore important to see how Habermas structures and justifies his argument.

To my reading, the most crucial step Habermas takes in developing this framework is to establish an internal relation between private and public autonomy. This link assumes a mutual relationship, which does not allow subordination of one to each other. While private autonomy provides the essential rights to act, public autonomy delivers the power and the space to participate into the process of deliberation. They are mutually interdependent because against a purely liberal-individualist conception of equal rights, Habermas argues that individual liberties can not become real without the power of being able to deliberate in the process of political will formation. This is what Habermas calls the co-originality of the rule of law and popular sovereignty, namely the internal connection between individual rights and democratic politics. However, I should note that within the trajectory of his theory Habermas has increasingly paid more attention to private autonomy. Indeed, for the establishment of his cosmopolitan order, based on individual rights, private autonomy has almost become a precondition. The application of individual rights at the level of constitutional states is the first and the most important step Habermas demands for being able to implement justice beyond the boundaries of nation states.

Within this framework, the establishment of the co-originality of the rule of law and popular sovereignty follows three major steps: The first is a vibrant political public sphere in which citizens as equal and free agents communicate to reach a common agreement on public issues. The second is a legal order which formally secures a democratic structure for the political public sphere and ensures that the process of deliberation have a formal impact on the final decision making bodies, and the last one is the constitutional state as a centralised power with the capacity to enforce collectively binding decisions.

In *Between Facts and Norms*, Habermas gives a detailed account of how he envisages the functioning of political public sphere in modern societies. It is important to note that in his account he also rectifies some shortcomings of his early analysis appeared in *The Structural Transformation of the Public Sphere*. Habermas later conceded that his early analysis was speaking more of one single public without acknowledging the internal differences, therefore consequently leading to an unjustified idealisation. He concluded that a more detailed oriented focus reflecting a greater internal differentiation should be accommodated into his study (in Calhoun, 1992).

Habermas takes these steps in *Between Facts and Norms*. Firstly, he acknowledges that the complexity of modern societies and their systemic divisions resulted in the formation of a decentered public sphere in which the self-understanding of different groups relies on a different set of value systems. The decentred characteristic of the modern public sphere has major consequences for a theory of democracy in that reaching agreement between those different value systems, and consequently the social coordination of them, becomes increasingly problematic.

Along with his new emphasis on the decentred nature of the public sphere, Habermas suggests a two-track model of public sphere in which he identifies a division of labour between weak and strong publics. Weak publics refer to the informal circles of political communication functioning at the level of civil society such as public agencies, private organisations, business associations, labour unions, interest groups, mass media and so on. Strong public is the formally organised bodies of political institutions, including the parliament and administrative system. Habermas also suggests that strong and weak publics function along a centre-periphery axis. Centre, with its virtue of formal decision-making power, plays a key role in synthesising public opinion and putting them into a binding context. However, the periphery, or weak publics, assumes a more central role for identifying and interpreting social problems. With its informal, highly differentiated and cross-linked channels the networks of weak

publics act like a warning system to alert civil society to the likely breaches of legal rights. So, in this sense the public sphere "can best be described as a network for communicating information and points of view (i.e., opinions expressing affirmative or negative attitudes). Like the life-world as a whole, so, too, the public sphere is reproduced through communicative action" (1996: 360).

Habermas' division of work between weak and strong publics is an important attempt to overcome the difficulties his early analysis faced. With this division, apart from acknowledging a pluralistic public sphere as a network of public spheres functioning at different levels in civil society, Habermas also makes room for the legitimate applications of strategic action in the forms of bargaining and compromise. He suggests that in real life situations, where it is often difficult to apply the ideal procedures, bargaining can be brought into action if it is regulated by the discourse principle from the standpoint of fairness, that is, if an equal opportunity is created "to influence one another during the actual bargaining, so that all the affected interests can come into play and have equal chances of prevailing" (1996: 167), then a negotiated agreement can be considered as fair. He concludes, "fair bargaining, then, does not destroy the discourse principle but rather indirectly presupposes it" (1996: 167).

