Social and Political Discourse in America:
The Civic Republican Revival in American Legal Theory
and the Critical Theory of Jurgen Habermas
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Oddly enough, the works of the scholar who provoked my initial interest in discourse are not in any way the direct subject of this thesis. During the spring semester of my junior year I was introduced to the social, political, and cultural criticism of post-modernist thinker Michel Foucault. The works of Foucault provide a trenchant, oftentimes disturbing, analysis of the operation of power in society. Through detailed historical observation Foucault traces the “genealogy” of concepts such as sexuality, delinquency, military discipline, and pedagogy to demonstrate how knowledge has enmeshed social relations in a matrix of power. Of particular interest to me was Foucault’s notion, as it is developed in Discipline and Punish\(^1\), that all knowledge is power and that intellectual constructs are used to order society in a way that is congenial to the powers that be. Foucault describes Discipline and Punish, a critical survey of various penal systems and the eventual "Birth of the Prison" (the subtitle of the work), as an attempt to try to study the metamorphosis of punitive methods on the basis of a political technology of the body in which might be read a common history of power relations and object relations. Thus, by an analysis of penal leniency as a technique of power, one might understand both how man, the soul, the normal or abnormal individual have come to duplicate crime as objects of penal intervention; and in what way a specific mode of subjection was able to give birth to man as an object of knowledge for discourse with a “scientific” status.\(^2\)

Foucault is interested in “unmasking” the operations of penal systems throughout history in an effort to demonstrate that what has developed in modern times is the advent of a system of controls, decentered in various parts of society, that render the human body more susceptible to manipulation and calculation. In Discipline and Punish, Foucault writes of the ubiquitousness of this emerging form of power:

One can speak of the formation of a disciplinary society . . . that stretches from the enclosed disciplines, a sort of social "quarantine," to an indefinitely generalizable mechanism of "panoptoconism." Not because the disciplinary modality of power has replaced all others; but because it has infiltrated the others, sometimes undermining them, but serving as an intermediary between them, linking them together, extending

\(^1\)Michel Foucault, Discipline and Punish, (New York: Vintage Books, 1979). (Hereafter Foucault, Discipline and Punish.)
\(^2\)Ibid, 24.
them, and, above all, making it possible to bring the effects to the most minute and
distant elements. It assures an infinitesimal distribution of power relations.  
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As a result of making humanity the subject of discourse and intellectual constructs, an increasing
number of aspects of an individual’s life fall under a disciplinary gaze that manipulates differently
situated bodies according to a rationality that stresses efficiency and order. Increasing knowledge
about the human condition has rendered individuals more vulnerable to the application of power.
Discourse creates categories centering on human characteristics and these categories subdivide
individuals into functional units that accomplish the goals of those who define and control the
intellectual and cultural constructs of society.

Foucault attempts to reconceptualize the way that we look at power relations in society and
tries to reorient political theory away from looking at the state as the central locus of power and
thus expand our understanding of how power operates in the broader social context. David
Shumway, in his book Michel Foucault, argues:

[O]ne can... call Foucault... postpolitical if one understands politics to be a
particular historical construction that emerged from the Enlightenment. Such politics
sought to provide a ground for the legitimacy of state power, and it found such ground
in the consent of the governed. Political theory continues to assume that power is
centered in the sovereignty of the state, an assumption that Foucault has criticized by
saying that “we need to cut off the King’s head: in political theory that has still to be
done.”

For Foucault, power is not something held by particular social structures; rather, power constitutes
the intricate web of interactions that form society; all that we know and say is intertwined with
power. Consequently, all laws are erected on top of a base of power relations and could not exist
without this foundation. As Gilles Deleuze, a commentator on Foucault’s thought, observed,
Foucault provides us with a “box of tools” that we can use to unmask the connection between
power and knowledge and this in turn can aid our understanding of the forces upon which the
political and legal systems are built.  
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3Ibid, 216.
5Gilles Deleuze, quoted in Shumway, 159.
However, in his afterword to Hubert Dreyfus and Paul Rabinow's book *Michel Foucault: Beyond Structuralism and Hermeneutics*, Foucault notes that power is not the main focus of his research. He writes that the aim of his work "has not been to analyze the phenomena of power, nor to elaborate the foundations of such an analysis. My objective, instead, has been to create a history of the different modes by which, in our culture, human beings are made subjects." 6

Foucault wants to document how

[t]he human body was entering a machinery of power that explores it, breaks it down, and rearranges it. A "political anatomy," which was also a "mechanics of power," was being born; it defined how one may have a hold over others' bodies, not only so that they may do as one wishes, but so they may operate as one wishes, with the techniques, the speed, and the efficiency that one determines. 7

Foucault calls this new form of power "biopower" and notes how it has "brought life and its mechanisms into the realm of explicit calculations and made knowledge/power an agent of the transformation of human life." 8 The key to understanding how this biopower operates, then, is examining how humans become the subject of power relations and how these power relations then manipulate the individual as an object.

It is difficult, I think, for one to read *Discipline and Punish* and not find Foucault's conclusions about the way that the penal system, and, by extension, knowledge in general have infiltrated at least some portions of contemporary society quite profound. I was, and still continue to be, drawn to his efforts to incorporate non-institutional sources of power in society and politics and the way that these other forms of power based on a "will to knowledge" hinder the potential for human liberation. Foucault's analysis of discourse is particularly attractive to me because of the situation I see in America where tremendous amounts of information are exchanged yet nothing of substance ever seems to be said. Rather than increasing the level of intelligent critical debate, the onslaught of continued technical improvements in the way that we as American citizens can

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7Ibid, 182.
8Ibid, 134.
absorb and communicate information has, ironically, caused greater parochialism in individual outlook. Foucault’s understanding of power and knowledge helps to explain this process.

Despite the insights that Foucault’s work provides in an analysis of power as it operates on levels not previously considered, many theorists find that such an understanding of power that includes most everything within its ambit results in a situation where, as Nancy Hartsock tellingly put it, “[p]ower is everywhere, and so ultimately nowhere.”

By depicting power as a continuous web, Hartsock argues, Foucault allows us to lose sight of the origins of this power and how the emerging forms of power result in the systematic domination of some over others. She notes that for Foucault

[p]ower... comes from below. There is no binary opposition between rulers and ruled, but rather manifold relations of force. ... [l]n the analysis of power, Foucault argues that rather than begin from the center or the top--the sovereignty--one should conduct an ascending analysis of power, starting from the "infinitesimal mechanisms". ... One can then see how these have been colonized and transformed into more global forms of domination. It is certainly true that dominated groups participate in their own domination. But rather than stop with the fact of participation we would learn a great deal more by focusing on the means by which participation is exacted. ... Foucault asserts that power must be understood as “capillary,” that it must be analyzed at its extremities. ... Thus all social life comes to be a network of power relations--relations which should be analyzed not at the level of large-scale social structures but rather at a very local, individual level.

This sort of analysis is disadvantageous as it does not allow for the identification of concrete social and political mechanisms that serve as the locus of power and therefore can be combatted. For Foucault power is such an all-encompassing web that we lose sight of the hierarchies that are responsible for the formation and application of power. Thus, Hartsock calls for a coupling of Foucault’s insights on power with an analysis that can locate the institutional mechanisms that facilitate the use of power.

In addition to failing to locate the operations of power within specific kinds of social and political structures, Foucault also neglects to consider the relationship between the bourgeois legal system, which he claims masks the operation of power in society, and the functioning of the disciplinary technologies in society that permeate life. According to Foucault, under the bourgeois

10Ibid, 169-70.
legal system the normative structures emanate from one location, the state and its legal institutions, while the actual operation of power takes place inconspicuously beneath the laws. State legitimation, the origins of its authority, are thus demarcated from the application of power. Foucault describes the separation as follows:

Historically, the process by which the bourgeoisie became, in the course of the eighteenth century, the politically dominant class was masked by the establishment of an explicit, coded, formally egalitarian juridical framework made possible by the organization of a parliamentary, representative regime. But the development and generalization of disciplinary mechanisms constituted the other, dark side of these processes. The general juridical form that guaranteed a system of rights that were egalitarian in principle was supported by these tiny, everyday, physical mechanisms, by all those systems of micropower that are essentially non-egalitarian and asymmetrical that we call the disciplines.11

Thus, the rhetoric of the bourgeois state serves the function of covering over the way that power is actually applied to partition society into discrete groupings that can then be manipulated according to a rationality that stresses efficiency and order. “[W]hereas the juridical systems define juridical subjects according to universal norms, the disciplines characterize, classify, specialize; they distribute along a scale, around a norm, hierarchize individuals in relation to one another...” 12

Foucault’s depiction of the separation in the bourgeois state between the form of political legitimation and the operation of disciplines stands in sharp contrast to previous forms of political power where both the justification for authority and the application of force were centered in the power of the sovereign. Jurgen Habermas observes Foucault’s understanding of the nature of the change from power vested in the sovereign to the modern bourgeois state:

Whereas the sovereign power of Classical formations of power is constituted in concepts of right and law, this normative language game is supposed to be inapplicable to the disciplinary power of the modern age: the latter is suited only to empirical, at least nonjuridical, concepts having to do with factual steering and organization of the behavioral modes and the motives of a population rendered increasingly manipulatable by science. . . 13

Because he sees the legitimation of the legal sphere and the actual operation of power as two distinct social and political functions, a major inadequacy of Foucault’s analysis is that he fails to

11 Foucault, Discipline and Punish, 222.
12 Ibid, 223.
trace the way in which the “normative language games” interface with the technical rationality that underpins discipline. Foucault places the norms of society, the stress on equality and justice in the modern liberal state, within the context of legal and political systems and then proceeds to investigate the operation of power at the “capillary” level. However, Habermas notes that

[as soon as Foucault takes up the threads of the biopolitical establishment of disciplinary power, he lets drop the threads of the legal organization of the exercise of power and of the legitimation of the order of domination. . . . [When] he passes from the Classical to the modern age, Foucault pays no attention whatsoever to penal law and to the law governing the penal process.]

This is problematic because Foucault does not trace the implications of his understanding of disciplinary logic to the foundations of the legal system. For Foucault the rationality that guides discipline is not seen to interact with the “normative language games” that constitute the public sphere. We are left asking the question “How does the application of disciplinary technology affect the way in which political norms are both generated and then subsequently serve as the foundation for political organization?”

While Hartsock is critical of Foucault’s failure to locate the operation of power within identifiable social and political structures because he defines all knowledge as being a form of power, Habermas complains that Foucault neglects any sort of consideration of the effects of disciplinary logic, putatively masked over by the legal system, on the types of interactions in the public and legal realms. At the heart of both Hartsock and Habermas’ concerns is the way in which the theoretical or substantive component of discourse relates to the practical or structural aspect of discourse. The process of communication functions at two levels: First at the level of the substance of discourse. Not all communication is the same; in different circumstances the forms of communication vary depending on the goal of the communicative act. Substance involves the process of the generation of thought. The second level of communication is that of the structures and institutions that mediate discourse. The process of communication involves not only the generation of ideas oriented towards communication, it also involves the expression of thought--this is why it is communication and not just an isolated individual’s thought. Different

14Ibid, 290. (Emphasis in original).
social and political structures provide avenues through which ideas can be expressed. In relation to Foucault, Hartsock argues for an examination of the way the substance of discourse is affected by the structures that facilitate communication, and Habermas calls for a study of the way that the substance of discourse impacts the operation of communicative structures.

The challenge for me then, and the question that gave rise to this thesis, was how can the value of Foucault's insights into the functioning of power within discourse be salvaged given the critiques levelled by Hartsock and Habermas?. That is, how can we link Foucault's analysis of the insidious and all-pervasive nature of power with actual political structures that facilitate and direct its application, and how does this application then affect the functioning of political structures? In attempting to answer this question I have integrated what I see to be two complementary fields of analysis: the critical theory of Jurgen Habermas and the civic republican revival in contemporary American legal theory. Both Habermas and the proponents of the civic republican revival contribute an additional dimension to understanding the place of discourse in society and how that discourse affects power relations. I believe that by drawing on and synthesizing these two fields I can both gain a better understanding of how power operates in society as well as identify potential solutions to counteract its effects.

The Critical Theory of Jurgen Habermas

Although I am in the early stages of gaining a comprehensive understanding of his work, I have found the Critical Theory of Jurgen Habermas extremely useful in contributing to a study of discourse in society and politics. While the works of Habermas are some of the most dense and complex that I have ever read, the depth of his social criticism is extraordinary and his analysis

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15 The phrase "republican revival" is taken from the title of an article by Cass Sunstein, "Beyond the Republican Revival," Yale Law Journal 97 (July 1988): 1539. (Hereafter Sunstein, "Republican Revival.")

16 I mention this as a kind of caveat to warn the reader that I have, by no means, mastered a great deal of what Habermas writes about. Philosopher Rick Roderick outlines some of the difficulties inherent in efforts to understand Habermas:
of contemporary society is, I think, nothing short of breathtaking in its scope and insight. Habermas, a protege of Frankfurt School thinkers such as Max Horkheimer, Theodor Adorno, and Herbert Marcuse, integrates a startling variety of academic fields (including, but not limited to, philosophy, linguistics, anthropology, sociology, psychology, and political theory) in an effort to create a foundation for social and political criticism that is simultaneously conscious of its historical and social location and is able to transcend the limitations of these contexts by furnishing social and political practice with a universal normative guide to action. For Habermas the key to linking social and political praxis with theoretical considerations begins with an attempt to salvage the Enlightenment notion of reason through an understanding of the presuppositions of communication. Habermas, who “has been called the last great rationalist[,]” has sought to defend the notion that only in a society in which a general notion of reason can be invoked can we hope to sustain a good society. Without an appeal to general standards of truth and goodness, social life gravitates towards an endless power struggle among antagonistic interest groups. This social condition lends itself to the Hobbesian solution of an authoritarian state called upon to impose order.

As will become clear later, I have focused on a specific aspect within Habermas’ enormous oeuvre so when I speak of Habermas generally I may be prone to vagueness. Rather than take my inability to comprehend every aspect of Habermas’ project fully as a sign that, perhaps, I should read someone who was more accessible, I chose instead to view reading Habermas as a challenge, and that I should try to learn as much about him as was possible. Consequently, throughout this work I quote liberally from secondary sources about Habermas in order to fill in gaps where his actual writings were beyond my comprehension.

By studying the theoretical basis of human interaction with other individuals, as well as with the object world, Habermas finds what he believes to be the foundations of communication, and this, in turn, guides his vision of a social order that is free from domination. In his inaugural lecture at the University of Frankfurt in June of 1965 Habermas describes his interest in language:

> The human interest in autonomy and responsibility is not mere fancy, it can be apprehended a priori. What raises us out of nature is the only thing whose nature we can know: language. Through its structure autonomy and respectability are posited for us. Our first sentence expresses unequivocally the intention of universal consensus. Autonomy and responsibility together comprise the only idea we possess a priori in the sense of the philosophical tradition.19

By referring to “prelinguistic norms,” the requirements for communication to be meaningful to both the speaker and the hearer, Habermas finds a core of reason that can prevent society from slipping into a state of unfreedom.

This core of reason embedded in prelinguistic norms is useful, according to Habermas, because it furnishes social criticism with a tool that can diagnose the current level of freedom in society and suggest avenues that might augment this overall level. By comparing the forms of communication that prevail in society today with the presuppositions of undistorted communication inherent in the requirements of meaningful discourse, Habermas is able to explain the relationship between the substance of what is said in various arenas of social and political deliberation with the structures of the social, political, and economic spheres. Of particular interest to Habermas is charting the way that communication has changed over time in relation to these spheres and isolating the mechanisms that have altered the substance of discourse. Habermas then links the types of discourse that arise within the structures of the social, political, and economic spheres back to their operation.

By studying the dialectical relationship between these mechanisms and structures and the types of communication that social and political interactions rely upon, Habermas is able to ground a study of discourse and power in society that is conscious both of hierarchies that guide the

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application of power as well as the nature of the communicative act itself. In sharp contrast with Foucault's thinking, for Habermas

unfreedom is a condition of the social structure, not merely a product of structures of consciousness. Epistemological critique must be part of a more comprehensive critical theory of society. Its aim is to stimulate critical self-reflection on the part of disempowered groups by identifying the social sources of unfreedom and highlighting possible social sites of crisis, conflict, and change.20

Because Habermas engages in a study of the substance of communication and how this substance is communicated he does not see, as Foucault does, the legitimation of authority in society as distinct from the operation of the disciplines (i.e., the way that knowledge is used as a source of power to construct social relations). Disciplinary logic presupposes a certain form of communication, and this, in turn, impacts the way in which individuals comprehend the rationales for authority and participate in the public sphere.

Habermas' goal is to develop a theoretical framework that can explain the interactions between the ways that individuals communicate and the social and political worlds in which that communication takes place. To this end, he observes trends in the development of advanced capitalist society, and from this he formulates theoretical abstractions that he believes are applicable to that general type of society. Based on these investigations, advanced capitalism is seen to have an inner logic that unfolds. In his preface to The Structural Transformation of the Public Sphere, Habermas comments on this analytical approach:

The sociological investigation of historical trends proceeds on a level of generality at which unique processes and events can only be cited as examples—that is, as cases that can be interpreted as instances of a more general social development. This sociological procedure differs from the practice of historiography strictly speaking in that it seems less bound to the specifics of historical material, yet it observes its own equally strict criteria for the structural analysis of the interdependencies at the level of society as a whole.21

By saying that Habermas' exploration of social, political, and economic structures is at an abstract level I do not mean to suggest that his work is unconscious of details in specific contexts. (One need only look at the detailed historical investigations in The Structural Transformation of the Public Sphere.)

20Seidman, Habermas on Society and Politics, 6.
Public Sphere to see that this is clearly not the case). Rather, Habermas searches for details in specific social, political, and economic orders only insofar as they are relevant to the general trends that he is trying to uncover.

In a sense this thesis is an attempt to work from these general trends that Habermas isolates and then link them back to a more detailed examination of the structures that underpin these trends. That is, I want to take Habermas a step further by using his conclusions about general tendencies in advanced capitalist society as a starting point and then locate how these trends are manifested in the specific context of the American social and political tradition. Habermas begins by abstracting general trends common to advanced capitalist societies from studies of specific contexts (Germany in particular). Then he relates these trends to the fundamental categories of communication. He then illustrates how forms of communication affect the operation of the institutional mechanisms of advanced capitalist societies. I then want to apply the conclusion Habermas makes about advanced capitalist society in general and observe it in the specific context of America. Because civic republican theories are concerned with how the design of the American political system hinders or facilitates discourse, the thought of American republican legal scholars is well suited to serve as framework in which Habermas’ broader conclusions can be placed.

**The Civic Republican Revival**

Recent years have seen an increase in proposals that advocate a revitalization of the republican strand of the American political tradition in the face of a dominant self-aggrandizing, individualistic tendency in society and politics. Mark Tushnet, a Critical Legal Theorist and a participant in the debate over the possibilities of a renewed republicanism, summarizes the two opposing traditions in the following way:

The Constitution was framed in an era when two general theories about citizenship contended on roughly equal terms. One theory, captured in the liberal tradition, emphasized the individualism of people acting in society and examined how social institutions rest on and constrain individual preferences. The other theory, recently
labelled the civic republican tradition, emphasized the essential social nature of individual being and examined how individual preferences rest on and constrain social institutions. 22

While

[t]he liberal tradition stresses the self-interested motivations of individuals and treats the collective good as the aggregation of what individuals choose. . . . The republican tradition insisted that people are social beings who draw their understanding of themselves and the meaning of their lives from their participation with others in a social world they actively and jointly create. 23

Because of various social, political, and economic factors liberalism has come to eclipse republicanism and has, republican scholars argue, become central to the way that American citizens define themselves as well as their role in society and politics. The result has been an inability for contemporary Americans, versed heavily in the rhetoric of liberalism, individualism, and pluralism, to deal with immanent philosophical and practical problems. 24 Proponents of an enhanced role for republican principles in American society, in a variety of ways and for a variety of reasons, call for a shift in politics away from individual self-interest and towards communal discourse and a debate that centers on the public good. 25 By changing the institutional structure of the United States, these scholars argue, areas for increased public debate and deliberation can be carved out and this, in turn, will move individual concern away from self-interest and towards a concern for the good of the community.

I have chosen to focus on the works of three legal scholars, Cass Sunstein, Frank Michelman, and Michael Perry, as representatives of the civic republican revival. These three men offer the most sophisticated, well-developed, affirmative arguments in support of a renewed role


23Ibid, 6, 10.

24This view is not found exclusively in the legal arena but can also been seen in the philosophical works of communitarian thinkers such as Michael Sandel (e.g., Liberalism and the Limits of Justice, (New York: Cambridge University Press, 1982)) and Benjamin Barber (e.g., Strong Democracy: Participatory Democracy for a New Age, (Berkeley: University of California Press, 1984) and The Conquest of Politics: Liberal Philosophy in Democratic Times, (Princeton: Princeton University Press, 1988)) as well as in works with a more sociological bent such as Robert Bellah, et al. Habits of the Heart: Individualism and Commitment in American Life, (Berkeley: University of California Press, 1985).

for republicanism that I have encountered, and by centering on them I think it is possible to
demonstrate the advantages as well as the disadvantages of the general perspective of legal theory
on the role of discourse in society and politics.26

Unlike the works of Foucault where power is as seen intrinsic to discourse, the writings of
these scholars locate discourse within the institutions of the American political system. By
focusing on how the structures of government have influenced the way in which public
deliberation takes place, these men explore the relationship between what is said and the channels
that provide a place in which to say it. Sunstein, Michelman, and Perry thus provide a "top-down"
approach to the study of power that can be used to augment Foucault's study of the "capillary"
levels where power is actually applied.

Understand Social and Political Discourse in America

The following chapters of this work are devoted to synthesizing the thinking of the civic
republican revival in American Constitutional law with the critical theory of Jurgen Habermas.
While the writings of Sunstein, Michelman, and Perry are useful in connecting forms of social and
political discourse with the institutional structures of the American political system, Habermas' 
analysis links discourse as it actually occurs with the theoretical underpinnings of all
communication and general tendencies in advanced capitalist societies. Each of these two outlooks

26I have consciously decided not to include Mark Tushnet's Red, White, and Blue for full consideration despite the
fact that Tushnet clearly provides an excellent and nuanced analysis of republican principles in the American political
tradition. Tushnet is less than enthusiastic about the potentials for republicanism to remedy many of the difficulties
facing American society today. Because he finds liberalism and republicanism to be in a perpetually antagonistic
relationship, and because he believes that both of these philosophies are crucial to understanding the human
condition, Tushnet is unable to provide a framework in which social and political discourse can meaningfully take
place. In the closing words of Red, White, and Blue Tushnet writes "Human experience consists of connectedness
and autonomy, love and hate, toleration of others and anger at their differences from an ever changing 'us.' Neither
the liberal tradition nor the republican one can accommodate the aspects of experience that the other takes as central.
Critique is all there is." (318) As will become clear as the thesis develops, I am believe that Tushnet is wrong in
his conclusion and that a synthesis of the sanguine republican vision of his colleagues, which he feels is misguided,
with the critical understanding of discourse and communication provided by Habermas, it is possible to move beyond
critique to a more substantive vision of social and political deliberation.

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on discourse, I believe, has much to add to Foucault's understanding of power in society. While the republican scholars are sensitive to the mechanisms that channel deliberation in America, Habermas is concerned with examining the requirements of communication in relation to social, political, and economic structures in the abstract. Thus, while each group of thinkers addresses a limitation inherent in Foucault's theory, only by integrating the analysis of both can a comprehensive understanding of discourse and power in American society be gained.

The overall goal of my thesis is to construct a theoretical apparatus, based on an integration of Habermas' thinking with the civic republican outlook, which can be used to analyze social and political discourse in American society. My hope is to construct a general theoretical orientation towards communication that can simultaneously highlight the problems that plague contemporary American discourse and offer potential solutions that could overcome these obstacles. To this end, the thesis is divided into three chapters.

Given the two levels of communication—substance and structure—that I discussed above, it is crucial to examine how a theorist views the connections between these two dimensions. In Chapter 1 I argue that substance and structure place limitations on each other and as a result the two must be understood dialectically. I note that while Habermas is sensitive to this dialectical connection the civic republican scholars view these two dimensions of communication as being divorced from one another and, consequently, their theories of discourse are skewed.

In Chapter 2, however, I argue that Habermas gives the dialectical relationship between substance and structure undue emphasis in terms of the overall dynamics of communication. Habermas sees the development of social and political communication as a process where institutions interact with the various types of communicative relationships. This understanding is reductionist, I contend, because it fails to consider the role that the formation of ideas plays in determining the kinds of communicative interactions in which individuals are able to engage. Specifically, I claim that in his investigations of the theoretical principles underlying communication—the substantive element—Habermas does not separate out the way that ideas are generated prior to communicative interaction from the communicative interaction itself.
Consequently, Habermas employs a reified conception of ideas where an idea is relevant to communication only insofar as contributes meaning to the language of discourse. This is important, I believe, because the process by which individuals form ideas has a significant impact on their subsequent ability to express or communicate those ideas. Habermas, however, overlooks the role of ideas since he does not locate the formation ideas within a specific social and historical context. I conclude, therefore, that both institutions and ideas are key factors that shape the types of possible communicative interactions.

Using this interaction of ideas and institutions as framework for understanding discourse, I return, in Chapter 3, to the civic republican theories of social and political communication in order to demonstrate the inability of republican principles, by themselves, to adequately reinvigorate meaningful debate and deliberation over public issues. I contend that, because republican theories of discourse ignore the significance of idea formation in the communicative process the republican emphasis on discourse, ironically, has a chilling effect on communication; the republican attempt to overcome the prevailing tendencies towards self-interest actually accelerates this process. That is to say, I believe that republican principles, as they have manifest themselves in the American social and political tradition, emphasize the creation of ideas on such a level that intersubjective debate and deliberation becomes impossible. In conclusion, I suggest an alternative solution to the difficulties associated with the prevalence of self-interest in social and political discourse—a solution which adequately addresses the importance of both institutions and ideas in the dynamics of communication in American society.

Taking Foucault’s claim that power is ubiquitous in society and that such power is intimately associated with discourse as my starting point, what follows is an effort to supplement this basic assumption by applying the conclusions of Habermas to the American context in order to paint a richer picture of how Americans are affected by power and what strategies are available to secure a higher degree of freedom. Although I am sympathetic to both the efforts of the civic republican scholars and the works of Habermas this thesis does not simply consist of my taking what I see as the “good” or “useful” parts of the various thinkers and combining them to create a
"better" theory of discourse and power. Throughout what follows I have made an effort to confront each group of thinkers critically and expose the shortcomings of their overall approaches on their own terms. Accordingly, this thesis is as much a destructive as a constructive project. It is important to emphasize the destructive aspects, I think, because I believe that one of the best ways to test how well one understands a theory is if one can take it apart and examine the various components. In my efforts to integrate Habermas and the civic republican revival, then, much of this thesis is devoted to revealing limitations as well as strengths in each thinker's works.
Introduction

As I argued in the Introduction, discourse operates on a substantive and structural level; communication involves both the social and political institutions that provide forums for discussion and the ideas that are expressed in those forums. Given these two levels, one of the central focuses of this work is to study how Habermas and the proponents of the civic republican revival view the relationship between the structural and substantive dimensions of discourse. I am interested in examining the way that Habermas and the civic republican thinkers perceive the connections between the ideas that are the backbone of communicative interactions and the institutional arenas that facilitate these interactions. Because of the fundamental nature of distinction between the substantive and structural levels of discourse it is essential, I believe, that any analysis of discourse pay close attention to how these two dimensions interact (or fail to interact). An individual's views on this interaction will subsequently shape his or her outlook on the dynamics of the communicative process and therefore close scrutiny must be given to the general theoretical attitude of the thinker. As my discussion of Foucault illustrated, an inattention to these two levels risks overlooking the complex set of dynamics that shape discourse. Unlike Foucault, Habermas, Sunstein, Michelman, and Perry all recognize the two dimensions of discourse, but the recognition of these two dimensions does not imply, however, that each man shares similar views on how they relate. Indeed, the central purpose of this chapter is to demonstrate that these two levels are dialectically connected and that only Habermas is sensitive to this connection. To demonstrate this, this chapter will largely be a descriptive effort designed to
outline the arguments of each man thereby providing a foundation for my analysis in Chapters 2 and 3.

I begin by examining the approaches taken by legal scholars Cass Sunstein, Frank Michelman, and Michael Perry. Broadly speaking, each man attempts to revive a certain type of discourse, republican deliberation, through structural adaptations to the American political system. What is of interest here is the way in which their respective understandings of the forces that shape contemporary American discourse relate to their visions of how debate and deliberation should occur. I argue that Sunstein, Michelman, and Perry have over-simplistic views of communication that divorce the substantive and structural elements of discourse and result, therefore, in a reductive understanding of key aspects of the communicative process. In the second part of the chapter I suggest that Jurgen Habermas has much more nuanced and, therefore, satisfying understanding of discourse which captures essential dimensions of communicative process overlooked by the civic republican scholars. Specifically, Habermas argues (and I think rightly so) that the substance and structure of discourse are dialectically connected, i.e., the institutional forums of debate and deliberation and the ideas that expressed in these forums both give definition to and shape one another. In Chapter 2 I then demonstrate how Habermas’ dialectical vision of communication allows him to see the rise of technical rationality as it limits the potential forms of discourse and strips the ability of members of advanced capitalist societies to debate and deliberate meaningfully. Right now, however, I want to sketch out the general orientations that Habermas and the civic republican scholars have towards the study of discourse. First, the civic republican approach.
The Civic Republican Approach

Cass Sunstein:

Cass Sunstein is one of the leading proponents of an enlarged role for republican principles in American politics today. In a series of articles Sunstein explores the role that republican ideas played in the founding of the Constitution and argues that American politics must move away from the dominant trend towards individual self-interest and self-aggrandizement. The key to this transformation, Sunstein believes, is an increased reliance on public discourse and debate. By adjusting the institutional structure of the American political system Sunstein hopes to create more channels for citizen participation in the political process causing, in turn, individuals to transcend their own parochial concerns and instead focus on the good of the public and the community at large.

Sunstein’s interests in public debate and deliberation spring from what he sees as Constitutional provisions prohibiting the exercise of "naked preferences" in the political process. In a Columbia Law Review article Sunstein argues that numerous constitutional mechanisms are aimed at preventing one group of political actors from using the political system to secure a “naked preference” which is “the distribution of resources or opportunities to one group rather than another solely on the ground that those favored have exercised raw political power to obtain what they want.” In other words, a naked preference is when a group obtains benefits because they are able to manipulate the political process so that they get what they want and is similar to Madison’s depiction of faction in Federalist 10. Because of the danger such interests pose for liberty Sunstein lists numerous provisions in the Constitution which check their influence. In

29Ibid, 1689.
30See Chapter 3, page 142, for a more complete discussion of Madison’s definition of faction.
particular, Sunstein identifies “the dormant commerce, privileges and immunities, equal protection, due process, contract, and eminent domain clauses” as all containing elements that prevent individuals or groups from securing self-interested benefits through the political process. While a full exploration of how these various clauses operate to rein in naked preferences is outside the scope of this work, what is important to note here is that Sunstein finds evidence in much of the Constitution that the framer’s explicitly and implicitly excluded one type of discourse. He writes that

\[\text{[t]he prohibition of naked preferences captures a significant theme in the original intent. It is closely related to the central constitutional concern of ensuring against the capture of government by faction. The framer’s hostility toward naked preferences was rooted in the fear that government power would be usurped solely to distribute wealth or opportunities to one group or person at the expense of another. The constitutional requirement that something other than a naked preference be shown to justify deferential treatment provides a means... of ensuring that government action results from a legitimate effort to promote the public good rather than from a factional takeover.}\]

Central to Sunstein’s analysis of naked preferences is the way that he sees interpenetration between the public and private spheres. For Sunstein, individual interests in the private sphere must always be revisable through public debate and deliberation. Through a process he calls “collective self-determination” Sunstein contends that the framers intended the public sphere to serve the function of subjecting private interests to revision in light of broader public concerns.

The role of the representative is to deliberate rather than to respond mechanically to constituent pressures. Politics cannot, in this view, be reduced to the aggregation of private interests. Such interests are not preexisting. They are themselves a product of the political process, whose function is not to choose among preselected values but instead to select values through public deliberation and debate.

From the initial formulation of his republican theory Sunstein wants a political system that allows public and private interests to merge through a process of public discussions where the good of the entire society is the focus. If the Constitution proscribes one form of discourse--pluralist

\[\text{31Sunstein, “Naked Preferences,” 1689.}\]
\[\text{32Ibid, 1690.}\]
\[\text{33Ibid 1694-5.}\]
\[\text{34As I argue in Chapter 3, however, despite the connections Sunstein sees between the public and private spheres his theory still maintains the integrity of each sphere. That is to say, while private interests must be subject to public debate and deliberation private interests as such still exist. This is problematic because, in my view, the technical rationality that Habermas (and I) see prevailing social and political debate assumes its dominant position as a result of individuals thinking in terms of both a public and a private sphere.}\]
interest-maximization--and prescribes another type of discourse--public debate and deliberation--the question becomes how the latter can be stimulated given the dominance of the former?

In one of the feature articles in a *Yale Law Journal* symposium on the civic republican tradition Sunstein gives us an answer to this question and further develops the notion that the political system should be more than just a tool for individual interest. Sunstein argues for a renewed role for republican principles in American society; he finds in these principles a source for political participation that can incorporate the good of the public in its considerations. Sunstein begins his article entitled “Beyond the Republican Revival” with a concern about issues of theory and practice. Sunstein writes:

> For modern republicans, the task is not simply one of excavation. History does not supply conceptions of political life that can be applied mechanically to current problems. Circumstances change; theoretical commitments cannot be wrenched out of context without great risk of distortion; contemporary social and legal issues can never be resolved merely through recovery of features, however important and attractive, of the distant past. Difficulties of this sort severely complicate efforts to revive principles of classical republicanism.

Although Sunstein is referring to the problems inherent in attempts to apply classical republican ideas to contemporary contexts the issue he raises is applicable to a general discussion on how to analyze discourse. At the heart of this statement is a warning by Sunstein that talking, thinking, and conceptualizing about discourse must be sensitive to the specific historical context in which that discourse takes place. That is, theories about the substance of what is expressed in communication, i.e., the thoughts and ideas, must be linked to the specific structural context in which that communication occurs. It would be ludicrous to merely take the ideas of, say the ancient Greeks, who had a radically different society in mind when they developed their republican principles, and apply those ideas to the immensely more complex and integrated world of contemporary America. Sunstein, then, appears to be aware of the interaction I spoke of above between the substantive dimension in which discourse expresses certain ideas and the actual world in which those ideas must respond to and be articulated. In short, what Sunstein is saying here is

35Sunstein, “Republican Revival.”
36Ibid, 1539.
that ideas and visions about the substance of communication must be tailored to the needs of specific historical contexts.

Interestingly, however, two pages later when Sunstein is outlining his argument this concern for the relationship between substance and structure is seemingly discarded. He notes that

"This Article has two principal parts. The first is relatively abstract. Its goal is to outline and defend a particular version of republican thought, one that avoids the difficulties associated with competing conceptions of public life. . . . The second part of this Article is quite concrete. Its goal is to describe some of the implications of republicanism, thus conceived, for a number of controversies in modern public law. I suggest that republican understandings call for a reformulation of many current legal rules, inside and outside the courts."

The way that Sunstein structures his argument appears to be at odds with his opening statements about the relationship between substance and structure. The first section is devoted to constructing a vision of republicanism, a vision that hopefully overcomes some of the disadvantages associated with older forms of republicanism. Here Sunstein wants to sketch out an alternative approach to discourse that can aid in an analysis of contemporary society, the subject of the second part of the article. The vision, "thus conceived" in the first half of the article, then directs the "reformulation of many current legal rules" discussed in the second half. What is puzzling about this, and what I will go into more detail about later, is that Sunstein appears to ignore his own cautions at the start of the article where he argues for a sensitivity when articulating a republican vision to the exigencies of contemporary society. Part of the requirement that republicanism be sensitive to context would seem to mandate that the formulation of substantive visions take place side-by-side with an analysis of the dynamics of contemporary society. By dividing the article into two pieces, Sunstein does not integrate his republican vision with a specific social and political context and, consequently, he vitiates this requirement. In the very structure of his article Sunstein divorces the substantive vision of republicanism from the practical considerations of American society and politics. As I suggest below, this is problematic because it fails both to account for the dialectical

38 Disadvantages such as exclusivity, i.e., the suppression of difference, common to many republican societies as well as its tendency towards militarism and social hierarchies. (1564-5)
relationship between the ideas formulated within discourse and the world in which that discourse takes place. For now though, let us look at how Sunstein’s republican vision unfolds.

Sunstein begins his analysis with a brief survey of two competing conceptions of the American political system. First, he examines the pluralist understanding where “politics consists of a struggle among interest groups for scarce local resources.”

According to this understanding of American politics “the existing distribution of wealth, existing background entitlements, and existing preferences” are taken as “exogenous.”

The government’s role under this system is simply to respond to naked preferences, aggregate desires that already exist among the population, and implement those desires that are most popular or influential. As should come as no surprise, given his above analysis on naked preferences, Sunstein is clearly uncomfortable with the pluralist notion and makes an effort refuting its basic premises through arguments attacking such things as “bad preferences and the problems of unequal power.”

Sunstein is particularly disturbed, however, by the pluralist depiction of the public role of the citizen. Echoing many of the laments already outlined in his earlier Columbia Law Review article Sunstein is now ready to give a fuller vision of his republican understanding of the individual and his or her role in the political system. It is to this that I now turn.

In taking stock of the diverse forms that republicanism has taken over the years Sunstein claims to have distilled what he sees as the central commitments that underlie any sort of republican theory and then incorporates aspects of the liberal tradition with them. Sunstein calls his theory a version of “liberal republicanism” and sets forth four central principles that lie at the core of this view of politics. Common to these four commitments is the republican belief “of autonomy as involving selection rather than implementation of ends, and the republican conception of political

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40Ibid, 1543.
41Ibid.
42Ibid, 1541. For considerations of space I have omitted a full discussion of Sunstein’s rationale for why his republican values are not only compatible with but indeed are an integral part of liberalism. For Sunstein’s statement of why liberalism and republicanism are complementary see 1566-71. I am more concerned here with how Sunstein develops his understanding of discourse in American society than I am with the traditions he is synthesizing. As I argue later (see Chapter 3) Sunstein and the other civic republican scholars have an oversimplified view of the fundamental aspects of communication regardless of what informs that view.
freedom, which prizes collective self-determination.”43 These four commitments are not distinct but rather flow into one another and are only comprehensible when seen as a connected whole. Sunstein again repeats his earlier claim that an identification of these commitments is primarily theoretical and, therefore, “an elaboration of those commitments will be necessarily abstract.”44

The first of these commitments is the belief that political involvement on the part of the citizen should be based on the ideal of deliberation. Sunstein notes that

> The function of politics on this view, is not simply to implement existing private preferences. Political actors are not supposed to come to the process with preselected interests that operate as exogenous variables. The purpose of politics is not to aggregate private preferences, or to achieve an equilibrium among contending social forces... The republican position is instead that existing desires should be revisable in light of collective discussion and debate, bringing to bear alternative perspectives and additional information... A central point here is individual preferences should not be taken as exogenous to politics.45

The political process is, under this view, an important contributor to individual identity and the definition of individual wants. The individual brings his or her desires and interests to the political process and then revises them through collective discussion and deliberation. The cause of the public good becomes the motivating force for political participation and displaces the narrow self-interest of the pluralist model. Presupposed in this view is the belief that individuals contain in themselves a certain degree of civic virtue. Sunstein admits that only if people have a sense of what is good for the larger whole will the process of deliberation allow them to transcend self-interest. The key is to both instill this sense of virtue in individuals as well as provide them with opportunities to exercise it.

The next three commitments of republicanism are supplementary to ideal of politics as deliberation in that they sketch out some of the major requirements necessary if deliberation is to be the regulative ideal of American society. The first of these ancillary requirements is that there be a high level of political equality. “Political equality, in republican terms, is understood as a requirement that individuals and groups have access to the political process; large disparities in

43Ibid.
44Ibid, 1548.
political influence are disfavored.” A high level of political equality is necessary to ensure that
the political process is open to ideas and does not collapse under the influence of a few powerful
groups. The second ancillary requirement is that the deliberative process be guided by what
Sunstein calls “universalism.”

The republican commitment to universalism amounts to a belief in the possibility of
mediating different approaches to politics, or different conceptions of the public good,
through discussion and dialogue. The process of mediation is designed to produce
substantively correct outcomes, understood as such through the ultimate criterion of
agreement among political equals. It is because of the belief in universalism that
republican approaches posit the existence of a common good, to be found at the
conclusion of a well-functioning deliberative process.

Universalism is essentially the belief that through debate and deliberation different individuals will
be able to come to some sort of a conclusion about the public good. While not all issues are
amenable to this sort of consensus the requirement of universalism holds that on most public
issues it is possible for diverse sets of individuals to come to some sort of a common agreement
about the common good.

The final republican commitment that Sunstein sets out is the importance of active citizen
participation in the political system. Citizen participation is important not only because it allows
individuals to have input in the process of debate and deliberation, “is it also a vehicle for the
inculcation of for the characteristics such as empathy, virtue, and feelings of community.”

Through political participation individuals expand their horizon of concerns to encompass the good
of the entire community. The individual does not come to the political process prefigured, rather,
by this view, much of the individual is constituted through public involvement.

The four commitments of liberal republicanism, as Sunstein understands them, essentially
involve a give and take relationship between the individual and the community. Stress is placed on
the deliberative process and political equality so that the individual is able to express him or herself

46 Ibid, 1552.
48 Sunstein, for example, would keep issues involving religion out of public debate as it is unlikely that enough
common ground could be established among diverse participants to secure universal agreement.
49 Sunstein, “Republican Revival,” 1556.
in the political process and emphasis is placed on universalism and citizenship to define how political involvement affects the individual.

Having outlined both his vision of liberal republicanism and how those principles are engendered in the American Constitution, Sunstein, in the second part of his article, then moves on to the practical implications of his theory.50 In the introduction to this section of the argument Sunstein returns apparently to his concern for the relationship between substance and structure stated at the start of his analysis. He notes:

Republican thought [as it is was presented in the first section of the article] furnishes the basis for approaching a variety of issues in modern public law. . . . To be sure, one cannot simply “apply” republican ideas as if they provided self-evident solutions to contemporary legal problems; there will be room to contest any particular application. But many contemporary controversies look different if viewed through the lens of the republican tradition.51

Sunstein acknowledges that the fit between the republican commitments he advocates and the controversies as they actually manifest themselves in modern public life will not always be perfect. He expects there to be divergences between theory and practice but that, on the whole, republicanism provides a superior “lens” through which to view contemporary legal problems. As I suggest below, however, these divergences do more than create instances where individuals “contest any particular application.” Instead these discrepancies between structure and substance are symptoms of an inadequate understanding of communication and a subsequent inability to examine it critically. In Chapter 2 I then demonstrate how this inadequate understanding overlooks the rise of technical rationality that Habermas documents.