What is crucial here for Habermas is that once a communicatively functioning public sphere is established then the formally organised political system would be increasingly open to the influences stemming from the deliberation process within weak publics. This is important for Habermas not only to establish communicative freedom as a fundamental right but also to emphasise its motivating force in generating power to reinforce change. It is the motivating force of communicative action that plays a central role when he explains how a decentred public sphere can function as a binding force and can expand the horizons of a community. He believes that

mobilising citizens' communicative freedom builds up into a potential that holders of administrative power cannot ignore. Thus, a healthy public sphere is the one that transforms the communicative power of citizens into administrative power. And this exactly where law plays its essential part in deliberative politics.

Habermas is cautious about the capacity of communicative action alone in dealing with conflict resolution. Under the complex conditions of modern societies, he maintains, "unfettered communicative action can neither unload nor seriously bear the burden of social integration falling to it" (1996: 37). Then, the power of communicative action needs to be backed up by the institutional power of law in order to guarantee that the power created by the communicative action of citizens is transformed to the formal administrative bodies of the political spectrum. Thus, through law, Habermas seeks to establish a stable social environment in which members of different traditions can perform their participatory role in democratic decision-making process. However, Habermas also offers a different conceptual arrangement for law. Following the principles of discourse ethics he proposes a procedural model of law in which the addressee of a legal order is neither an individual protected by the liberal law, nor the clients of a welfare state protected by the paternalistic measures of welfare state bureaucracies, but a public of citizens actively participating in political decision making processes and articulating their needs and wants, and more importantly formulating the criteria according to which equals are treated equally and unequals are unequally. Habermas simply wants citizens to be author of their legal system.

Individual liberties must be discussed in the political sphere in order to reach a consensus about their appropriateness. Therefore he argues that private persons should not only be equal under the law, they should also be able to understand themselves as the authors of the laws. His conclusion is that:

a legal order is legitimate when it safeguards the autonomy of all citizens to an equal degree. The citizens are autonomous, only if the addresses of the law can also see themselves as its authors. And its authors are free only as participants in legislative processes that are regulated in a way that deserve general and rationally motivated agreement (in Gutmann, 1994: 122).

Thus, in this sense law owes its validity to the approval of its subjects. His main principle of discourse ethics, that is, "just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses" (1996: 107) becomes the main criteria to test the legitimacy of law. And in return, law guarantees that the norms, regulating the democratic deliberation of citizens, are formally acknowledged by the political system.

However, to be able to socially effective at this level law needs to have a centralised power with the capacity to enforce collectively binding decisions, which brings us to the notion of constitutional state. Within this framework the constitutional state takes up the role to be the institutional guarantor of the dissemination of communicative power derived from citizens' deliberation. What makes this definition of the constitutional state different from its liberal or republican models is where Habermas assigns the task of sovereignty. Again in line with his theory of communicative action and discourse theory of democracy the sovereignty here appears in the subjectless forms of communication rather than in the form of a concrete subject such as the people as in the republican tradition, or some anonymous agencies representing the constitutional rights but detached from the subjects of these rights as in the case of liberal tradition. In Habermas words:

We can then interpret the idea of constitutional state in general as the requirement that the administrative system, which is steered through the power code, be tied to the lawmaking communicative power and kept free of illegitimate interventions of social power (i.e., of the actual strength of privileged interests to asserts themselves). Administrative power should not reproduce itself on its own terms but should only be permitted to regenerate from the conversion of communication power (1996: 150).

Once the administration is linked to the process of democratic will-opinion formation its power takes a more accountable shape in the service of citizens. In return the constitutional state demands from its citizens a loyalty to the norms that it promotes. Habermas calls this bond constitutional patriotism advocating devotion to a shared political culture in which different cultural, ethnic and religious forms of life coexist and interact on equal terms (1998: 118). This shared political culture does not refer to a shared ethos or to the idea that citizens are part of the same language, culture or ethnic origins, rather it ensures that an awareness of diverse life styles and acknowledgment of their integrity is embedded within the shared political culture. Thus, a shared, common political culture acts like a common denominator around which citizens gather patriotically. It resists to the integration of sub cultural entities into mainstream culture.