Sunstein sees a variety of implications for his liberal republican theory. Examples include his belief that a republican conception of politics would be more hospitable to attempts at campaign finance reform, attempts which were limited by the 1976 Supreme Court case Buckley v. Valeo. While the Court in its Buckley decision argued that affirmative attempts to place different individuals on an equal footing in electoral campaigns violated the First Amendment, a republican

50I have omitted mention of Sunstein’s examination of liberal republican principles as they were enshrined in the Constitution during the Founding. I will discuss republicanism and the Founding in Chapter 3.
51Sunstein, “Republican Revival,” 1576.
reading of such efforts would see the necessity of placing candidates on roughly equal ground in order to assure debate and deliberation could center on the public good. Similarly, republican principles favor enhanced role for Federalism and intermediate organizations in the political process. For Sunstein

[a] critical feature of the learning of the New Deal period--one with continuing influence on American law--is that the original constitutional structure of dual sovereignty was a large mistake, allied with anachronistic goals of limited government and inconsistent with the need for continuing national intervention into marketplaces. But one of the great strengths of the original constitutional system was its simultaneous provision of deliberative representation at the national level and self-determination at the local level, furnishing a sphere for traditional republican goals. A central lesson of the republican revival is the need to provide outlets for self-determination in the public and private spheres. The Tocquevillian understanding of a variety of groups, some in local government, some in purely private organizations, furnishes an alternative understanding, far superior to the New Deal model.52

Sunstein believes that keeping alive the tradition of local associations and self-government provides the individual with additional points of access to the political system and thereby secures the republican principles of debate and deliberation. Federalism and intermediate organizations carve out institutional space that both allows individuals to have a greater voice in the government and creates opportunities for the inculcation of civic virtue. Sunstein sees republican principles also requiring heightened judicial scrutiny into legislation that affects groups lacking in social power. Thus, he calls for judges to examine closely laws that categorize individuals on the basis of such things as “race, sex, sexual orientation, or poverty” as this sort of categorization may be an effort to restrict particular individuals from participating in the political process.

In short, Sunstein sees the four republican principles he develops earlier as providing a blueprint for structural modifications in the institutional design of the American political system. As he concludes his article, “The basic idea here is that the Madisonian ideal--representative processes operating to filter particular points of view--might in some settings fail to serve its intended purposes; and distinctly non-Madisonian institutions may be necessary to serve republican goals.”53 The non-Madisonian institutions are the product of Sunstein’s substantive vision of a republican society. The substance of this vision, i.e., the type of thoughts he wants to

52Ibid, 1578.
53Ibid, 1590.
be communicated—republican thoughts, dictates the kinds of structures (institutions) needed and these structures, in turn, alter the substance of social and political discourse and allow for the generation of certain types of thoughts. That is to say, Sunstein’s theory of republicanism determines the institutional modifications needed to create an arena in which the substance of discourse is changed and people can debate and deliberate about the public good rather than focus solely on their individual interests. Nowhere in this analysis, however, do we see an interaction between the substance of Sunstein’s theory and the institutional modifications he suggests. Before he even considers the structure of the American political system he has already constructed an conception of what social and political communication should be like. Furthermore, after Sunstein has determined the structural changes needed he never considers if these changes are enough to actually alter the substance of social and political communication as it functions in contemporary American society. That is, he fails to examine whether structural modifications (modifications that carve out increased institutional space for debate and deliberation) are sufficient to cause individuals to actually debate and deliberate with one another about the common good. Sunstein’s approach to communication completely divorces the structural and substantive levels of discourse. As I will argue below, this approach is inadequate because it results in a reductive model of social and political communication.

Frank Michelman:

Frank Michelman, in the other central article in the *Yale Law Journal*’s symposium on civic republicanism, argues for a revival of the civic republican tradition as a solution to what he refers to as the “jurisgenerative dilemma.” While Sunstein’s interest in republicanism stems from the perceived inadequacy of the Madisonian system to counteract the effects of possessive individualism resulting from a different economic environment, Michelman’s attraction to

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republicanism stems from a theoretical conundrum he sees at the heart of the American Founding. However, despite his different approach to the study of discourse in American society than that of Sunstein, Michelman also divorces the substantive and structural levels of discourse.  

The American Constitutional tradition, Michelman contends in his article "Law's Republic," is founded on two seemingly contradictory premises: "[F]irst, that the American people are politically free insomuch as they are governed by themselves collectively, and, second, that the American people are free insomuch as they are governed by laws and not men [sic]." The difficulty for American political thought is reconciling these two antithetical notions. Michelman asks how a legislative process based on a representative democracy can be thought of as a government of laws and not people. He writes:

Each of the two constitutional formulas—self-government and a government of laws—seems to express a demand that we are all bound to respect a primal requirement of political freedom: the first demands the people's determination for themselves of the norms that are to govern their social life, while the second demands the people's protection against abuse by an arbitrary power. Reconciliation is not accomplished simply by regarding the people as making or consenting to their own laws. The process of popular law-making is what we call politics; and politics is, in the traditional (and healthy) American understanding, a theater of power in which some people stand always in danger of abuse by others. If a "government of laws" stands—as it surely does—for an institutionalized discipline that would render legislative policies trustworthy, the "law" in the "government of laws" formula must stand in circular relation with politics as both outcome and input, both product and prior condition.

According to Michelman, when we analyze the American political tradition it is important for us to examine the way that this circularity is resolved or fails to be resolved. If the political tradition is able to square self-government with the rule of law then it is in keeping with the desires of the Founders to both protect the liberty of individuals as well circumscribe the power of those individuals in their public capacity. If a political tradition is unable to resolve the jurisgenerative dilemma, then it fails to meet the requirements of ordered liberty.

In setting up this dilemma Michelman's main target is, like Sunstein, the pluralist tradition that he sees prevailing in contemporary America. As I have already noted, pluralism is based on the idea that the political system serves as a marketplace in which various interests and concerns...
are expressed. Pluralist thinkers argue that such a marketplace, like its counterpart in economics, is the most efficient means to distribute governmental resources and services. As a result, the pluralist political system is based, either explicitly or implicitly, on a "higher" law of marketplace rationality.\textsuperscript{58} For Michelman, though, this does not sufficiently address the requirements of the jurisgenerative dilemma. This "higher" law that provides the framework of the political system is not universally agreed upon. Many individuals and groups do not subscribe to the view that state resources and services are best distributed in the political marketplace setting. On the contrary, they contest that the political market is prone to failure and that all preferences are not always considered when decisions are made. Since it is not something that everyone accepts, having a political system based on the law of the market does not satisfy the jurisgenerative dilemma. Marketplace rationality results in the law of some over others and consequently makes true self-government impossible.

\begin{quote}
Only republicanism, Michelman claims, creates the conditions whereby all people can come to \underline{agreement} about the regulative ideal that controls the workings of the political system. Through a process which Michelman calls "\underline{dialogic modulation}," the republican emphasis on discourse and deliberation can allow individuals to come together so that they can establish the norms that should govern social interaction. "In speaking of dialogic ‘modulation’ of participant’s pre-political understandings, I have meant to allow--as the American constitutional tradition evidently enjoins us to allow--for the possibility of cases in which validation occurs when participants, rather than ‘abandoning’ their commitments, come to ‘hold the same commitments in a new way.’"\textsuperscript{59} If individuals are able to reconsider beliefs they have in the light of collective discussion then it is possible, so the argument goes, that a consensus could be reached about the fundamental laws that guide the legal and political systems.
\end{quote}

\textsuperscript{58}Ibid, 1508, 1511-12. \\
\textsuperscript{59}Ibid, 1527.
Dialogic modulation operates with reference to what Michelman terms, drawing on the work of Drucilla Cornell, "recollective imagination." The recollective imagination is the common ground on which the sort of consensus described above can be achieved. Michelman writes that

[jurisgenerative political debate among a plurality of self-governing subjects involves the contested "recollection"... of a fund of public normative references conceived as narratives, analogies, and other professions of commitment. Upon that fund those subjects draw both for identity and... for moral and political freedom. The fund is the matrix of their identity "as" a people or political community, that is, as individuals in effectively persuasive, dialogic relation with each other, and it is also the medium of their political freedom, that is, of their translation of past into future through the dialogic exercise of recollective "imagination." The republican idea of political jurisgenesis thus presupposes... that such a fund of normatively effective material--publicly cognizable, persuasively recollectable and contestable--is always already available.

In order for individuals to be able to come together to agree about regulative ideals there must be a common “fund” of norms to mediate discourse and debate. Underlying communal deliberation must rest a foundation of values that serves as a linguistically mediated space for social intercourse. Through shared norms diverse sets of individuals with differing life situations and experiences can reach an accord with respect to how the system of self-government should function.

Key to reaching this type of accord, however, is the stipulation that all groups, with their varied outlooks and insights, be allowed to contribute to the recollective imagination. If a particular group, for example, homosexuals, are prevented from being who they are, if they are unable to live their lifestyle according to their own values, then the recollective imagination, upon which the social order is based, will not take into account a segment of the population and, consequently, the jurisgenerative dilemma will remain unresolved. Because he thinks that it is important that all groups be allowed to contribute to the common fund of norms, Michelman calls for an increased judicial role that would protect previously marginalized groups.

If republican constitutional possibility depends on the genesis of law in the people's on-going normative contention, it follows that constitutional adjudicators serve that

62 I use homosexuals as an example because Michelman directs his article as a critique of the Supreme Court's decision in Bowers v. Hardwick (478 U.S. 186 (1986)) which held that sodomy could be proscribed by state law.
possibility by assisting in the maintenance of jurisgenerative popular engagement. Republican constitutional jurisprudence will to that extent be of the type that Laurence Tribe calls... "process-based."63 Ely's well-known and controversial justification of judicial review as "representation reinforcing."64 There will, however, remain a difference of substance between Ely's process-based theory of judicial review and the one I have in mind, reflecting the difference between conceptions of political possibility respectively informing our two accounts—pluralist in Ely's case and republican in mine.65

Like John Hart Ely, Michelman is concerned that marginalized groups are repressed and hence denied the opportunity to participate in the political process. Unlike Ely, however, who wants to assure that all interests are represented in the political marketplace, Michelman is concerned that marginalized groups be allowed to participate so that they can engage, with others, in the process of dialogic modulation and therefore come to a consensus about legal structures that guide the political process. It is important that all voices be heard in the political process no just so that everyone may have a chance to influence the political market, rather all individual outlooks must be included so that public deliberation can transcend competing interests and encompass the good of the entire society. Thus, Michelman is a strong critic of Court decisions such as Bowers v. Hardwick because they do not allow a certain segment of the population to contribute to the ongoing communal debate surrounding regulative ideals. Through active judicial intervention based on overcoming the jurisgenerative dilemma, Michelman believes that all points of view can then be taken into account and therefore the balance between self-government and a government of laws that the Founders achieved can be maintained.66

66 In this way Michelman anticipates the Court's recent shift towards defining rights in terms of personhood. See, for example, the Court's decision last year in Planned Parenthood of Southeastern Pennsylvania v. Casey (No. 91-744). In ruling on a challenge to provisions of the Pennsylvania Abortion Control Act, Justices Kennedy, O'Connor, and Souter, writing for the majority, observed that the decision to have an abortion involves the most intimate and personal choice a person may make in a lifetime, choices central to personal dignity and autonomy, [which] are central to the heart of liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under the compulsion of the state. ... Though abortion is conduct, it does not follow that the state is entitled to prescribe it in all instances. That is because the liberty of the woman is at stake in a sense unique to the human condition and so
Although Michelman takes a considerably different route in developing his vision of republicanism, his overall approach to an analysis of social and political discourse encounters many of the same limitations faced by Sunstein. The starting point for Michelman’s analysis is a central dilemma he perceives at the center of the American Constitutional tradition. From this dilemma he then develops a theoretical perspective that can make sense of, and ultimately resolve, the contradictions. The notion of jurisgenerative politics rests on the idea that there is a recollective imagination that serves as a backdrop for political interaction and that all groups in society must be allowed to contribute to this backdrop. Only by doing this can common ground for deliberation and debate be established and the jurisgenerative dilemma be transcended. In order to make this recollective imagination a reality Michelman then purposes an active judicial role to facilitate the participation of formerly marginalized groups in the political process. Thus, Michelman directs the judiciary to open heretofore closed channels of political communication to these groups; the structure of government is modified based on the idea of a recollective imagination. Like Sunstein, Michelman creates an ideal, a recollective imagination to which all members of society contribute, and then he argues for the structural channels that will allow for the needed types of discourse.

Again, as I will argue later, what is troublesome in all this is that nowhere in Michelman’s thinking do we see any interaction between the theoretical level where the recollective imagination is developed and his analysis of how actual political structures can place limitations on the types of discourse possible in society. In Chapter 2, then, I will illustrate how this way of conceptualizing discourse does not consider that the rise of technical rationality has made meaningful debate and deliberation impossible regardless of the forums created for that debate.

unique to the law. . . . [A woman’s suffering resulting from an unwanted pregnancy] is too intimate and personal for the state to insist, without more, upon its own vision of the woman’s role, however dominant that vision has been in the course of our history and our culture. The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society. (9-10).

In Casey the Court expands on Michelman’s idea that an individual must be able to develop a sense of self. Like the right of Hardwick to express his sexual orientation, the Court in Casey argues that a woman, if she is to be allowed to define who she is a person, must be allowed to make determinations about issues such as what is human life and whether or not she wants to bring another human life into the world. In Chapter 3 I argue that this notion of personhood expounded by Michelman and the Court is actually damaging to the overall level of social and political debate.
Unlike Sunstein and Michelman whose works are based primarily on legal theory, Michael Perry’s interests in republicanism stem largely from his investigations into moral philosophy. Specifically, Perry is interested in the relationship between the moral development of society and the political and legal systems that operate within that society. In his book *Morality, Politics, and Law*, Perry states the central question of his study in the following way:

> How can we, the members of a morally pluralistic society, hope to resolve our conflicting political claims through a discursive process given, first, our deep moral differences and, second, the absence of a transcendent conception of justice? From the perspective of the person as inevitably partisan in the subjective circumstances—as inevitably a member of some particular moral (perhaps religious) community within the larger pluralistic society—the question is: How can I, a member of one moral community among many, hope to engage in productive moral discourse with persons outside my moral community, given our moral differences and the absence of transcendental principles of justice?

In short, Perry asks how moral claims can be mediated within a political system that takes as its foundations the representation of diverse interests. Perry investigates the ways in which the political process can be used as a system that allows participants with different worldviews and moral beliefs to engage in meaningful debate and deliberation about the good of the entire society. To do this, however, Perry must first develop a theory of morality and then connect this theory to the functioning of the political and legal systems.

The first part of *Morality, Politics, and Law* is devoted to defining “morality” and illustrating how individuals (and societies) gain moral knowledge. Perry calls himself a “moral cognitivist” and a “moral relativist.” By this he means that, in contrast to “moral skeptics” who doubt the existence of any sort of morality, Perry believes that moral knowledge exists, but, in contrast to “moral foundationalists” who find one source of morality, he believes such knowledge finds its source in various social groups. Perry labels this view of morality the “naturalist” position and defines it in this way:

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According to the naturalist conception, moral knowledge is knowledge of how to live so as to flourish, to achieve well-being. More precisely, it is knowledge about how particular human beings... must live if they are to live the most deeply satisfying lives of which they are capable. Human beings are social in the sense, inter alia, that they require society—and the artifacts of society, especially language and concepts—if they are to realize their distinctively human capacities, like speech and thought, and acquire “the information...[they] need[] to get...[their] bearings to make up for...[their] lack of hereditary instructions,” indeed, their very identities, as individual persons, are achieved in and through relationships with one another. Moral knowledge is knowledge of how particular human beings ought to live if as social entities they are to flourish. Thus moral knowledge is primarily about what sort of person a particular human being ought to be...if she is to live the most deeply satisfying life of which she is capable.68

There are two notable aspects about this definition: First, Perry posits the source of moral knowledge within the individual’s drive to “flourish.” Morality, then, is not found in transcendental or metaphysical principles; individuals, in their attempts to actualize their “distinctively human capabilities,” necessarily become a part of a moral system. Second, this morality, located in individual flourishing, can only be realized in a social context. Because human beings are social creatures it is only possible for individual humans to flourish, i.e., act morally, in concert with other humans. Morality, while centered on individual flourishing, can only be actualized in social interactions.

Despite the social nature of morality, however, “[i]t bears emphasis that the question of how a particular human being ought to live so as to flourish does not presuppose that there is but a single way for all humans to achieve well-being. The notion that there is only one such way is implausible.”69 It is implausible because the key to morality is individual flourishing. Although such flourishing is only possible in society this does not mean that everyone does this is in the same way. It is in this tension between the individual and social dimension of morality that Perry develops his notion of moral discourse. Assuming that morality is different for different individuals and morality can only be actualized in a social setting, how, Perry asks, can the various subjective definitions of flourishing be mediated so as to form a cohesive social whole? The answer to this question, Perry thinks, lies in the shared traditions or beliefs of a society. Such shared traditions or beliefs can serve as the locus for a moral discourse that allows individuals to

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68Ibid, 11. (Emphasis in original; Ellipses and brackets in original).
69Ibid, 12.
participate in a social setting and therefore contributes to their individual flourishing. Perry writes that "there cannot be productive moral discourse in the absence of relevant shared beliefs."\(^{70}\)

The facts that human beings are members of a single species, that they have at least some basic interests in common as members of the same species, and that they inhabit the same planetary environment explain why there are beliefs common to all human beings. One might want to portray certain of these beliefs—"deep" beliefs about, for example, space, time, causality—as "transcendental" constraints on reasoning or discourse. They are beliefs presupposed by whatever else we believe; in that sense they can be seen as transcendental constraints on our believing anything at all.\(^{71}\)

Perry, however, believes that shared moral beliefs go beyond those that result from the shared identity all individuals have by virtue of the fact that they are members of the human species. Because human beings are social beings, Perry argues that people are linked to one another through their ability to meaningfully communicate with one another. That is, because different moral positions are the subject of social debate and discussion this entails that certain commonalities exist which allow individuals with different conceptions of morality to understand each other; because diverse individuals associate with one another it is necessary for them to have some sort of common ground that allows them to communicate with one another. Perry quotes Ronald Beiner on the role that communication plays in providing a locus for moral development:

Necessarily... [moral questions] must be submitted to criteria of judgement to which (ideally) all those judging can assent. That is, there must be underlying grounds of judgement which human beings, qua members of a judging community, share, and which serve to unite in communication even those who disagree (and who may disagree radically). The very act of communication implies some basis of common judgement. There must be some agreement of judgement on what would count as valid historical evidence, or valid moral considerations, such as would tend to confirm or contradict one political judgement or the other (although it may be well be that none of these considerations is conclusive). For judgement to be at all possible, there must be some standards of judgement, and this implies a community of judgement, that is, agreements in judgement at a deeper level than grounds those at the level of ordinary political argument. In this sense, discourse relies upon an underlying substratum of agreements in judgements. The very possibility of communication means that disagreement and conflict are grounded in a deeper unity.\(^{72}\)

Perry contends that in order for individuals with different conceptions of morality to be comprehensible to one another requires that there exist common standards of judgement. Such standards inform members of different moral communities how they are to adjudicate conflicts.

\(^{70}\)Ibid, 50. (Emphasis in original).
\(^{71}\)Ibid, 51. (Emphasis in original).
\(^{72}\)Ronald Beiner quoted in Ibid, 154. (Emphasis and ellipsis in original).
Perry sees these shared judgements originating in the social, political, and cultural traditions that capture the commonalities that exist between diverse sets of social groups. In a way that is not unlike Michelman’s recollective imagination, Perry posits the existence of a historically generated fund of meaning which serves as a backdrop on which discourse can occur.

It is in the American Constitution and constitutional tradition that Perry finds a primary source of shared beliefs that can mediate differences between the opposing conceptions of morality and therefore contribute to individual moral development. Perry asks:

In what sense and to what extent is American society a true political community, “a judging community,” notwithstanding its morally pluralistic character? In the sense and to the extent the various moral communities that together constitute the pluralistic society share certain basic aspirations as how to the collective, the life in common, should be lived. There are such shared aspirations [in America]: for example, the freedoms of speech, press, and religion, due process of laws, and equal protection of the laws.73

The key to the Constitution and the constitutional tradition lies in aspirational meaning of many of its major provisions. In assessing the ongoing debate over “originalist” versus “nonoriginalist” interpretations of the Constitution, Perry notes that that elements of both positions explain the role that Constitution plays as a lodestar for social (and consequently moral) discourse. Generally speaking, originalism stresses the importance of the framer’s intent for Constitutional interpretation when they created and amended the Constitution. Perry characterizes this outlook as backward-looking: “One must look behind the text, to the original beliefs, if one is to comprehend the text.”

What the Constitution means, to the originalist, is what it originally meant. Its meaning to the originalist is its original meaning. For the originalist, to enforce the Constitution is to enforce it as originally understood. . . . For originalism, then, to “interpret” the Constitution is to ascertain the original meaning—the beliefs the text was originally understood to signify—and then to answer the question of what significance, if any, those beliefs have for the conflict at hand, what those beliefs, if accepted, require the court to do, if anything, with respect to the conflict at hand. Thus, for originalism, the interpretation of a constitutional provision comprises two interpretive moments: a moment in which the original meaning/understanding of the provision is ascertained (to the extent possible) and a second moment in which the significance of that meaning for the conflict at hand is ascertained.74

In contrast, Perry characterizes nonoriginalism as forward-looking, “[t]he political community must respond to the incessant prophetic call of the text—must heed the aspirations

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73 Perry, Ibid.
74 Ibid, 132. (Emphasis in original).
signified by the text—and thus create and give (always provisional, always-reformable) meaning to the text, as well as take meaning from it.”

To the nonoriginalist, unlike the originalist, what the Constitution means is not merely what it originally meant. Some provisions of the constitutional text have a meaning in addition to the original meaning: Some provisions signify fundamental aspirations of the American political tradition. . . . It seems invariably (though not necessarily) the case that the aspirational meaning of a constitutional provision, like the free speech clause of the first amendment, has grown out of the original meaning. The aspirational meaning has emerged over time—in the course of constitutional adjudication, and, more generally, of political discourse. . . . as a progressive generalization of the original meaning. As a progressive generalization of the original meaning, the aspirational meaning of the Constitution is not inconsistent with, but indeed includes, the narrow original meaning.

The aspirations Perry refers to are the open-ended Constitutional provisions which signify broad goals society should either protect or move towards; aspirations are general values that are seen to be vital for social prosperity.

For the American political community, the constitutional text is not (simply) a book of answers to particular questions. . . . It is, rather, a principal symbol, perhaps the principal symbol, of fundamental aspirations of the tradition. . . . The constitutional text, like other foundational symbols for other human communities, serves a crucial role in the life of the political community, for confronting and struggling with the not-to-be-forgotten aspirations of the tradition. The text is a principal occasion of mediating past and present.

Unlike the originalist view, the nonoriginalist theory of interpretation considers how constitutional doctrine has evolved over time as a result of its continuing dialogue with different historical contexts. For the nonoriginalist, it is these aspirations that then guide judicial decision-making.

For nonoriginalism. . . . to “interpret” some provisions of the Constitution is, in main, to ascertain their aspirational meaning and then to bring that meaning to bear—that is, to answer the question of what significance, if any, the aspiration signified by the relevant provision has for the conflict at hand, what that aspiration, if accepted, requires the court to do, if anything, with respect to the conflict at hand. Thus, for nonoriginalism no less than originalism, the interpretation of a constitutional provision comprises two interpretive moments: a moment in which the aspirational meaning of the provision is ascertained and a second moment in which the significance of that meaning for the conflict at hand is ascertained.

It is because of his concern with moral discourse that Perry favors the aspirational qualities of nonoriginalism over originalist theories of constitutional interpretation. Aspirations, because

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75 Ibid, 139.
76 Ibid, 133-4. (Emphasis in original).
77 Ibid, 139, 141. (Emphasis in original).
78 Ibid, 136.
they define the general goals and aims of the country, can serve as common ground to mediate between individuals who have different specific outlooks of how the country can best realize these goals. By referring to the central aspirations of the American political tradition Perry argues that individuals and groups with diverse outlooks can unite around the broad directions in which they all want society to move. "Even divergent judgements of the most deep-seated and fundamental kind are rooted in some relation of community, otherwise one would lack the concepts with which to disagree." Aspirations are the embodiment of such a community. Although different individuals and groups may have different ways they think society can best realize the aspirational goals of the Constitution they can all agree that these aspirations are worthwhile goals.

By providing a common ground for public debate these aspirations also function to cause what Perry calls a "deliberative, transformative politics." In other words, aspirations provide the foundations for dialogue between diverse members of society and thus can allow individuals to revise their preexisting opinions and beliefs through discursive interaction with other members of society.

[Deliberative, transformative politics], in contrast to a politics that is merely manipulating and self-serving, is one in which the questions of what ought we want and, therefore, who ought we to be are open not closed. Whereas manipulative politics presupposes the authority of existing preferences and is simply an instrument a citizen or group uses to maximize her or its preference of satisfaction, deliberative politics is in part an instrument for calling (some of) our existing preferences into question--for challenging them--and, ultimately for "the transformation of preferences through public and rational discussion." On this view, our public life includes on-going moral discourse with one another in an effort to achieve ever more insightful answers to the questions of what our real interests, as opposed to our actual preferences, and thus what sort of persons... ought we to be.

Like Sunstein and Michelman, Perry believes that public engagement with others will allow an individual to enlarge and refine his or her outlook. Thus, aspirations not only facilitate communicative interactions between individuals, they also allow those individuals to revise their opinions because of that interaction. It is for this reason that Perry considers his theory a republican theory. Quoting Ronald Beiner again Perry observes that

79 Ibid, 155.
80 Ibid, 152. (Emphasis in original).
communication between subjects joined in a community of rational dialogue may entail a process of moral self-discovery that will lead us to a better insight into our own ends and firmer grasp on our own subjectivity. Here politics functions as a normative concept, describing what collective agency should be like, rather than abiding by its present devalued meaning. The political expression of this ideal is the republican tradition.81

Given the aspirational quality of the Constitution, Perry sees judges, and in particular the federal judiciary, fulfilling an important role in moral discourse. He notes that

[b]y virtue of its political insularity, the federal judiciary has the institutional capacity to engage in the pursuit of political-moral knowledge—a search for answers to the various questions as to how we, the political community, given our basic aspirations, should live our collective life, our life in common—in a relatively disinterested manner that has sometimes seemed to go beyond the reach of the electorally accountable branches of government, for many of whose members the cardinal value is “incumbency.”82

Unlike the legislative and executive branches who are (ideally) responsive to constituencies that demand certain outcomes in specific cases, the federal judiciary is better able to think in terms of the broad aspirations of the Constitution because it has life tenure. Perry cites constitutional theorist Alexander Bickel’s observation that

an advantage that courts have is that questions of principle never carry the same aspect for them as they did for the legislature or the executive. Statues, after all, deal typically with abstract or dimly foreseen problems. The courts are concerned with the flesh and blood of an actual case. This tends to modify, perhaps lengthen, everyone’s view. It also provides and extremely salutary proving ground for all abstractions; it is conducive, in a phrase of Holmes, to thinking things, not words, and thus to the evolution of principle by a process that tests as it creates.83

Although the legislative and executive branches are not unconcerned with the constitutionality of a particular statue it is more likely that they would center their concerns on the statue’s technical feasibility, i.e., how the statue addresses a perceived problem or need. The judiciary, however, can test the case at hand through reference to constitutional tradition and precedent, both of which link the specifics of the case to the broader aspirations of the Constitution. In this way judges can keep alive the historically created and preserved aspirations relevant to contemporary society.

The judiciary’s advantageous position with regard to aspirations, however, does not answer the question of how it go about connecting traditional aspirations to contemporary issues,

82 Ibid, 147.
thereby mediating the past and the present. One of the central purposes of Morality, Law, and Politics is to furnish judges with a set of principles that can guide them in this process of keeping alive the aspirations of the American political tradition. Perry is very concerned that since the court system is a countermajoritarian institution it must have its influence limited in order to prevent judges from stifling the types of moral discourse that he advocates. Whereas Sunstein and Michelman see a fairly active role for the courts in stimulating public debate and deliberation, Perry defines the courts’ role more narrowly. Judges, in his view, must only strike down legislation when such legislation violates the aspirations of the Constitution. When invalidating legislation

[t]he judge must be confident of her position that the policy choice is ruled out by the relevant aspiration(s). ... If the issue is one about which other public officials—including not merely other judges, but also legislative and executive officials—have truly deliberated, and if, after deliberation, they have concluded that the policy choice is not ruled out by the relevant aspiration, the judge must face the possibility that they are right. To the degree that possibility seems to her a realistic one, to that degree she should hesitate to invalidate the policy choice.84

Perry is concerned that if judges strike down legislation because it disagrees with the judge’s particular vision of an aspiration that they will, in effect, substitute their outlook for the broader process of moral discourse where groups with different outlooks engage in debate and deliberation over issues. For Perry, areas where there are disagreements over the specific meaning of an aspiration are important sites where deliberative, transformative politics can take place. Through reference to abstract aspirations individuals and groups can mediate their subjective outlooks and, hopefully, come to some sort of an agreement. If the courts intervene prior to this process, however, they circumvent this process by inserting the views of the court where communicative interactions might have taken place. It is for this reason that Perry is a strong critic of the Court’s decision in Roe v. Wade. Because Roe involves debate and deliberation about some of the central aspirations of the Constitution Perry argues that the Court improperly stifled public debate: it established legal precedent that dictated that the right to an abortion existed under certain conditions. According to Perry’s view of moral discourse this precedent, by dictating one outcome, prevented debate and deliberation on other levels of government over the relationship

84Perry, Ibid, 170.
between abortion and constitutional aspirations. The dialogic process of deliberative, transformative politics was halted because one set of ideas was determined by the Court to be correct interpretations of the Constitution. Because of the effects that such action has on moral discourse, Perry argues that the courts should limit itself to intervening only in areas where a particular provision clearly violates one of the aspirations of the Constitution.

Like Sunstein and Michelman, Perry uses his vision of republican deliberation (in this case a vision based on moral development) to dictate the structural organization of political institutions. Because moral development requires individual and group deliberation about the central aspirations of American society, judges, since they are largely insulated from political pressure, must keep those aspirations alive and take care not to interfere with moral discourse. If judges are sensitive to the nature of their authority as well as its limits then moral discourse can flourish and a deliberative, transformative politics can be realized. Perry fails to consider, however, that specific context of contemporary American society, a context shaped by social, political, and economic institutions, may prevent moral discourse regardless of whether or not judges emphasize the aspirational qualities of the Constitution. The ideal of moral discourse and the aspirations of the Constitution are determined first thereby making the stimulation of social and political discourse simply a matter of assuring that adequate social and political space for communication exists. This view is oversimplistic because it neglects to examine the possibility that the institutional world of social and political debate has been conditioned by certain forces so that meaningful communication has become impossible.

As I have alluded to above, although I respect Sunstein, Michelman, and Perry's desire to move American government towards a system where public debate and deliberation centering around the good of the community prevails, I find much of each scholar's thinking unpersuasive because of the way it approaches the study of discourse. Obviously, each man believes that some forms of discourse are preferable to others (witness the attacks on pluralism and the praises of
republicanism). Substance, then, is a consideration outside of structure. The civic republican scholars make the mistake, however, of assuming that just because substance and structure are two levels of analysis with regard to discourse they, therefore, are independent. It is my hope to prove in the following pages that nothing could be further from the truth. Because each thinker does not integrate his formulation of republican principles with his study of American institutions as they operate today each neglects to consider the possibility that existing social and political structures militate against or prevent a discourse centered on the public good from ever being realized. In other words, the kind of communication Sunstein, Michelman, and Perry conceptualize may be incompatible with how the world actually is. Taking the ideal of a political system where the definition of the individual and his or her wants and needs are the product of public debate, Sunstein, Michelman, and Perry then move to adjust the structures of the government to achieve this goal. This view reveals a deficiency in their outlooks on the dynamics between the substance of discourse and the structures in which it is said.

Because Sunstein, Michelman, and Perry use an ideal form of communication as a lens through which to examine social and political practice, each sees the problem in terms of creating more institutional space for debate and deliberation. The substance of the discourse is presupposed in the ideal, therefore, the only real question the civic republican scholars have when examining American institutions is how to create the channels in which that discourse can be communicated. They never consider, however, the flip side of this method. Because they start with a idealized conception of discourse and look at reality through this lens Sunstein, Michelman, and Perry suggest alterations in political practice that are in keeping with the ideal. What if, though, these concrete social, political, and economic structures make a discourse centered on the public good impossible? If this is the case then merely making superficial adjustments to these structures will not change the content of what is spoken. Rather, the entire operation of the given set of institutions, as well as of their basic principles, must be reconsidered. Adjustments in the

85Whatever one's definition of reality may be.
functioning of these structures must be made in light of a desired type of discourse but that type of discourse should not be assumed. As I argue more fully in the next chapter, because of the rise of what Habermas calls technical rationality, it is important we recognize that structural modifications can alter the kinds of communication possible in a similar way that theories about the kinds of communication that are desirable can guide structural modifications. Just as it is illogical to make ad hoc changes in the way the government operates and then develop a theory to explain those changes, so too is it non-sensical to develop a theory that is immutable in the face of, or insensitive to, the practical considerations that arise from a study of institutions. Substance and structure are in a dialectical relationship and the failure to recognize this risks a reductionist understanding of discourse. Our imaginative capabilities, which have limitless horizons, must be reminded of the limitations inherent in the social, political, and economic spheres, and the parochial and bounded outlook of the status quo must be reminded of, inspired by, and aspire to the unbounded potentialities inherent in our imaginations. Failure to make either of these connections will result in either quixotic utopianism or in stagnant realism.

To summarize, the gap between the civic republican scholars' considerations of the substance of discourse and its structure result in a disjuncture between the goal of their analysis, republican deliberation, and the discourse that actually prevails. By taking a particular form of discourse as their aim and then translating the concern for substance back into structural considerations each man only results in enlarging the scope of public debate without modifying its substance. Only by understanding substance and structure as being dialectically connected can the translation from theoretical goals about communication be converted into institutional modifications in the dynamics of discourse without subsequently losing the essence of the theory. A change in the substance of discourse can not be made until one grasps how institutions affect that substance. Until this is done, structural modifications of social and political systems, as dictated by Sunstein, Michelman, and Perry, will only create new avenues for discourse but leave the type of discourse that individuals engage in fundamentally unchanged. What is necessary, then, is both a

86 I argue this more fully in Chapter 3.
theoretical apparatus that can explain this dialectical relationship and aid in the transition from a
desired kind of communication to its realization in the working of actual political mechanisms, as
well as an understanding of the fundamentals of communication that can establish a normative
framework that can differentiate and attach value to competing conceptions of discourse. As we
will see, the works of Jurgen Habermas provide just such a theoretical apparatus and normative
framework.

The Critical Theory of Jurgen Habermas

Habermas’ initial systematic attempt at social theory comes in his first book, *The Structural
Transformation of the Public Sphere*. In this work Habermas establishes the broad range of
research interests which serve as a foundation and a point of departure for his subsequent writings.
Generally speaking, *Structural Transformation* is an attempt to document both the differentiation of
public and private spheres in eighteenth-century bourgeois society and how this process of
differentiation was undermined as a result of the rise of capitalism. While a full discussion of
Habermas’ views on the public and the private will have to wait until Chapter 2, what I want to
focus on now is the way that Habermas, early in his thinking, chooses to proceed when examining
discourse. This is important because much of Habermas’ later writings are in reaction to
methodology of his first book.

In *Structural Transformation* Habermas employs a method of immanent critique that was
indicative of Marx and the early Frankfurt School. Immanent critique is a mode of analysis
designed to reveal contradictions between, in this case, the ideals proclaimed by the doctrine of the
bourgeois public sphere and the prevailing realities which run contrary to these ideals. The central

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ideal that governed the bourgeois public sphere was what Habermas called “discursive will-formation” which involved “equal, open, and constraint-free discussion.”

Rick Roderick describes how Habermas saw this ideal functioning:

Within the public sphere, the “reasoning public” was to attempt to achieve a consensus on political questions under conditions of the open and free discussion of all issues without dogmatic appeal to authority or tradition. Under such conditions, “public opinion” would possess legitimate authority as an expression of “the rule of reason” and, thus, be capable in principle of truly articulating the general interest.

Habermas’ method is to demonstrate how this “open and free discussion” was not being realized because of the effects unleashed by the capitalist system of production. His central argument in Structural Transformation is that the ideal public sphere, which was posited as a distinct sphere in relation to private interests, gradually collapsed under the weight of private interest and the requirements of an industrialized society—a process Habermas calls the “refeudalization of the public sphere.” With the collapse of the public sphere as a distinct realm of social intercourse the communicative forms of the private sphere invaded the public sphere and made substantive debate and deliberation impossible. In other words, Habermas documents the decay of the substantive ideal of public discourse as a result of social, political, and economic (structural) forces.

Habermas continues to rely on this method of immanent critique in Theory and Practice published in 1963, but in later works Habermas shows an uneasiness with this approach.

This uneasiness was conditioned by what Habermas came to see as the relativistic implications of immanent critique. It could only appeal to truths or values which are internal to a given society in a given historical period. Immanent critique can escape relativism only if it, however tacitly, relies on a theory of history which can objectively distinguish between “what men and things could be and what they actually are.” The method loses its critical thrust if a society refuses to recognize those truths and values as their own and the theory of history offers no objective assurance that they ever will.

As I noted in the Introduction, one of Habermas’ central concerns has been to defend the Enlightenment notion of reason which posits the existence of discoverable objective truths. In

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89 Ibid, 42.
90 Ibid.
91 Habermas, Structural Transformation, 195. See Chapter 2 for a more complete discussion of this process.
92 Roderick, Foundations of Critical Theory, 43.
93 See page 11.
order to retain this notion, then, Habermas had to ground his immanent critique in a theory which could demonstrate the objectivity of its critique. Unfortunately, however, immanent critique, as it was employed by Marx and the early Frankfurt School, attempted to objectively ground their criticism in a theory of history that Habermas found inadequate.

In an untranslated essay "Marx und den Marxismus" written in 1957, Habermas argues that Marx’s entire “philosophy” of history was directed, ironically, to the abolition of philosophy.94 “Traditional philosophy was to be replaced by a ‘philosophy of history’ that was no longer strictly philosophical because it did not rest on ontological or metaphysical grounds.”95 History was to be seen not as an unfolding of a metaphysical plan or a reference to the ontological status of things, rather, on Marx’s view, history was a progression of practical events. Habermas describes this interpretation of history as “a philosophy of history with a practical intent.”96 The “practical intent” being the modes of production that dominate in a society. For a variety of reasons, though, Habermas notes that this perception of history was belied by aspects of contemporary society. For example, the welfare state resulted in a significant degree of interpenetration between base and superstructure and the rise in the standard of living for most citizens dissolved the revolutionary potential of the proletariat.

In order to answer many of the objections raised against the Marxist interpretation of history, Habermas returns to Marx’s fundamental category of historical development—the mode of production. It is through a reworking of this fundamental category and the relationship between base and superstructure that Habermas finds an alternative theory that can serve as the basis for critique. On Habermas’ reading, Marx recognizes two levels that center around the mode of production: labor and interaction. Labor “highlights the instrumental aspect of action. A single individual relates to external nature, as subject to object, oriented towards its efficient mastery.”97

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94See Roderick, Foundations of Critical Theory, 44, for excerpts.
95Ibid, 44.
96Quoted in Ibid.
97Steven Seidman, Jurgen Habermas on Society and Politics: A Reader, (Boston: Beacon Press, 1989), 12. (Hereafter cited Seidman, Habermas on Society and Politics).
While, in contrast, interaction involves “conceptualizing labor as a social process [which] points to a communicative model of action. Individuals relate to other individuals, subject to subject; their behavior is guided by shared expectations, beliefs, and norms.”

When tracing out the historical development of material reproduction, however, Habermas notes that Marx has a reductionist tendency to collapse these two levels; interaction is seen as being generated and determined by labor.

Habermas’ central concern in a reconstruction of historical materialism is to demonstrate that there is developmental logic for cultural traditions and institutional change that is not solely dependent on an economic substructure. Whereas Marx conceived of progress in terms of quantitative increase in the forces of production and qualitative leaps in the relations of production, Habermas asserts that development also occurs in the sphere of interaction.

It is because of Marx’s failure to recognize the interactive sphere as having a developmental logic of its own that Habermas finds his understanding of history insufficient to capture the general process of societal development, an understanding of which could serve as the grounding of a critical theory. A theory that takes into account both levels of social development—labor and interaction—must then explain the way society develops in terms of each of these levels and how these two levels interact with one another. “From this multi-dimensional theoretical standpoint, emancipation involves the release from the material constraints of scarcity and a process of

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99 The locus classicus of the reduction inherent in the base-superstructure model is found in Marx’s preface to A Contribution to the Critique of Political Economy:

In the social production of their existence, men inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of the material forces of production. The totality of these relations of production constitutes the economic structure of society, the real foundation on which arises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political, and intellectual life. It is not the consciousness of men that determines their existence, but their social existence that determines their consciousness. (Quoted in McCarthy, The Critical Theory of Jurgen Habermas, 17)

100 Robert Holub, Jurgen Habermas: Critic in the Public Sphere, (New York: Routledge Press), 102. (Hereafter cited Holub, Critic in the Public Sphere).
increasing reflexivity, consensual strategies of conflict resolution, and the democratization of the public realm.”

To overcome the reductionist tendency in Marx that explains social development in terms of labor alone, and to flesh out his understanding of the priority of the communicative dimension of existence over that of labor, Habermas moves towards what Richard Rorty has called the “linguistic turn” in philosophy. As Roderick notes, the linguistic turn in philosophy came largely as a reaction to the Cartesian conception of the self. He writes, “The abstract and one-sided character of the Cartesian concern with the accomplishments of the isolated thinking subject became apparent through investigations into the intersubjectivity of the shared structure of language. Attempts to solve or dissolve traditional philosophical problems were carried out with the aid of formidable new logical and linguistic techniques.” The linguistic turn in philosophy is useful to Habermas because it helps explain developments in the sphere of interaction overlooked by the Marxian understanding of history.