However, the most striking feature of this common political culture appears to be a search for the establishment of a base broader than nation-state. Habermas defines the project of constitutional state is an ongoing, unfinished project which does not have a fixed essence. It can broaden its base easily particularly within the framework of rapidly developing intimate relations between different nation-states, thus enabling to ground democracy also at supranational levels. At this stage Habermas' theory reaches its most ambitious level. He proposes a cosmopolitan order seeking the establishment of an international legal order to guarantee the loyalty of individual nation states to the basic rights of citizens. For this reason he supports supranational institutions with greater executive and judicial powers. The aim of these institutions is to constitute an international order to force individual governments to respect

the basic rights of their citizens, if necessary through the threat or the implementation of sanctions. A cosmopolitan law in this sense, privileges individuals as the bearers of rights and gives them "unmediated membership in the association of free and equal world citizens" (1998: 181). The establishment of cosmopolitan law should not allow the autonomy of citizens to be pre-empted even by the sovereignty of their states. The principles of constitutional patriotism remains same here with the exception that it operates now at a supranational level where individual states subordinates their inherited regional royalties to the common political principles of the new cosmopolitan order. In other words, the form of social integration created by constitutional patriotism first at national level transcendences itself over the borders of nation state, but still remain loyal to the main principles of a constitutional order. Surely there are a lot of issues at stake here in regard to the sovereignty of states, but for Habermas without this obligation the creation of a peaceful world order is a very remote possibility.

So, how realisable is Habermas' dream in the context of real life situations where sharp value conflicts divide members of different groups? Habermas' general answer to this question lies in the fact that any formal process of legitimation requires the expansion of common horizon against the horizon of individual perspectives and worldviews. This means that under the conditions of pluralist complex modern societies the different parties should refer to a shared understanding of justice, or moral issues, and in order to do that they are required to decenter their different perspectives. The difficulty here stems from the fact that practicality is always a distant issue for a normative theory which can never be totally reflected in the empirical world. Habermas explicitly says that his theory does not provide answers to substantive questions. He refuses to offer an a priori answer to real life problems. His contribution remains at the level of the rules of procedure providing the framework for a legitimate decision making process. Finding

answers to substantive issues is left to participants within this framework. However, in relation to the operational functioning of the deliberation process there are still some problems that are not clearly answered by Habermas. For instance, it is not clear what specific proposals would follow from his model in regard to the rules of interaction between weak and strong publics. This question demands serious consideration about how to mediate communicative and administrative powers. Another problem surfaces at the level of communicative action, that is, how much can we realistically expect all participants to reach agreement even if they agree to listen to each other. Is consensus possible at all? If we accept the fact that the process of deliberation can not completely be immune from the symptoms of social inequalities endemic to contemporary societies.

Then how can these inequalities be neutralised? Surely, the asymmetrical power relations among participants plays a very critical role in decision making process. Habermas himself acknowledges that nation states are becoming increasingly helpless to overcome the problems created by the current global economic regime under which not only individual states loose control over their own economies, but also their resources to deal with the risks of globalisation such as ecological problems, economic inequalities, international crime and arm trade are already running scarce (1998). All this will ultimately form underclasses in even developed countries and the attempt to contain the anomic effects of underclass groups would result in recourse to repressive politics and the decay and finally the collapse of political legitimacy. Habermas' sole answer to modify these inequities and minimise outside effects relies on the rules of the deliberation process and the power that communicative action creates. This seems quite a fragile ground to build a democratic process since both solutions demands a high level of reliance on individual's rational thinking capacity. I accept that once the power of communicative action is institutionalised, that is, the foundation of a democratic deliberation process is established, then it is easier to protect

this existing structure, however the real question appears to be how to establish it in the first instance. Thus, a more thorough investigation of the current structural deficiencies of political public spheres is essential in order to make Habermas' normative theory a viable alternative.

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Imagining Interactive Documentary - the Halfeti Project

Abstract

What potential does interactive multimedia have as a documentary medium? We know it can serve as a convenient means of linking together a diverse set of documentary materials, but are there interactive paradigms available to enable a more sophisticated work of interpretation? This paper considers this question both at a general theoretical level and in terms of the issues raised by a recent Turkish/Australian interactive documentary project.

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