Despite its usefulness, however, Habermas finds a linguistic basis for the thinking subject just as reductionistic as its Marxian counterpart because it abstracts intersubjectivity from social constraints and considers it in terms of logical and linguistic rules alone.

If a concentration on the acts and achievements of the isolated, individual consciousness appears abstract and one-sided in the light of a consideration of our shared linguistic practices, then a concentration on these practices appears equally abstract in the light of consideration of the larger social context within which they are embedded. Thus, the “linguistic turn” leads to the necessity for taking a “social turn.” The work of Habermas not only presents a strong case for this additional “turn,” it also begins the difficult work of appropriating that tradition without which such a “turn” would be in danger of remaining abstract and one-sided. Because an understanding of “social practice” as constituted in both labor and language is central, for Habermas, the epistemological and systematic claims of philosophy can only be carried out as social theory. Further, such a social theory can not ignore the fact that the autonomous dialogue philosophy claims to be, is, and always has been, distorted by social constraints and forms of social domination. This is one sense in which, for Habermas, social theory must be “critical.” A “critical” social theory not only describes social reality, but criticizes it and attempts to change it. Thus, it is theory with a “practical intent.”

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101 Seidman, Habermas on Society and Politics, 13. (Emphasis added).
By turning towards language in order to complement or reconstruct the Marxist vision of history, Habermas is not simply trying to deduce certain rules that govern communication as it operates in the status quo. Instead, Habermas recognizes that the rules that govern logical and linguistic systems are the product of the interaction between the philosophical aspects of language and the concrete social structures that shape and constrain that language. Recognizing this, the challenge then becomes locating a source of criticism that can guide modifications in both the philosophical and practical elements of communication. Habermas attempts to show "that the normative goal of a critical theory (a society free from all unnecessary domination) is anticipated in every act of communication." For Habermas it is crucial that we comprehend the two dimensions that impact language, the philosophical and the practical, so that we can then understand the relationship between the spheres of labor and interaction which serve at the base of his understanding of history. Unlike Sunstein, Michelman, and Perry then, Habermas conceives of the substance and structure of discourse dialectically connected from very early on in his thinking.

Since *Knowledge and Human Interests*, published in 1968, Habermas has been moving steadily towards a theory of communication that is cognizant both of the relationship between labor and interaction and the way that language functions on both a philosophical level and practical

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104 Habermas makes a similar critique with regards to the hermeneutic tradition which attempts to explain the relationship between a historically situated subject who deciphers the meaning of language and the translator, located in a different historical context, who attempts to decipher that meaning as it was understood by the subject. Habermas writes:

The objective framework within which social action can be comprehended without surrendering its intentionalitly is not merely a web of transmitted meanings and linguistically articulated tradition. The dimensions of labor and domination cannot be suppressed in favor of subjectively intended symbolic contents. A functionalist framework can also give non-normative conditions their due. Cultural tradition then loses the appearance of an absolute that a self-sufficient hermeneutics falsely lends to it. Tradition as a whole can be assigned its place; it can be conceived in its relations to the systems of social labor and political domination. It thus becomes possible to grasp functions that the cultural tradition assumes within the system as a whole, functions that are not made explicit as such in tradition--i.e. ideological relations... (Quoted in McCarthy, *The Critical Theory of Jurgen Habermas*. 183-4) (Emphasis in original).


level. The key to this project has been the continual striving to find a critical perspective that can make sense of these various interactions. The identification of such a critical perspective would aid investigations into the dialectical connection of structural (practical) and substantive (philosophical) aspects of discourse by furnishing a normative framework which could assess the contemporary dynamics of communication in terms of how they should operate. Such a normative framework could rescue Structural Transformation from its relativistic immanent critique and give Habermas a richer, more sound view of the communication, the “discursive will-formation,” that is at the center of his vision of the public sphere. Habermas’ analysis of language with a “practical intent” is the focus of most of his work in the 1970’s and early 1980’s and it is to this that I now turn.

Habermas’ views on communication have undergone a significant transformation since Knowledge and Human Interests. Roderick identifies four distinct stages, each of which builds on and attempts to overcome the shortcomings of the previous stages. Because of this, one can not intelligently convey Habermas’ most recent system of communication without first placing it in the context of his earlier thinking. Consequently, we must look at Habermas’ earliest works on communication, albeit in a cursory manner, despite the fact that Habermas almost completely abandons the approaches taken in these works.

The first of the four stages that Roderick identifies he calls “Communicative competence, systematically distorted communication, and the ideal speech situation.” Habermas’

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108 It is for this reason that I have relied heavily on Rick Roderick’s book Habermas and the Foundations of Critical Theory in gaining an understanding of Habermas’ overall communicative project. Of all the secondary material I have encountered on Habermas’ work, Roderick’s book is the only one that was both sequential in its depiction of Habermas’ theory and was written after Habermas’ most recent systematic approach to communication, The Theory of Communicative Action. While Thomas McCarthy’s The Critical Theory of Jurgen Habermas is probably the most exhaustive survey of Habermas’ earlier works, because it was published before The Theory of Communicative Action I found it less useful than Roderick’s book despite the fact that Roderick’s book less comprehensive than McCarthy’s. Because Roderick is aware of Habermas’ most recent systematic view of communication he is able to tailor his overview of Habermas’ earlier work in such a way that earlier theories are seen as logical steps leading towards The Theory of Communicative Action.
109 Roderick, Foundations of Critical Theory. 74. For reasons of space, in focusing on the role of communication I am consciously omitting a discussion of Habermas’ earliest work on discourse contained within Knowledge and Human Interests. Unlike his later work, the theory of language put forth in Knowledge and Human Interests does not center around the fact that language is communicated but focuses instead on critical elements contained within the types of interests people have when communicating. “Essentially [Habermas] postulates three deep-seated interests that inform our preoccupation with various branches of knowledge.” (Holub, Critic in the Public Sphere, 53)
investigations of communicative competence and the ideal speech situation stem from his rejection of the linguistic turn of philosophy without a practical intent. He wants to demonstrate, Roderick notes, that “linguistic universals [which] ‘arise in all natural languages’... cannot be understood only in terms of a universal inventory of lexical components based in the equipment of the individual human organism. They must also be understood in socio-cultural contexts...” To do this, Habermas turns to the fact that individuals not only master universal rules for the creation of linguistically meaningful sentences, they also must learn how to communicate these sentences.

Relying on the theory of speech acts developed by Austin, Habermas details these universal competencies that a speaker must master in order to communicate with another individual. The details of these competencies are unimportant for my present purposes, we need only understand how they contribute to the ability of a speaker to create linguistically meaningful sentences, i.e., sentences constructed according to linguistic rules, so that they can then be communicated and understood by other individuals.

Within these communicative competencies Habermas finds an anticipation of an ideal speech situation where communication is undistorted. That is, the requirements for a speaker to be understood by a listener, the assumed goal of communication, contains within it the standards that determine the ideal situation in which undistorted communication can take place. The competencies that guide the usage of sentences requires that the speaker not be constrained by

9). In Knowledge and Human Interests, Habermas argues that behind each of these communicative interests in knowledge is the ability for individuals “to reflect critically on [their] own presuppositions. This interest is emancipatory because it because it allows us to free ourselves from constraints imposed on us by non-natural, i.e. human causes.” (Ibid) Thus, Habermas saw within human interest in knowledge the anticipation of a society free from domination. In later works, however, Habermas forsakes this approach because of what he calls the “quasi-transcendental” status of this interest in forms of knowledge—a status that fails to resolve the tension between its Kantian and Hegelian dimensions and, consequently, renders it suspect.

11 Ibid, 77.
elements of the social and political world which would make mastery of these competencies impossible. 112 Communicative competency both refers to the substantive rules that guide the formation of utterances and the social and political context in which those utterances are spoken. In this way a study of discourse simultaneously links the substance of communication, the generation of linguistically meaningful sentences, with the structure of communication and provides an emancipatory thrust that both suggests a vision of discourse and ways to overcome the practical obstacles to the realization of that vision.

The second stage in Habermas’ development of a communicative model Roderick calls “Discourse and truth as consensus.” 113 The idea of truth as a consensus, an idea worked primarily in the as yet untranslated essay “Wahreheitstheorin” (1970), serves as a bridge between the ideal speech situation and Habermas’ later concern for universal pragmatics. At the heart of the consensus theory of truth is Habermas’ distinction between communicative action and discourse.

‘Communicative action’ refers to those forms of social interaction in which individuals tacitly and uncritically accept the norms, social practices, and belief systems of everyday life. ‘Discourse,’ on the other hand, explicitly thematises and criticizes the background consensus concerning belief systems, norms, values, and ideologies taken for granted in everyday life. 114

During the course of normal day-to-day communicative interactions Habermas contends that it is possible that one of the norms or values that guides this interaction is no longer readily accepted by one or both of the interlocutors and, as a result, this norm or value becomes the subject of discourse where, Habermas indicates, “validity claims which have become problematic are made

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112 According to Roderick, for Habermas

[b]ased on [these competencies] one can arrive at three “symmetry requirements” which characterise the ideal speech situation and ensure that it is free from “systematic distortion.” These three requirements are the following: (i) unrestricted discussion in which it is possible to “develop strategies for reaching unconstrained consensus;” (ii) mutual “unimpaired self-presentation” in which it is possible to “achieve subtle nearness with inviolable distance among the partners and that means communication under conditions of extreme individuation;” (iii) “full complementation of expectations” which makes it possible “the claim of universal understanding” and universalized norms.” For Habermas, “these three symmetry requirements represent... a linguistic conceptualization for that which we traditionally apprehend as the ideas of truth, freedom, and justice.” (Ibid, 88-9).

113 Ibid, 81.
114 Ibid, 82.
the topic and are examined for their justification." Only in this way can the background consensus of communicative interactions be reestablished.

For individuals to engage in discourse Habermas contends that there are four presuppositions that must fulfilled: First, discourse must aim at agreement among the participants; Second, this sort of agreement must be possible; Third, it is possible to distinguish a true consensus from a false one; Fourth, a true consensus must be accepted by all the participants in the discourse as an objective truth. These four presuppositions become the foundation for the ideal speech situation which can be used as a critical standard to measure the degree to which distorted communication prevails in practice.

Habermas gives this notion stronger a theoretical backing by grounding it in a consensus theory of truth. Habermas' interpretation of this kind of theory holds, according to Roderick, that [t]ruth is the validity claim we attach to propositions by asserting them and thus, at least implicitly, offering them up for discursive vindication. For Habermas, any adequate theory of truth must address itself to the "pragmatics of assertions" which should explain not only under what conditions statements are true, but also under what conditions we are justified in holding statements to be true. Criteria for truth cannot be established in separation from the notion of warranted assertability.

In other words, truth can only be determined under conditions where individuals are able to engage in discourse and subject any problematic ideas to a discursive investigation. As Habermas succinctly puts it "a truth claim can only be made good through argumentation." Because argumentation requires the realization of the presuppositions of the ideal speech situation in practice, the notion of truth stands at the convergence of practical and theoretical consideration. Constraints on discourse in practice must be eliminated if any idea is to be discursively justified and its truth demonstrated. If, because of social, political, or economic factors, and individual is not able to raise validity claims then the goals of discourse--the communication of ideas and mutual comprehensibility--are undermined.

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115 Quoted in Ibid.
116 Ibid, 83.
117 Ibid, 84.
Habermas' most important development in the idea that discursively validated truth claims are inherent in the process of communication comes with his work on universal pragmatics—the third stage in the development of his communicative model. Before I turn to how Habermas uses universal pragmatics as a foundation for critical social theory it is first important to explain what pragmatics, and in particular universal pragmatics, are in contrast to traditional linguistic analysis. In an essay entitled "What is Universal Pragmatics?" Habermas nicely describes the difference between the linguistic and universal pragmatic approach to the study of language:

The basic universal-pragmatic intention of speech-act theory is expressed in the fact that it thematizes the elementary units of speech (utterances) in an attitude similar to that in which linguistics does the units of language (sentences). The goal of reconstructive language analysis is an explicit description of the rules that a competent speaker must master in order to form grammatical sentences and utter them in an acceptable way. The theory of speech acts shares this task with linguistics. Whereas the latter starts from the assumption that every adult speaker possesses an implicit, reconstructible knowledge, in which is expressed his linguistic rule competence (to produce sentences), speech-act theory postulates a corresponding communicative rule competence, namely the competence to employ sentences in speech acts. It is further assumed that communicative competence has just as universal a core as linguistic competence. A general theory of speech actions would thus describe exactly that fundamental system of rules that adult subjects master to the extent that they can fulfill the conditions for the happy employment of sentences in utterances. ... Habermas is interested here in formulating the presuppositions of what makes an utterance comprehensible to the listener. This moves beyond linguistic analysis which generates rules for the construction of meaningful sentences and does not consider the act of communicating these sentences. But, as Holub notes, "Habermas...is not interested in the empirical realm of actual statements or in categorizing statements or in actual speaker intention, motivation, or context. Rather he is looking for principles that are active on a general or universal level whenever we use language pragmatically." Habermas wants to establish the background conditions that make all communication possible.

To this end, relying on Karl Popper's analysis, Habermas contends that every utterance relates to the world on three levels: First, an utterance relates to "an external world of states of affairs and objects." Second, an utterance corresponds to "an internal world of ideas, thoughts,

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119 Holub, Critic in the Public Sphere, 11.
and emotions.” And third, an utterance interacts with “a normative world of intersubjectively
determined norms and values.”120 This threefold relationship, in turn, implies four distinct validity
claims that can be raised in all discourse that aims at reaching an understanding. Roderick notes
that when an individual communicates with another

[he claims to be: (i) “uttering something understandable,” (ii) “giving (the hearer)
something to understand,” (iii) “making himself thereby understandable,” and (iv)
“coming to an understanding with another person.” These validity claims are of the
four following types: (1) comprehensibility... (2) truth... (3) rightness... and (4)
sincerity... Communication depends upon the presupposition that each participant
can justify the validity claims he raises. Although this presupposition may prove
false, Habermas holds that it is unavoidable. For him, the goal of communication is
coming to an understanding in regard to each of the types of validity claims that
culminates in “reciprocal understanding, shared knowledge, mutual trust, and accord
with one another.” Universal pragmatics aims “at reconstructing the universal validity
basis of speech” at all four levels.121

Because the speaker is situated in a three-fold relationship with the world the four validity claims
listed above can be raised to question the background consensus on which communication rests.
These validity claims are situated at a nexus between the substance and structure of discourse; each
validity claim questions the relationship between what the speaker is saying and the world in which
she or he is saying it. For example, the validity claim for truth tests the relationship between the
speaker and the world of external nature; the substance of what is said is compared with the world
about which it is said. Discursive vindication of a validity claim occurs only when an individual
has mastered communicative competencies and the relationship between the speaker and one of the
dimensions of the “world” is verified through discussion.

In his latest effort to develop a model of communication, the intensely complex two volume
work The Theory of Communicative Action, Habermas attempts to locate the rationality of
communication captured in his analysis of universal pragmatics within the broader social context in
which utterances are spoken. For Habermas, universal pragmatics is useful in situating the
individual and his or her utterances in relation to the world in which he or she speaks but its
depictions of communicative rationality and competence do not take account of the essential social
nature of the communicative process. Language is not only oriented towards the expression of

120Ibid, 13.
ideas, it is also a basic component of social interactions between individuals. To supplement universal pragmatics Habermas has to first integrate his theory of communicative rationality with a theory of social action that explains how utterances are used to secure agreement among and coordinate action between individuals. Habermas then has to link this model of communication to an historical context in a way that is sensitive to social development. “In The Theory of Communicative Action, this attempt takes the form of a systematic account of social theory from Marx to Parsons, as well as a formal explication of the ‘reason’ embodied in speech and action and linked to a theory of ‘social rationalisation.’” 122

To demonstrate language’s social usage Habermas pursues two goals simultaneously: First, he reworks the communicative competencies of universal pragmatics so that the speaker is integrated into a larger community where he or she speaks. Second, this ‘social rationalisation’ is then connected dialectically to a theory of social development which documents both the historical stages that society passes through and the impact that these levels of developmental levels have on the ability for individuals to engage in undistorted communication. As will become clear, this integration of social rationalisation with a theory of social development is keenly aware of the dialectical relationship between substance and structure and takes pains to keep this tension alive on many different levels.

Although universal pragmatics represents a sophisticated effort to connect the requirements of discourse with the concrete social and political institutions in which that discourse takes place, Habermas is unsatisfied with the results because he believes that universal pragmatics reifies the way in which communication is generated. I.e., universal pragmatics understands validity claims as being raised only to question the relationship between the speaker and the world to which his or her utterance corresponds; the validity of a speaker’s utterances can be tested only to determine the relation between the utterance and one of the three worlds that the individual is oriented towards. In testing this relationship the validity claims of universal pragmatics fail to consider that the speaker is not acting in isolation but rather is part of a larger community to whom utterances are

122Ibid, 108.
uttered. "[T]he 'normative foundation' Habermas tried to establish for critical theory in his work on universal pragmatics (a 'reconstruction' of the reason embodied in speech) requires completion and correction in a theory of communicative action since society, understood as a 'communication community,' must be approached 'in the first place as a community of (social) interaction and not of argumentation, as action and not of discourse.'" Habermas takes the vision of communicative competence outlined in his theory of universal pragmatics and connects it to the social world in which the speaker exists and to whom the speaker communicates. Habermas is particularly interested in exploring the way that speech is used to coordinate action among individuals in a given society. The addition of the social dimension to his analysis of communication allows Habermas to place the substantive vision of discourse--itself informed by the dialectical interaction of substance and structure--in another dialectical relationship with the structures of the speaker's social world.

Habermas begins his attempt to link universal pragmatics to the use of language in a social setting by outlining the three fundamental ways that an individual can communicatively approach the world. These three categories of social action are an attempt at reworking Habermas initial analysis of Marx's distinction between labor and interaction. By locating the speaker in a community, Habermas is able to distinguish three ways that language can be used to coordinate social action among individuals and can explain the fundamental social activities of labor and interaction. The first category of social action according to Habermas is "[a]ction oriented towards success" and is described as being "instrumental" and occurs "when the action can be understood as following technical rules and can be evaluated in terms of efficiency in dealing with the physical world (a nonsocial context)." Instrumental action involves communication pertaining to individuals manipulating objects. In contrast, the second category, which Habermas calls strategic action, results "when the action [is] understood as following rules of rational choice and can be evaluated in terms of efficiency in influencing the decisions of other social actors."

125 Ibid.
viewed as potential opponents (a social context).” Strategic action involves the use of technical manipulation in interactions with other subjects. An individual engaged in strategic action approaches others with a particular goal in mind and thus interacts with others so that goal can be realized.

The final category of social action Habermas labels communicative action and “occurs when social intercourse is co-ordinated not through the egocentric calculations of the success of the actor as individual, but through the mutual and co-operative achievement of understanding among participants.” Since it does not use language to secure predetermined goals in either a social or nonsocial context, communicative action involves intersubjective relations where individuals are involved in the reciprocal exchange of information.

Central to the concept of communicative action is an idea of action as always embedded in an interactive context. To the extent that acts are linguistically constituted, language embeds us in an interpersonal communicative context. Furthermore, focusing on the linguistically mediated nature of interaction we can observe that communication presupposes agreement on a range of claims about ourselves and the world. Social interaction occurs smoothly to the extent that individuals negotiate some consensus about these claims. Communicative action presupposes, in other words, that action is oriented to agreement about certain basic claims and that some level of consensus is a condition of social reproduction.

While instrumental action is the communicative rationality of labor, strategic and communicative actions, since they occur in a social setting belong to the realm of interaction.

126 Ibid.
127 For further clarification of the distinction between instrumental and strategic action see Thomas McCarthy, The Critical Theory of Jurgen Habermas, 23-5.
129 Seidman, Habermas on Society and Politics, 17.
130 Habermas clarifies his how he now sees language as manifesting itself in social action and how social action takes on various forms:

[T]he communicative model of action does not equate action with communication. Language is the medium of communication that serves understanding, whereas actors, in coming to an understanding with one another so as to coordinate their actions, pursue their particular aims... Concepts of social action are distinguished, however, according to how they specify the coordination among goal-directed actions of different participants: as the interlacing of egocentric calculations of utility (whereby the degree of conflict and cooperation varies with the given interest positions); as a socially integrating agreement about values and norms instilled through a cultural tradition and socialization; as a consensual relation between players and their publics; or as reaching understanding in the sense of a cooperative process of interpretation. (Jurgen Habermas, The Theory of Communicative Action: Reason and the Rationalization of Society, Volume 1, (Boston: Beacon Press, 1981), 101). (Emphasis in original).
Of the three types of communication an individual can engage in Habermas is particularly concerned with communicative action because it is, as Roderick puts it, "linked internally" to the rationality of the validity claims that can be raised in universal pragmatics.131 Communicative action, like universal pragmatics, is concerned with interlocutors coming to agreement about the content of an utterance.132 Unlike universal pragmatics, however, communicative action views this agreement through the lens of the intersubjective relations that are subsequently formed. Habermas' "theory of communicative action is thus based on an analysis of the social use of language oriented towards reaching an understanding, which focuses on the action co-ordinating effects of the validity claims offered in speech acts. Participants in communication can, through offering validity claims, establish intersubjective relations which make possible the socially binding recognition of these claims."133 In other words, the validity claims which test utterances against the speaker's relation to a world, are used as the basis for intersubjective relations. Through the exchange of utterances whose validity claims are not subject to disagreement individuals can communicate with one another and establish socially binding values and norms that then regulate behavior.

The changed orientation of the rationality of communication towards utterances as the foundation of intersubjective agreements has important implications for the source of Habermas' critical account of society. The social turn that communicative rationality has taken allows Habermas to both shift from the notion that an ideal form of speech is anticipated in every communicative act and move further towards the idea that the potential for undistorted communication is an intrinsic part of every utterance and, therefore, can be tested empirically. Roderick observes the importance of communicative rationality in Habermas’ most recent attempts at a systematic vision of communication:

132Instrumental and strategic are not "linked internally" to the validity claims of universal pragmatics since their usage is not prefaced on mutual agreement between discourse partners. The former is aimed only at the technical manipulation of objects and subjects qua objects, and the latter involves the manipulation of other subjects to secure a given end. In neither case is there a reciprocal exchange of information between individuals.
133Roderick, Foundations of Critical Theory, 111.
Communicative rationality is the central concept in Habermas' latest attempt to provide a normative foundation for critical social theory. This attempt at normative justification moves even farther away from "foundationalism" ... which many critics found in Habermas' theory of universal pragmatics, particularly in the transcendental notion of an ideal speech situation. Habermas no longer claims that an ideal speech situation, or any other feature of communicative rationality, directly represents the "image" or anticipation of a concrete form of life. The perfectly rational society is an illusion. Thus, communicative rationality represents neither a transcendental deduction of a utopian critical standard capable of judging concrete forms of life as a whole, nor a telos for a resurrected philosophy of history. Understood formally as a procedural concept, communicative rationality involves an attempt to characterise universal features of communication in their structure and development that remains open to empirical-reconstructive test and refutation. Understood concretely as a sociological concept, communicative rationality involves an attempt to identify empirically the actual social embodiment and historical development of rationality structures, as well as objective possibilities for extending rationality to more spheres of social life.134

Whereas universal pragmatics posits an abstract situation where validity claims are raised in reference to a speaker's utterance and certain requirements are to be met if this validity claim is to be discursively vindicated, by shifting the emphasis of validity claims towards intersubjective relations Habermas locates this abstract situation in specific historical contexts. Through the intersubjective relations that are established in social interactions the requirements of undistorted communication and the discursive vindication of validity claims can be subjected to empirical analysis. In this way the abstract and idealized normative vision can be observed in actual social settings. Through the web of intersubjective relations established in society the fulfillment or non-fulfillment of these validity claims can be analyzed through historical observation; the communicative rationality of undistorted communication is manifested is specific social phenomena.

Individuals can engage in communicative action and establish intersubjective relations on any one of three levels. Habermas writes that "[h]ere we find three dimensions contained in the concept of universal rationality: first, the relation of the knowing subject to a world of events or facts; second, the relation to a social world of an acting practical subject entwined in interaction with others; and finally, the relation of a suffering and passionate subject. . . to its own internal nature, to its own subjectivity, and the subjectivity of others."135 Based on the three possible

relations between an utterance and the world interlocutors may thematize any utterance and test the validity of the statement by engaging in one of five different types of argumentation. Depending the relation of the statement and the world to which it refers individuals can participate in argumentation centered on any of the following: theoretical discourse, practical discourse, aesthetic criticism, therapeutic critique, or explicative discourse. The details of these various forms of argumentation are unimportant for my present purposes. It is sufficient to note that discourse participants can test the validity of a statement used to secure intersubjective agreement according to various types of argumentation that deal with the relation between the utterance and that to which is being referred.

Merely separating out the possible ways that interlocutors can test a statement’s validity, however, is not sufficient for Habermas to construct the foundations of a critical theory of society. As I noted above, because intersubjective relations are concrete social phenomena Habermas must link communicative rationality to a theory of social development. In this way a society can be critically examined in terms of how it, at a given stage of development, compares with a discourse in which all intersubjective relations can be subject to the five forms of argumentation. Communicative rationality explicating in Habermas’ theory of the discursive vindication of validity claims must be coupled with an understanding of social development so that communicative action are placed in the context of a society’s capacity to enter into reciprocal intersubjective relations. To do this “requires moving from conceptual analysis to an anthropological and sociological perspective which addresses the question of a ‘rational conduct of life’ in an ‘evolutionary perspective.’ From such a perspective, the claim to universality of the modern understanding of the world... may be more adequately evaluated.”

By employing such a perspective Habermas’ theory of communicative rationality is more than an idealized set of standards to which all discourse, to a greater or lesser degree, adheres. Instead, in keeping with his desire to secure a notion of Enlightenment reason I discussed in the Introduction, communicative rationality is manifested in a series of evolutionary stages ending with modern Western society. The superiority

136Roderick, 116-7.
of the modern Western outlook is demonstrated through an examination of how in Western society, individuals are able to raise and discuss validity claims thus assuring the potential for a greater degree of undistorted communication.

By relocating the source of social and political critique so that they become empirically observable events with reference to social development Habermas yet again links the substance and structure of discourse. His substantive vision of communicative rationality initially centered on universal pragmatics--itself the product of the interactions between substance and structure—is placed yet again in a dialectical relationship with structure by showing how utterances are employed in social contexts to secure agreement. This entire vision of the substance of discourse is, however, linked again to structure because Habermas locates the operation of communicative rationality within the process of social development within actual societies. Communicative rationality, the substance of Habermas’ vision of undistorted communication, can only be analyzed within the dynamics of social and historical development; the structural aspect of discourse. At all times Habermas is careful to recognize the interrelationships between the way that communicative relations can be established and the way that actual social structures allow them to be established. Through his reformulation of universal pragmatics in *The Theory of Communicative Action*, Habermas does not allow an idealized vision of communication, a vision that would posit communication outside of a social context, to dictate what would constitute undistorted communication in the social world. Rather, Habermas’ theory of communicative rationality is only comprehensible if the essential social nature of communication is recognized and is traced to how concrete social systems evolve.

In this way Habermas is able overcome the difficulties encountered in Sunstein, Michelman, and Perry’s approaches to the study of discourse. In Chapter 2 I demonstrate how Habermas uses his dialectical understanding of substance and structure to trace the eventual dominance of a technical rationality which prevents the type of debate and deliberation emphasized by the civic republican scholars from ever being realized.

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137See page 58.
Chapter 2:
Habermas on the Public and the Private:
The Formation of Ideas and the Development of Communication

Introduction

Having sketched how Habermas approaches the study of discourse I now want to move to a slightly less abstract level and examine how he actually perceives the substance and structure of discourse interacting in advanced capitalist societies. As I noted in Chapter 1, the goal behind Habermas’ development of a system of discourse is to provide a critical social perspective through reference to an ideal of undistorted communication that is intrinsic to every individual utterance. This perspective can then serve as a standpoint from which to criticize existing forms of social and political discourse. In applying this notion of communication to concrete social and political contexts I want to suggest that Habermas has continually relied on the public/private dichotomy as a means to demonstrate the convergence of the substance and structure of discourse. For Habermas, the interaction of substance and structure creates both the contemporary dynamics of communication within the public and private spheres and the ideal of undistorted communication that should prevail in each. Just as his understanding of communication and the way that substance and structure interact with one another has undergone constant revision, so too has the way that Habermas grasps the nature of the public/private dichotomy evolved in important ways. Despite the modifications in his theory, however, the public/private split has remained an abstraction which aids in the explication of types of labor and social interactions. Throughout his work, the public and the private represent two distinct realms where, under the impact of the interaction of substance and structure, individuals engage in purposive-rational and communicative action.

I find this understanding of the public and private unsatisfactory for a number of reasons. The goal of this chapter is to demonstrate that the public/private dichotomy is not simply an
abstraction used to pinpoint how discourse functions in a given society, but rather, that this dichotomy plays an important role in shaping the forms of discourse that operate in society and politics. I see the emergence of a differentiated public and private sphere as the critical point in social and political development where technical rationality was able to gradually emerge as the prevailing form of social and political communication. Habermas fails to see the active role taken by the public/private dichotomy in determining social and political communication, however, because he has a reductionist understanding of the interrelationship between the substance and structure of discourse. While Habermas' awareness of this interrelationship shows a far greater degree of sophistication in his analysis of communication than do the civic republican scholars who view the two levels in isolation from one another, Habermas himself is guilty of over-simplifying the substantive level of discourse. I contend that he gives undue priority to the interaction of substance and structure in the shaping of discourse without recognizing how this interaction is connected with the world of ideas. Specifically, I suggest that the way a thinker situates him or herself vis-a-vis the world without (a world of objects and other subjects)—what I will call “individual world orientation”—influences the way that he or she generate ideas. The generation of ideas (which comes prior to any sort of communicative engagement with the world whether it be instrumental or communicative in nature), affects the way that individuals are able to subsequently express those ideas. As a result, ideas interact dialectically with the substance and structure of discourse via their influence on the meaning that is conveyed by language.

In conclusion, I argue for a new model of social and political communication that is aware of how ideas fit into the dialectical nature of discourse as Habermas understands it and, therefore, is of more use in diagnosing the challenges to liberty that are threatening advanced capitalist society. According to this revised theory the public/private split that Habermas uses simply as an abstraction takes on a key role as a cause of the rise of technical rationality. In Chapter 3 I then use this revised model of discourse to analyze how technical rationality has been able to infiltrate large parts of American social and political life. First, however, we must look at how Habermas uses the public/private split in his own investigations of communication.
The Structural Transformation of the Public Sphere

Habermas' first book, The Structural Transformation of the Public Sphere, concerns itself largely with the rise of the public/private distinction that accompanied the growth of both capitalism and the bourgeoisie as a social and political class. By employing immanent critique, Habermas seeks to illustrate how the bourgeois ideal of a public sphere, an ideal that stresses the importance of debate and deliberation, has been undone by the capitalist mode of production and social interaction. Just as it establishes the groundwork for Habermas' later approach to the study of communication, Structural Transformation is also a seminal work for understanding how Habermas identifies the concrete manifestations of various forms of communication. In terms of appreciating his approach to isolating discourse as it functions in specific societies, a close reading of Structural Transformation is absolutely essential because the method Habermas uses here remains, for the most part, unchanged in his later works.

Habermas begins Structural Transformation by noting that in the feudal societies of the High Middle Ages, prior to the emergence of the bourgeoisie, there did not exist a public and a private sphere that stood in opposition to one another. Rather, there was only a public realm where the lord would represent or display his or her power. Habermas writes:

The publicness (or publicity) of representation was not constituted as a social realm, that is, as a public sphere; rather it was something like a status attribute. . . In itself the status of the manorial lord . . . was neutral in relation to the criteria of "public" and "private;" but its incumbent represented it publicly. He displayed himself, presented himself, as an embodiment of some sort of "higher" power. . . [R]epresentation pretended to make something visible through through the public presence of the person of the lord.138

The public, in this sense, was a way that power was expressed to those over whom the lord had authority; the public was a mode of power, not a set of social and political institutions.139

139One is reminded of Foucault's discussion in Discipline and Punish of the "spectacle of scaffold" whereby, through public executions, a sovereign is able to display his or her power to the rest of society. See Michel Foucault, Discipline and Punish, (New York: Vintage Books, 1979). (Hereafter cited Foucault, Disciplining and Punish). On punishment as a representation of the sovereign's power Foucault writes:
Generally speaking, there were no public arenas in which citizens could deliberate or debate about the good of the society, nor was there a private sphere that was not subject to the often arbitrary will of the feudal lord.

With the growth of commerce, however, this situation slowly began to change. Habermas observes that as trading began to expand beyond local towns and crossed territorial boundaries merchants increasingly relied on centralized as opposed to local authority for assistance in opening up new markets. He writes that “within this process was constituted what has since been called the ‘nation’--the modern state with its bureaucracies and its increasing financial needs.” In Habermas’ analysis, the increased role of the state in the expansion of commerce reduced the expression of publicly represented authority in two ways. First, it centralized government at the national level and, secondly, it created a large bureaucratic apparatus that was distinct from the authority of the sovereign. This is important because the existence of a national state as independent from the person of the sovereign reduced the number of instances where the power of the sovereign could be displayed publicly. The increased role for the nation-state could no longer be financed through the sovereign’s own funds or through loans he or she received from financiers, and, as a consequence, the state turned towards the levying of taxes on its citizens. Taxation, though, had the effect of separating “the prince’s personal holdings and what belonged to the state.”

Governmental functions were increasingly performed in conjunction with merchants by a bureaucracy that had an independent source of revenue. The bureaucracy that both developed alongside with commerce and was funded through taxation became an autonomous source of authority that rivaled that publicly represented power of the sovereign.

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The public execution... has a juridico-political function. It is a ceremonial by which a momentarily injured sovereignty is reconstituted. It restores the sovereignty by manifesting it at its most spectacular. The public execution... belongs to a whole series of great rituals in which power is eclipsed and restored (coronation, entry of a king into a conquered city, the submission of rebellious subjects); over and above the crime that has placed the sovereign in contempt, it deploys before all eyes an invincible force. Its aim is not so much to re-establish a balance as to bring into play, as its extreme point, the dissymmetry between the subject who has dared to violate the law and the all-powerful sovereign who displays his strength. (48-9).

140 Habermas, Structural Transformation, 17.
141 Ibid.
The reduction in the kind of publicity involved in representation that went hand in hand with the elimination of the estate-based authorities by those of the territorial ruler created room for another sphere known as the public sphere in the modern sense of the term: the sphere of public authority. The latter assumed objective existence in a permanent administration and a standing army. Now continuous state authority corresponded to a continuity of contact among those trafficking in commodities and news (stock market, press). Public authority was consolidated into a palpable object confronting those who were merely subject to it and who at first were only negatively defined by it.\textsuperscript{142}

Corresponding to the birth of a new type of public sphere Habermas sees the emergence of a private sphere from the confines of the household.

Civil society came into existence as the corollary of a depersonalized state authority. Activities and dependencies hitherto relegated to the framework of the household economy emerged from this confinement into the public sphere. . . The economic activity that had become private had to be oriented toward a commodity market that had expanded under public direction and supervision; the economic conditions under which this activity now took place lay outside the confines of the single household; for the first time they were of general interest.\textsuperscript{143}

Prior to the development of an economic system that was based on commodity exchange economic matters were largely the subject of conjugal family relationships. With the increase in state intervention in the expansion of markets, however, the private sphere became oriented so that it served as a counterpart to the public. Owing to the large scale of economic relations, economic concerns transcended the family, and therefore the private sphere developed in conjunction with the actions of the public authority of the state. Economic survival and prosperity could only be secured if people were conscious of the way private interests were being affected by the state.

It is as a consequence of the emergence of a private sphere oriented towards state intervention in the market that the public sphere as we (ideally) understand it today, as a realm of debate and deliberation on issues pertaining to the entire society, was formed. Prior to its institutionalization this concern for “public” issues took place among private citizens, who through correspondence and journals, engaged in debate over how state involvement in the economy impacted the collective private interests of society. Through these letters and journals, and prior to the emergence of a public sphere which was a counterpart of the public authority of the state,

\textsuperscript{142}Ibid, 18.
\textsuperscript{143}Ibid, 19.
private citizens were able to formulate opinions on issues of broad social concern. Habermas explains that

before the public sphere explicitly assumed political functions in the tension charged field of state-society relations, the subjectivity originating in the intimate sphere of the conjugal family created, so to speak, its own public. Even before the control over the public sphere by public authority was contested and finally wrested away by critical reasoning of private persons on political issues, there evolved under its cover a public sphere in apolitical form—the literary precursor of the public sphere operative in the political domain. It provided the training ground for a critical public reflection still preoccupied with itself—a process of self-clarification of private people focusing on the genuine experiences of their novel privateness.144

The private sphere oriented towards the public authority of the state created the conditions that allowed the bourgeoisie to develop its critical capacities—capacities that would eventually allow it to assume control of the political public sphere through institutions that facilitated and regulated sustained public critique of the functions of the state. “The public sphere in the political realm evolved from the public sphere in the world of letters; through the vehicle of public opinion it put the state in touch with the needs of society.”145 Habermas trenchantly states this emergence of the critical public sphere from the private sphere:

The process in which the state-governed public sphere was appropriated by the public of private people making use of their reason and was established as a sphere of criticism of public authority was one of functionally converting the public sphere in the world of letters already equipped with institutions of the public and with forums for discussion. With their help, the experiential complex of audience-oriented privacy made its way also into the political realm’s public sphere. The representation of the interests of the privatized domain of a market economy was interpreted with the aid of ideas grown in the soil of the intimate sphere of the conjugal family. The latter and not the public sphere itself (as the Greek model would have it) was humanity’s genuine site. With the rise of a sphere of the social, over whose regulation public opinion battled with public power, the theme of the modern (in contrast to the ancient) public sphere shifted from the properly political tasks of a citizenry acting in common... to the more properly civic tasks of a society engaged in critical public debate (i.e., the protection of a commercial economy)... With the background experience of a private sphere that had become interiorized human closeness it challenged the established authority of the monarch; in this sense its character was from the beginning both private and polemical at once.146

State intervention in the expansion of markets moved economic concerns out of the family and brought them into a critical relationship with the public authority of the state. Through the world of letters, i.e., private correspondence, private individuals exercised their critical abilities which

144 Ibid, 29.
145 Ibid, 30-1.
then enabled them to secure a public political realm in which institutionalized debate and discussion could take place and thus become the basis for state authority.

As the public political realm was forming it had the effect of changing the basis of state legitimation. In place of absolute state sovereignty the critical political public substituted a system of laws based on both their universal applicability and their manifestation of an objective notion of reason. "A political consciousness developed in the public sphere of civil society, which in absolute sovereignty, articulated the concept of and demand for general and abstract laws and which ultimately came to assert itself (i.e., public opinion) as the only legitimate source of this law." This form of legitimation sprang directly from the experiences of citizens experiences in the private sphere which was geared towards state intervention in the economy. Habermas writes:

The criteria of generality and abstractness characterizing legal norms had to have a peculiar obviousness for privatized individuals who, by communicating with each other in the public sphere of the world of letters, confirmed each other's subjectivity as it emerged from their spheres of intimacy. For as a public they were already under the implicit law of the parity of all cultivated persons, whose abstract universality afforded the sole guarantee that the individuals subsumed under it in an equally abstract fashion, as "common human beings," were set free in their subjectivity precisely by this parity. . . . These rules, because they remained strictly external to the individual as such, secured space for the development of these individuals' interiority by literary means. These rules, because universally valid, secured space for the individuated person; because they were objective, they secured a space for what was most subjective; because they were abstract, for what was most concrete. At the same time, the results that under these conditions issued from the public process of critical debate lay claim to being in accord with reason; intrinsic to the idea of public opinion born of the power of the better argument was the claim to that morally pretentious rationality that strove to discover what was at once just and right.

Through calls for a rationality centering on universality and abstractness, bourgeois participants in the public sphere were able to mediate the differences inherent in the different economic status of various private individuals since laws were required to treat all citizens equally. The subjective experiences of the private sphere could be recognized while simultaneously showing a respect for the essential parity of "cultivated" citizens. Within the sphere of cultivated citizens all would be allowed to participate in the political public thereby assuring universality and the representation of

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147 Ibid, 54.
148 Ibid.
subjective circumstances. Because of its inclusive nature\(^{149}\) the political public sphere transformed state legitimation from domination to an enlightened public guided by the force of reason.

Since the critical public debate of private people convincingly claimed to be in the nature of a noncoercive inquiry into what was at the same time correct and right, a legislation that had recourse to public opinion thus could not be explicitly considered domination. . . . Public opinion was in principle opposed to arbitrariness and subject to the laws in an immanent public composed of critically debating private persons in such a way that the property of being the supreme will, superior to all laws, which is to say sovereignty, could not be strictly speaking attributed to it at all. In accord with its own intention, public opinion wanted to be neither a check on power, nor power itself, nor even the source of all powers. Within its medium, rather, the character of executive power, domination . . . itself, was supposed to change. The domination of the "public, according to its own idea, was an order in which domination itself was dissolved. . . \(^{150}\)

In contrast to this public sphere which is, putatively, guided by reason that manifests itself in deliberation and debate, private sphere interactions are, according to Habermas, guided by the forces of the market.

For in proportion to the increasing prevalence of the capitalist mode of production, social relationships assumed the form of exchange relationships. With the expansion and liberation of this sphere of the market, commodity owners gained private autonomy; the positive meaning of "private" emerged precisely in reference to the concept of free power of control over property that functioned in capitalist fashion.\(^{151}\)

The private sphere gave individuals the ability to pursue their own economically related interests while the public sphere provided a forum in which differences could be mediated. Private sphere interactions adhered to what Habermas in later works would call a technical rationality that stressed

\(^{149}\) Inclusive in the sense that the bourgeoisie and aristocrats were allowed to participate. See n.150.
\(^{150}\) Habermas, *Structural Transformation*, 82. Habermas, however, does not believe that this was actually the case. Rather, he sees the rise of the bourgeois public sphere, since it covers over class relations, as domination in a more subtle form. He observes that

> nowhere did the constitutional establishment of a public sphere in the political realm. . . betray its character as an order of domination more than in the central article stating that all power. . . came from the people. Otherwise the constitutional state predicated on civil rights pretended, on the basis of an effective public sphere, to be an organization of public power ensuring the latter's subordination to the needs of a private sphere itself taken to be neutralized as regards power and emancipated from domination. Thus the constitutional norms implied a model of civil society that by no means corresponded to its reality. The categories drawn from the historical process of capitalism, including its liberal phase, were themselves historical in character. . . Thus, the "private people" on whose autonomy, socially guaranteed by property, the constitutional state counted just as much as on the educational qualifications of the public formed by these people, were in truth a small minority. . . (84)

\(^{151}\) Ibid, 72.
efficiency in reaching a predetermined goal (i.e., economic self-gain). The public and the private contained different types of social interactions and thus served distinct functions.

In the measure to which it was linked to market exchange, production was disengaged from its connection with functions of public authority; conversely, political administration was released from production tasks. Public power, concentrated in national and territorial states, rose above privatized society, however much the latter’s affairs might be initially directed by interventions of state authority. In this way, despite the initial linkages between the public and private spheres resulting from private correspondence in the world of letters, the formation of an institutionalized political public sphere caused the public and private to take on different functions. The concerns of private citizens about the state’s role in securing the foundation of the market by coordinating private interests were instrumental in establishing the political public sphere. With the institutionalization of the political public sphere and the private marketplace, however, private interests lost their orientation towards broader social concerns. For the first time, individuals were able to focus primarily on what was in their own best interest without simultaneously checking to see what was in the best interest of society. The egalitarian legal system, a belief in a discoverable objective reason, and a faith in the “invisible hand” of the marketplace meant that the disparate subjective interests of private citizens would ultimately be brought into harmony with one another.

This fundamental separation between public and private functions was eroded, however, because personal economic conflicts in the private sphere infiltrated public debate and deliberation. Individuals turned towards the state to mediate opposing private interests, and, as a result, the state began to assume ever more the functions of the private sphere. At the same time, Habermas contends, the opposite phenomena occurred with private interactions assuming an increasingly public function. As the public sphere abdicated its role as the realm of reason private “corporate

\[152\] Ibid, 141.

\[153\] This was largely due to the inequalities of wealth that were created in the private sphere. Habermas writes:

> The concentration of power in the private sphere of commodity exchange on the one hand, and in the public sphere with its institutionalized promise of universal accessibility (established as an organ of the state) on the other, strengthened the propensity of the economically weaker parties to use political means against those who were stronger by reason of their position in the market. (Ibid, 145).
bodies” took over the functions of determining public goals. Habermas concludes that “this dialectic of a progressive ‘societilization’ of the state simultaneously with an increasing ‘statefication’ of society gradually destroyed the basis of the bourgeois public sphere—the separation of state and society.” The “reciprocal permeation” of the two spheres led to an undermining of what was previously held to be the basis of each sphere. Public intervention into the private market destroyed the former’s foundation of independent individuals coming together to debate and deliberate on common concerns. Habermas brilliantly sketches out the implications of this interpenetration (and I think it is worth quoting at some length):

What made it possible within the political public sphere to resolve conflicts on the basis of relatively homogeneous interests and by means of relatively reasonable forms of deliberation, what alone made it possible to encase the parliamentary conflict settlements in a system of abstract and general laws with a claim to rationality and permanence, was a peculiar arrangement. The multitude of substantive decisions within a commercial society neutralized as a private sphere were mediated by the mechanism of the market and were in principle arrived at apolitically. Although limited to a framework of interests common to private people insofar as they owned property, the public was nonetheless kept free from the competition between individual private interests to such an extent that the decisions falling within the domain of political compromise could be handled by the procedures of rational political debate. However, as soon as private interests, collectively organized, were compelled to assume political form, the public sphere necessarily became an arena in which conflicts also had to be settled that transformed the structure of political compromise from the ground up. The public sphere was burdened with the tasks of settling conflicts of interests that could not be accommodated within the classical forms of parliamentary consensus and agreement; their settlement bore the marks of their origin in the sphere of the market. Compromise literally had to be haggled out, produced temporarily through pressure and counterpressure supported directly only through the unstable equilibrium of a power constellation between state apparatus and interest groups. Political decisions were made within the new forms of “bargaining” that evolved alongside the older forms of the exercise of power: hierarchy and democracy. Admittedly, on the one hand the forum of the public sphere had been expanded. But on the other hand, because the balancing of interests continued to be linked to the liberal claim of this public sphere (which is to say, to legitimation in terms of the common welfare) without being able to fulfill it or evade it entirely, the haggling out of compromises moved to extraparliamentary sites. This could occur formally by delegating jurisdictional

154Ibid, 142.
155For example, Habermas notes, that

the integration of the public and private realms entailed a corresponding disorganization of the public sphere that once was the go-between linking state and society. This mediating function passed from the public to such institutions as have risen out of the private sphere (e.g., special-interest associations) or out of the public sphere, e.g., parties; these now engage in the exercise and equilibration of power in cooperation with the state apparatus, treating it as a matter internal to their organization. (Ibid, 177).

156Ibid, 142.
competences of state organs to societal organizations or informally by de facto shifts in jurisdictions...\(^{157}\)

Habermas calls this process the "refeudalization" of society "insofar as, with the linking of public and private realms, not only certain functions in the sphere of commerce and social labor are taken over by political authorities but conversely political functions are taken over by societal powers."\(^{158}\)

With the refeudalization of the public sphere, public political functions were assumed by private interests groups which centered on pre-political compromise and then represented private interests in the public. All debate and deliberation takes place prior to engagement in the public sphere thus public interactions takes on the color of mere jockeying for power and state favors. Claims to public reason are eschewed in favor of an interest-maximizing calculus.\(^{159}\) "The parliament therefore tends to become a place where instruction-bound appointees meet to put their predetermined decisions on record... The new status of the delegate is no longer characterized by participation in a public engaged in nonpartisan rational debate."\(^{160}\) Habermas notes that because of this tendency citizens lose their point of access to a larger public. With the increasing subsumption of economic functions by the state apparatus, the satisfaction of economic interests, formerly relegated to the private become the raison d'etre of the political public. This becomes especially acute under the modern welfare state where the government becomes a primary distributor of economic benefits. Habermas observes the effects of this change on the citizen's relation to the public:

Citizens entitled to services relate to the state not primarily through political participation but by adopting a general attitude of demand--expecting to be provided for

\(^{157}\)Ibid, 197-8.

\(^{158}\)Ibid, 231. Habermas explicitly defines the refeudalization of the public sphere in this way:

> With the interweaving of the public and private realms, not only do political authorities assume certain functions in the sphere of commodity exchange and social labour, but conversely social powers now assume political functions. This leads to a kind of "refeudalization" of the public sphere. Large organizations strive for a kind of political compromise with the state and with one another, excluding the public whenever possible. (Quoted in David Held, An Introduction to Critical Theory, (Berkeley: University of California Press, 1980), 262).

\(^{159}\)Habermas, Structural Transformation, 200-1.

\(^{160}\)Ibid, 205.
without actually wanting to fight for the necessary decisions. Their contact with the state occurs essentially in the rooms and anterooms of bureaucracies; it is unpoltical and indifferent, yet demanding. In a social-welfare state that above all administers, distributes, and provides, the "political" interests of citizens constantly subsumed under administrative acts are reduced primarily to claims specific to occupational branches.\textsuperscript{161}

In advanced capitalist societies, Habermas argues, the two distinct forms of discourse evident in the public and private before the process of refeudalization have started to converge so that they can no longer be meaningfully distinguished. Both the institutions of the public and private spheres employ the language of the marketplace in order to mediate conflicting interests.

\textit{Towards a Rational Society}

Habermas further refines this notion of the refeudalization of the public sphere in \textit{Towards a Rational Society},\textsuperscript{162} a work directed primarily at the German student protest movement of the late 1960's and early 1970's but with larger implications for his overall understanding of the public/private dichotomy. In \textit{Towards a Rational Society} Habermas reconceptualizes his understanding of the refeudalization of the public sphere more explicitly in terms of the rise of technical rationality and its effects on social integration. The central concern of this work is the relationship between what Habermas calls "technology" and "democracy." Habermas states the problematic this way:

\begin{quote}
[W]e shall understand "technology" to mean scientifically rationalized control of objectified processes. It refers to a system in which research and technology are coupled with feedback from the economy and administration. We shall understand democracy to mean the institutionally secured forms of general and public communication that deal with the practical question of how men can want to live under the objective conditions of their ever-expanding power of control. Our problem can then be stated as one of the relation of technology and democracy: how can the power of technical control be brought within the range of the consensus of acting and transacting citizens?\textsuperscript{163}
\end{quote}

\textsuperscript{161}Ibid, 211.
\textsuperscript{163}Ibid, 57.
To answer this question Habermas turns towards his reformulation of Marx's distinction between labor and interaction in order to demonstrate that these fundamental categories of human activity are the key to gaining a more detailed understanding of the forces that caused the changed nature of individuals' public and private roles. By returning to the labor/interaction dichotomy Habermas is able to ground the analysis of the interpenetration of the public and private spheres in *Structural Transformation* with fundamental categories of communication. This thereby gives his analysis an additional dimension that helps to explain the connections between the types of discourse he observes in public and private associations.

Relying on the linguistic turn in philosophy coupled with a practical intent that I discussed in Chapter 1, Habermas expands on Marx's understanding of work and interaction by further detailing their relationship with one another. In an important passage Habermas elaborates his view on the essence of this distinction:

By “work” or purposive-rational action I understand either instrumental action or rational choice or their conjunction. Instrumental action is governed by technical rules based on empirical knowledge. In every case they imply conditional predictions about observable events, physical or social. These predictions can prove correct or incorrect. The conduct of rational choice is governed by strategies based on analytic knowledge. They imply deductions from preference rules (value systems) and decision procedures; these propositions are either correctly or incorrectly deduced. Purposive-rational action realizes defined goals under given conditions... By “interaction,” on the other hand, I understand communicative action, symbolic interaction. It is governed by binding consensual norms, which define reciprocal expectations about behavior and which must be understood and recognized by at least two acting subjects. Social norms are enforced through sanctions. Their meaning is objectified in ordinary language communication. While the validity of technical rules and strategies depends on that of empirically true or analytically correct propositions, the validity of social norms is grounded only in the intersubjectivity of the mutual understanding of intentions and secured by the general recognition of obligations.164

Work involves a logic centered on technical control and mastery while interaction is guided by symbolic relationships based on intersubjectivity. From this distinction Habermas argues one can then pinpoint the relationship of the former to the latter. Because the technical rationality of work involves “deductions from preference rules (value systems)”--value systems which are generated in the realm of communicative action--Habermas concludes that technical rationality is a subsystem for understanding social action.

of the larger context of communicative action. Communicative action, through the institutions of
the public sphere, provides purposive-rational action with normatively determined goals that can
then be achieved using technical rationality. To put it less abstractly, communicative action
determines the direction that society moves in and purposive-rational action moves society in that
direction as quickly and efficiently as possible.

Habermas contends that this relationship held (and holds) true for traditional societies
where technical rationality remained embedded in a web of symbolic interactions. He writes:

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The stable pattern of a precapitalist mode of production... makes possible a typical
relation of the institutional framework to subsystems of purposive-rational action. For
despite considerable progress, these subsystems, developing out of the system of social
labor and its stock of accumulated technically exploitable knowledge, never reached that
measure of extension after which their "rationality" would have become an open threat
to the authority of the cultural traditions that legitimate political power.165
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In traditional societies the development of the technical capacities do not outstrip that society's
ability to explain and guide the application of technical knowledge in terms of intersubjective
norms; communicative action serves as the regulator of technical competencies.

This dependence of technical knowledge on norms and values is drastically altered,
however, with the rise of the capitalist mode of production. Habermas claims that capitalism
uncoupled this dependence by instituting a mechanism of social labor that grew at a faster rate than
society's ability to comprehend that mechanism via intersubjectively determined norms created in
the institutions of the public sphere. According to Habermas

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[i]t is only since the capitalist mode of production has equipped the economic system
with a self-propelling mechanism that ensures long-term continuous growth (despite
crises) in the productivity of labor that the introduction of new technologies and
strategies, i.e., innovation as such, has been institutionalized... the capitalist mode of
production can be comprehended as a mechanism that guarantees the permanent
expansion of subsystems of purposive-rational action and thereby overturns the
traditionalist "superiority" of the institutional framework to the forces of
production.166
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From the perspective of a technical rationality that interprets the world in terms of empirically
quantifiable data, the norms and values of the institutional public sphere seem incomprehensible.
Consequently, when technical rationality is employed in a capitalist system that ensures "the

165Ibid, 246.
166Ibid, 247. (Emphasis in original).
permanent expansion" of purposive-rational action, the normative framework that formerly served as the guiding force of social labor is rendered increasingly meaningless. The economic system of the bourgeois private sphere strips the political public sphere of its function as a realm where intersubjective consensus, under the influence of reason, can be achieved. Thus, the logic of social labor--technical rationality--becomes the legitimating mechanism of political interactions.

With the emergence of capitalism comes "the creation of an economic legitimation by means of which the political system can be adapted to the new requisites of rationality brought about by these developing subsystems [of purposive-rational action]." The technical rationality of the private sphere comes to pervade the public sphere.

With the advent of the welfare state as a means to combat the vicissitudes of the market Habermas sees technical rationality assuming an even more prominent position vis-a-vis the norms of the institutionalized public. When advanced capitalist societies reached the point where market destabilizations threatened the existence of the entire market, a new form of state and public legitimation was needed to replace the free-market ideology which continued to become ever more counterfactual. Habermas observes that

\[\text{[w]ith the collapse of [the capitalist] ideology, political power requires a new legitimation. Now since the power indirectly exercised over the exchange processes is itself operating under political control and state regulation, legitimation can no longer be derived from the unpolitical order constituted by the relations of production. To this extent the requirement for direct legitimation which exists in precapitalist societies, reappears. On the other hand, the resuscitation of immediate political domination (in the traditional form of legitimation on the basis of cosmological worldviews) has become impossible. For traditions have already been disempowered.}\]

The ideology of the free-market which served as the controlling mechanism for social relations held that the state should not intervene in economic matters. As a result, social life was guided by the technical rationality of the market. With the emergence of the welfare state, however, state intervention into the economic sphere has to be justified in terms of something other than market relations as these have been shown to have dysfunctional tendencies. Whereas traditional societies would have justified such intervention through reference to a set of norms or values the welfare

\[167\text{Ibid, 248.}\]
\[168\text{Ibid, 251.}\]
state is not able take advantage of these legitimating mechanisms. The technical rationality of the
market which pervaded social life in both the public and private spheres has made recourse to
norms impossible as these norms themselves were rendered meaningless by the empirical-
analytical approach of purposive-rational action.

To legitimize its intervention into the market, then, "government action [becomes] directed
toward the economic system's stability and growth, [and] politics takes on a peculiar negative
character. For it is oriented towards the elimination of dysfunctions and the avoidance of risks that
threaten the system: not, in other words, towards the realization of practical goals but toward the
solution of technical problems." 169 State intervention becomes based on its ability to prevent
market failure and therefore secure the technical efficiency in the economic sphere. Policies such
as as health care, unemployment insurance, and entitlement programs for the indigent are justified
to the general populous less on the basis because they are "right" or "fair" but rather they are
legitimized with regard to a calculus of technical efficiency. Benefits are provided to citizens
because they are remedies to market failures and not because a set of values or norms requires that
they be provided. 170 Similarly, those who directly benefit from entitlement programs approve of
them less because they are "just" acts on the part of the government and more because these
programs help provide the material conditions of life.

This change in the form of state legitimation has a devastating impact on citizen
participation in the political public sphere.

Old-style politics was forced, merely through its traditional form of legitimation, to
define itself in relation to practical goals; the "good life" was interpreted in a context
defined by interaction relations. The same still held for the ideology of bourgeois
society. The substitute program prevailing today, in contrast, is aimed exclusively at
the functioning of a manipulated system. It eliminates practical questions and
therewith precludes discussion about the adoption of standards; the latter could emerge
only from a democratic decision-making process. The solution of technical problems
is not dependent on public discussion. Rather, public discussions could render
problematic the framework within which the tasks of government action present
themselves as technical ones. Therefore the new politics of state interventionism

170For example, witness the Clinton administration’s attempts to sell entitlement programs to those not directly
benefited by them by calling such programs part of an "economic stimulus" package designed to revive a sluggish
economy.
requires a depoliticization of the mass of the population. To the extent that practical questions are eliminated, the public realm also loses its political function. In order to better facilitate solutions to technical problems, solutions which justify state power, the government depoliticizes the public sphere so that discussion about normative issues does not hinder its efficient operation. Public debate and deliberation about norms and values is unwieldy to a state that attempts to correct market dysfunctions. As a consequence, spaces for public interaction among citizens shrink at the same time that bureaucracy and technocracy become more prominent. Rather than relying on citizen participation in the public sphere individuals turn more and more to interest groups to represent their wants--interest groups that do nothing more than secure material benefits for its own members.

Like his analysis in Structural Transformation, in Towards a Rational Society Habermas conceives of the public/private dichotomy in terms of shifting forms of discourse. In this respect, the major difference between these two books is how Habermas conceives of the types of discourse that prevail in each sphere. In an improvement on his analysis of the refeudalization of the public and private spheres in Structural Transformation, Towards a Rational Society explains the relationship between the substance and structure of discourse with reference to the requirements of the two essential activities of human existence: work and interaction. Thus we see the transformation of the public sphere, which was centered on communicative action, to a realm where technical problems are addressed. In advanced capitalist societies the institutions of the public sphere interact with technical rationality so that citizens are shut of from meaningful public participation.

\(^{171}\)Ibid, 252.
Legitimation Crisis

Habermas continues the themes of Towards a Rational Society in Legitimation Crisis where his central focus is the effect that capitalism has had on social integration. At this stage in his thinking Habermas is interested in furnishing a more systematic account of effects that the ubiquitous technical rationality of the welfare state has on social organization and the ability of social bodies to maintain their identity. Habermas undertakes this investigation by examining the various types of crisis societies can potentially face. Given that Marx’s base-superstructure model is inadequate in explaining both economic and social dislocations Habermas moves to reformulate the fundamental categories of crisis.

[Legitimation Crisis] proceeds from the claim that the major cite of social crisis and conflict has shifted from the economic to the political and cultural spheres. The irrationality of capitalism continues to be exhibited in episodic cycles of economic growth and recession. However, state policies aimed at averting economic crises have minimized their social impact. Habermas is convinced that economic crises no longer have the potential of generating a societal crisis but can be addressed as a local social disturbance.172

Through intervention in the economy the welfare state prevents crises of the Marxist variety from occurring. Social crisis must be redefined in order to capture the increased role that social and cultural mechanisms have in assuring the proper functioning of the market.

Habermas begins by setting out the two spheres were social actions are coordinated and hence can be subject to crisis.

A social-scientifically appropriate crisis concept must grasp the connection between system integration and social integration. The two expressions “social integration” and “system integration” derive from different theoretical traditions. We speak of social integration in relation to the systems of institutions in which speaking and acting subjects are socially related. . . . Social systems are seen here as life-worlds that are symbolically structured. We speak of system integration with a view to the specific steering performances of a self-regulated system. . . . From the life-world perspective, we thematize the normative structures (values and institutions) of a society. We analyze events and states from the point of view of their dependency on functions of social integration. . . . While non-normative components of the system serve as limiting conditions. From the system perspective. . . . [w]e analyze events and states from the

172 Steven Seidman, editor’s introduction, Jurgen Habermas on Society and Politics. (Boston: Beacon Press, 1989), 21. (Hereafter cited Seidman, Habermas on Society and Politics)
In other words, social integration is that aspect of social life where individuals interact with one another to form intersubjective relations and therefore lifeworld functions allow individuals to interact with one another on the symbolic level of language. In contrast, system integration centers on the coordination of individuals’ technical capabilities and is determined by how well members of a society are able to employ technical rationality in order to secure the material requirements for existence.

These two levels of social integration correspond to the two key ways Habermas sees members of a social system relating to the world. System integration involves how members of a society appropriate outer nature, i.e., the physical world, through the use of “[p]roduction processes [that] extract natural resources and transform the energies set free into use values.” Social integration relates to the “inner nature” of individuals and how individuals are socialized. “Socialization processes shape the members of the system into subjects capable of speaking and acting.”

Within this framework Habermas is able to redefine what constitutes a crisis:

(Book) only when members of a society experience structural alterations as critical for continued existence and feel their social identity threatened can we speak of crisis. Disturbances of system integration endanger continued existence only to the extent that social integration is at stake, that is, when the consensual foundations of normative structures are so much impaired that society becomes anomie. Crisis states assume the form of a disintegration of social institutions.

In opposition to Marx, who sees social dislocation emanating from the economic sphere and system integration, Habermas argues that only threats to social integration can constitute a crisis which can threaten the entire social order. Habermas’ theory focuses on the two levels of integration (and the worlds to which they relate) in order to understand how increases in the dominance of the system integration rationality can affect social integration. Specifically, Habermas wants to investigate how the rise of technical rationality demonstrated in Toward a

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175 Ibid, 3.
176 Habermas notes that members of a social system also relate to members of other social systems but he does not consider this type of relationship fundamental and therefore omits discussion of it.
Rational Society affects an entire society’s ability to perpetuate its existence on the level of social reproduction where individual identity is determined with regards to the overall operation of society. So that he can diagnose possible crisis points in contemporary society, Habermas uses his two sphere model of integration as a foundation to return once again to the historical process whereby the bourgeois capitalist system was transformed into the welfare state.

As I have already pointed out in my discussion of Structural Transformation and Towards a Rational Society, the shift from the from what Habermas calls the liberal capitalist mode of production to the advance capitalist system of the welfare state is characterized by state intervention into a formerly autonomous market. In this situation where the state intervenes directly in the economy to compensate for dysfunctions in the market the state is situated at the nexus where the forces of system and social integration come into contact with one another. That is to say, in order to correct the deficiencies of the market the state must respond to system imperatives while at the same time maintain and comply with the requirements of social integration. On one hand, the state acts to prevent the market from collapsing and thereby supports the unequal power relations inherent in the capitalist mode of production. On the other hand, however, because of the ideology of democratic participation the state must maintain the mass support of disparate class and social interests. Habermas attempts to answer the question, “how does the state’s response to these contradictory pulls precipitate or avoid social dislocation?”

Based on the antithetical requirements of the market and the broader population Habermas identifies two types of social dislocations: legitimation and motivation crises. Both of these

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177 Habermas recognizes, however, that even in the liberal capitalist stage of economic development the market is never wholly independent of the state. Capitalism was only possible after the state had established certain background conditions that allowed the market mechanism to function. For example, the legal system codified exchange relationships into a coherent doctrine that facilitated the “natural” operations of the market, and the state provided essential components of the market infrastructure such as education and transportation. See Legitimation Crisis, 21, 53. For a complete discussion on the role of the state in the rise of the putatively “natural” forces of the market see Part II, “The Rise and Fall of the Market Economy,” in Karl Polanyi, The Great Transformation, (New York: Rinehart & Company, 1944).

178 In addition to legitimation and motivation crises Habermas also observes that economic and rationality crises are possible. I, however, will omit a discussion of these two types of crises. Both economic crises and rationality crises concern dislocations which arise because of conflicts that are intrinsic to the market system of production. Properly speaking, neither an economic crisis nor a rationality crisis are social crises because neither threatens the ability of a society to integrate its members. Rather, economic and rationality crises result in a breakdown in the functioning of the market because state intervention is not sufficient to overcome market dysfunctions.
crises demonstrate the impact that the forms of communication in the private sphere have on the functioning of the state in the public sphere. The private sphere, composed of the institutions of civil society and the market and employing language of economic interest and intersubjective relations, interacts with the public sphere, composed of the institutions of the state and the language of economic interest and intersubjective relations. In a sense, the goal of Legitimation Crisis is to depict the "refeudalization" of the public sphere described in Structural Transformation in terms of how the linkages between the public and private sphere in advanced capitalist society can result in social crises.

A legitimation crisis results because of the contradictory pulls between the state's interventionist role in the economy and the requirements of mass support placed on the state through democratic participation. On the one hand, the state must respond to the system imperatives of the market; the state must work with system of economic production dominated by capitalists so that market failure can be averted. On the other hand, however, the state must act in a way that legitimizes its authority in the eyes of the broader population who, through universal suffrage, are formally included in the political process. Seidman outlines how the tension between these two interests results in a legitimation crisis:

Habermas speaks of a legitimation crisis when the state is faced with the contradictory demands of ensuring capital accumulation while needing to maintain mass loyalty. The former imperative requires that the state act to promote the particular interests of those strata (e.g., property owners, high-level management, administrative technical elites) who most benefit from capitalism. The latter imperative demands that the state promote the general welfare of society. In other words, the class interests of the state that are revealed in its social and economic policies must be concealed in order to maintain its legitimacy. The latter rests on its claim to represent the general interest of society. To the extent that the state is perceived as a "capitalist state" or as a class-based state, it experiences legitimation problems. The withdrawal of mass loyalty may be manifested in citizen apathy, mass social disobedience, or proposals for social reform.179

To avoid this situation the state relies on the de-publicizing of the public sphere that Habermas already outlined in Towards a Rational Society. The initial problem faced by advanced capitalist societies is validating, in the eyes of the populous, its role in heretofore private realms. Viewed from the perspective of traditional norms and values the welfare state is unable to justify the

179Seidman, Habermas on Society and Politics, 21-2.
changing nature of its authority. Because of this, active citizen participation in the public sphere threatens the market stability that the state helps to achieve. To remedy this situation the state substitutes technically secured benefits for intersubjectively generated values and norms while simultaneously discouraging citizen input into the operation of the state. The "meaning" behind state action is abandoned in favor of rewards and benefits with which citizens are provided.

"Meaning" is a scarce resource and is becoming even scarcer. Consequently, expectations oriented to use values—that is, expectations monitored by success—are rising in the civil public... The fiscally siphoned-off resource "value" must take the place of the scanty resource "meaning." Missing legitimation must be offset by rewards conforming to the system. A legitimation crisis arises as soon as the demands for such rewards rise faster than the available quantity of value, or when expectations arise faster than the available quantity of value, or when expectations arise which cannot be satisfied with such rewards.\textsuperscript{180}

In this way the state is able to redefine legitimation problems so that their solution are in accord with the requirements of state intervention in the economy. Legitimation problems no longer arise because the state cannot justify its actions with reference to norms and values. Rather, the withdrawal of legitimation by citizens occurs only when use values, i.e., goals and rewards defined by the system, cannot be provided in sufficient quantities.

Like a legitimation crisis, a motivation crisis involves problems arising from the status of the state as a nexus between the sphere of economic reproduction and the sphere of social interaction. In typically cryptic fashion, Habermas describes a motivation crisis occurring "when the socio-cultural system changes in such a way that its output becomes dysfunctional for the state and the system of social labor."\textsuperscript{181} On Seidman's translation this means that in a motivation crisis "mass support for social institutions is withdrawn because individual motives and orientations do not lead to behavior supportive of late capitalist society."\textsuperscript{182} Motivation crises arise when the influence of the economic system on the political system causes the political system to have such an effect on the private sphere that traditions, values, norms, or other factors which guide social behavior no longer produce actions on the part of citizens conducive to the operation of the political

\textsuperscript{180}Habermas, \textit{Legitimation Crisis}, 73.
\textsuperscript{181}Ibid, 75.
\textsuperscript{182}Seidman, \textit{Habermas on Society and Politics}, 22.
and economic systems. In Habermas’ lexicon, the socio-cultural system threatens the very “inputs”—i.e., individual motivations—that it requires for social integration and functioning of the system of production; the political system undermines the necessary foundations of society that secure the types of motivations comparable to the needs of the welfare state.

As in his earlier writings in *Structural Transformation* and *Towards a Rational Society*, the public/private split figures prominently in Habermas’ analysis of legitimation and motivation crises. In his depiction of the split Habermas is interested in exposing how the rationality of the market—a part of the private sphere—impacts the workings of the state in the public sphere and the social interactions of the private sphere. Habermas hopes to demonstrate how the structures of the marketplace relying on the language of system integration have fused the public sphere and the private sphere so that technical rationality comes to dominate both. With his theory of legitimation crisis Habermas indicates that one of the effects of this fusion is the changed nature of state legitimation as well as what form the withdrawal of legitimation from the populous will take. Habermas’ analysis of motivation crises suggests that the fusion of the state and the economy results in a potential situation where the social interactions of the private sphere are altered to such an extent that core of social and system integration and reproduction is put into jeopardy. Despite the different ways that a legitimation or motivation crisis results in social dislocation Habermas is consistent in his usage of the public/private split. In both cases the nature of the public sphere is determined by the interaction of a particular kind of discourse—technical rationality—and the institutions of the state, e.g., universal suffrage and democratic participation. Similarly, in both cases the dynamics of the private sphere are the product of the concrete interactions of civil society and the type of discourse employed in those interactions. The public and private spheres then serve as specific points where the substance and structure of discourse interact.
The Theory of Communicative Action

In The Theory of Communicative Action, Habermas’ most recent work dealing directly with the rise of technical rationality, Habermas brings together his analysis of undistorted communication that I documented in Chapter 1 with his investigation of the concrete social mechanisms that allow intersubjective relations to be replaced by instrumental reason. Although Habermas’ theory of communication clearly underlies his examination of technical rationality in Towards a Rational Society and Legitimation Crisis, it is only in The Theory of Communicative Action that Habermas explicitly links his study of the presuppositions of undistorted communication with the dynamics of social and political development in advanced capitalist society. Central to this effort is Habermas’ elaboration and expansion on the definitions of system and lifeworld he tentatively outlined in his earlier works. It is within the relationship between system and lifeworld that Habermas sees both the potential for a free society and the reality that one form of discourse has come to influence all communication.

In Chapter 1 I noted that Habermas’ major advance in The Theory of Communicative Action was applying the social orientation of communication to his study of universal pragmatics. Language, Habermas argued, was used by individuals to secure agreement amongst themselves so that social behavior could be regulated. Because such communication established intersubjective relationships it was possible for individuals to raise validity claims about an utterance in relation to the world to which the utterance corresponded. Consequently, the potential for undistorted communication was intrinsic to every communicative act. With his theory of the lifeworld Habermas attempts to explicate the conditions under which such intersubjective relations can be established and validity claims raised. “The concept of the lifeworld is introduced as a necessary complement to the concept of communicative action. It links that concept firmly to the concept of society. . . .”

Habermas defines the lifeworld as the context for language "which stands behind the back of each participant in communication" and supports "the process of understanding." Every actual consensus is achieved against this "uniquely pre-reflective form of background relations." The lifeworld is a resource for what goes into explicit communication which can become subject to criticism. The lifeworld itself, however, always remains implicit, pre-reflexive and pre-critical. As the unexceedable context for co-ordinating the three "worlds," the lifeworld supports social collectives and cultural groups by providing a resource of meaning and situation definitions that are drawn upon for social reproduction. Thus, for Habermas, the lifeworld is crucial for the reproduction of culture, society, and personality in so far as it is the carrier of personal, social, and cultural tradition.\footnote{Rick Roderick, Habermas and the Foundations of Critical Theory, (New York: St. Martin's Press, 1986), 119-20. (Hereafter cited Roderick, Foundations of Critical Theory).}

Prior to entering into an intersubjective relationship certain pre-linguistic requirements must be met. Although not explicitly spelled out in Roderick's description above, the lifeworld is similar to Michelman's notion of the recollective imagination.\footnote{Of course, unlike Habermas, Michelman fails to see how this recollective imagination can become victim to technical rationality. See my description below of Habermas' analysis on system colonization of the lifeworld.} The lifeworld establishes a common fund of meaning that allows what a speaker says to a listener to be understood by the listener, and, if necessary, allows listener to raise validity claims concerning that utterance. Only if such a fund exists can the subjectivity of two individuals be mediated by language. Habermas describes how the lifeworld relates to communicative action:

\begin{quote}
In coming to an understanding with one another about their situation, participants in communication stand in a cultural tradition which they use and at the same time renew; in coordinating their actions via intersubjective recognition of criticizable validity claims, they rely on memberships in social groups and at the same time reinforce the integration with competent reference persons, growing children internalize the value orientations of their social groups and acquire generalized capabilities for action... Under the functional aspect of \textit{reaching understanding} communicative action serves the transmission and renewal of cultural knowledge; under the aspect of \textit{coordinating action}, it serves social integration and the establishment of group solidarity; under the aspect of \textit{socialization}, it serves the formation of personal identities.\footnote{Habermas quoted in McCarthy's introduction, Reason and the Rationalization of Society, xxiv. (Emphasis in original).}
\end{quote}

In contrast to the lifeworld stands the other foundation of discourse, system. Roderick summarizes Habermas' account of system by noting that it refers to those aspects of "[s]ocial systems (particularly subsystems such as the economy and the state) [that] follow functional imperatives and serve as 'formally organised systems of action based on media steering' (money
and power)."\textsuperscript{187} Translated that means that system, centered on material reproduction, is based on the coordination of individuals according to a standard that stresses efficiency and order.

The material reproduction of society requires that the purposive activities of different individuals be effectively coordinated. To the extent that the economy of effort and efficacy of means are measures of success, there is pressure in the direction of a cooperative division of labor, that is, a functional specification of activities with corresponding differentiation of their results and products. This requires in turn that these activities be somehow coordinated and these products somehow exchanged. "The competent combination of specialized performances requires a delegation of the authority to direct, or of power, to persons who take on the tasks of organization; and the functional exchange of products requires the establishment of exchange relations." Thus the division of labor goes hand in hand with the development of organizational power and exchange relations.\textsuperscript{188}

Whereas the lifeworld creates the conditions that allow intersubjective agreements to be reached, system provides the foundation for the organization of individuals so that the material means of life can be obtained. System requirements for material reproduction—organization of individuals with different abilities and a means of exchange between those individuals—are secured through the "media steering" mechanisms of power and money. The former provides a way for individuals to be manipulated according to the technical rationality of production, and the latter creates a system that allows the goods produced by those individuals to be exchanged.

It is through the media steering mechanisms of system that lifeworld and system are linked.

According to Roderick, for Habermas

[i]n modern societies in particular, two subsystems have been differentiated through the media of money and power, namely the capitalistic economic system and a "rationalized" (in Weber's sense of formal rationality) state administration. . . . On this . . . account, the institutionalization of the money and power media anchor the economic and administrative systems of action in the lifeworld. This connects the lifeworld with the functional system imperatives of the economy and state administration through private households (the family) and the legal system respectively. Thus, the symbolically structured lifeworld is subject to "the limitations of material reproduction within the framework of existing productive relations." On the other hand, the economy (and its occupational system) and the state (and its administrative system of domination) are "dependent on accomplishments of the symbolic reproduction of the lifeworld, namely on individual skills and motivations, as well as on mass loyalty." . . . For Habermas, the lifeworld depends upon the social system, both in terms of material production (the economy) and organization (the state). The social system depends upon the lifeworld for both the reproduction of socialized individuals and the continuation of coherent cultural traditions. They are

\textsuperscript{187} Roderick, \textit{Foundations of Critical Theory}, 120.

\textsuperscript{188} McCarthy, \textit{Reason and the Rationalization of Society}, xxviii. (Emphasis in original).
thus interdependent and interact in complex ways in the course of social development.\textsuperscript{189}

The state administration required to exercise power over individuals so that they are organized according to system imperatives itself requires both a legal system that is intersubjectively validated and citizens who possess the requisite intersubjectively generated motivations. Only on the basis of lifeworld interactions can the power of the state be effectively applied to individuals. Similarly, money which serves the system function of economic exchange is rooted in intersubjectively determined behavior patterns established in the lifeworld. Only if individuals are socialized into accepting money as fundamental unit of exchange can the market system function properly. In this way the institutions of the state and the market are dependent both on the system rationality of control and exchange and the communicative relations of the lifeworld which provide the types of behavior necessary for the market and the state to function.

In the ideal relationship between system and lifeworld in modern society the public sphere and the state stand at the point of convergence between system and lifeworld: the intersubjective relations of the lifeworld provide the normative framework in which system imperatives can then be carried out. The structures of the state and the legal system interact with the requirements of system and lifeworld (the substance of communication) and as a result the dynamics of communication in the public sphere are formed. Similarly, discourse in the private sphere is conditioned by the structures of the market and the family and the substance of lifeworld and system interactions. On Habermas' reading, then, the public/private split demonstrates the two ways that system and lifeworld are linked with one another. Through the institutionalization of the state administration the steering media of power is subjected to the background conditions for communication found in the lifeworld and the organization of individuals for material reproduction found in system. This also holds true for the institutionalization of money and exchange relations. Money can function as a unit of exchange according to system imperatives because the institution of the market has been established through intersubjective relations of the lifeworld.

\textsuperscript{189}Roderick, \textit{Foundations of Critical Theory}, 130-1.
Habermas is not content, however, to merely depict the ideal relationship between system and lifeworld so that the former can be seen to be anchored in the latter. Rather, by analyzing the process of social rationalization he hopes to demonstrate that system and lifeworld functions have been decoupled to such an extent that system threatens the symbolic reproduction of the lifeworld. For considerations of space I will not explore how Habermas approaches the study of social rationalization. We need only consider that Habermas sees societies evolving in such a way that system and lifeworld functions become more clearly demarcated. Rationalization within system involves an increased level of complexity in the productive process accompanied by an increase in the division of labor. This rationalization has the effect of making system more efficient and productive. With the increased complexity of system the lifeworld is also rationalized so that symbolic reproduction can keep pace with the growing complexity of system. Rationalization in the lifeworld results in the “differentiation of value spheres (science, morality, art)” so that validity claims can be more easily raised in intersubjective relations.

Rationalization and progress occur in both spheres, but there is a significant difference between progress in the two realms of action. Rationalization in the sphere of communicative action is indubitably a positive development, whereas rationalization in the realm of purposive-rational action involves strategic and instrumental decisions. Increasing rationalization in the latter area is usually seen as contributing to the alienation and bureaucratization of the modern world. But in the sphere of communicative action, rationalization means the elimination of those aspects of communication that lead to distortion... Progress in the sphere of communicative action is thus not measured the same way as progress in purposive-rational action. It has to be measured "against the intersubjectivity of understanding without force, that is, against the expansion of the domain consensual action together with the re-establishment of undistorted communication."190

Unfortunately, Habermas sees the process of rationalization in system and lifeworld occurring at an uneven pace.

The capitalist economy and the modern administrative state privileged the value sphere of science for its functions of power and control, and thus they one-sidedly imposed the hegemony of scientific-technological rationality over the other values spheres. This obscured the scope, role and goal of the more comprehensive concept of communicative rationality. For Habermas this process of rationalizing the lifeworld under system imperatives crosses a crucial threshold when inherently communicative lifeworld structures are damaged. These communicative structures represent areas of life necessary for the material reproduction of social life such as cultural reproduction, social integration, and the formation of the autonomous person through socialization. These areas of life cannot be turned over to functional system imperatives and

purposive-rational action without severe crises and disturbances. Primary among these are the loss of meaning, anomie, and personality disorders which Habermas associates with the colonization of the lifeworld.  

The process of system colonization of the lifeworld is caused by the system imperatives of the market in the private sphere becoming the sole basis of the state and the public sphere. As Habermas says, "The government apparatus became dependent on the media-steered economic subsystem; this forced it to reorganize in such a way that political power took on the structure of steering medium--it was assimilated to money." In this way capitalist mode of production caused the technical rationality of the private sphere to infiltrate the intersubjective relations that frame the public sphere. The dynamics of communication in the private sphere, which were increasingly dominated by the structures of the market and the language of purposive-rational action, begin to permeate the public sphere which, through its stress on intersubjective relations, created the framework both for the market and for the application of power. Technical rationality threatened the intersubjective relations of the lifeworld, and, as a result, the freedom of society, centered on the notion of undistorted communication, was jeopardized.

**Idea Formation in Habermas' Theory of Communication**

Clearly, Habermas' thinking on the dynamics of social and political discourse has undergone many important changes since *The Structural Transformation of the Public Sphere*. The "refeudalization" of the public and private spheres has been refined into "system colonization of the lifeworld," and the interest-maximizing tendencies of contemporary politics and the rise of bureaucracy are linked with a theory of communication and technical rationality. Despite this evolution, however, Habermas' depiction of the public and private has remained, in its most important aspects, essentially unchanged. From his earliest discussions of the public/private split

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up through *A Theory of Communicative Action*, Habermas has consistently used the split between public and private as an abstraction to observe different forms of social and political discourse. In each of the works I discussed above Habermas conceptualizes the public/private split in terms of how a particular form of discourse, its substantive content, relates to the institutions of the public and private spheres. Habermas then traces the evolution of this relationship as capitalism and next the welfare state develops. The nature of the public and private spheres fluctuates depending on what point it is at along the course of societal development. Under early capitalism Habermas sees two distinct forms of discourse in the public and private realms: the private sphere dominated by technical concerns and the public sphere based on deliberation and debate over values and norms. With the eventual emergence of the welfare state, however, the two distinct spheres of discourse have merged so that one form of discourse, technical rationality, comes to pervade most public and private interactions. The public sphere of early capitalist society becomes virtually unrecognizable when compared to its manifestation in the welfare state. Habermas uses the public and private as part of a matrix on which he can plot changing forms of discourse--changes which involve fluctuations in the interaction between the substance and structure of communication.

This use of the public and private sphere I will call the "convergence theory" as it posits each sphere only as point where forms of communication are centered; the public and private serve as the locus where substance and structure of discourse converge. The changes in types of discourse are the product of interactions between the institutions of the public and private spheres and the two forms of communication, purposive-rational and communicative action. The starting point for Habermas' analysis is the emergence of the bourgeois public sphere which had the effect of creating two fundamental categories of interactions. The convergence of substance and structure in the public sphere was different from that of the private sphere. Habermas then traces how these convergences have been altered with the changing system of production. The public sphere in the welfare state is recognizable as such only because of its historical linkages to the original political public sphere of the bourgeois state; the public sphere of the welfare state is what has become of the public sphere of bourgeois society. Other than that there are no linkages --i.e.,
there are no substantive similarities—between the types of discourse that occur in each. One public sphere has evolved from the other but the convergence of substance and structure in each is quite different. This same analysis holds true for the private sphere.

I want to suggest, however, that the convergence theory that Habermas employs is deficient because it does not recognize the importance that the formation of ideas has in shaping social and political discourse. That is, in his analysis of substance and structure Habermas overlooks the way that individuals orient themselves towards the world prior to any communicative involvement, whatever the form of that involvement might be. In order to accurately depict the dynamics of communication Habermas’ convergence theory—represented in the public and private spheres—must take account of the way that the ideas that give language its content. To make this argument I will return to Habermas’ approach to discourse discussed in Chapter 1. This approach, I contend, despite its superiority to that of the civic republican scholars, is reductionist in its view of the forces that influence discourse. Only by incorporating what I call “individual world orientations”—the unchanging way that individuals relate themselves to the world around them—with Habermas’ view can we adequately gain an understanding of social and political communication. To understand Habermas’ failure to include individual world orientations in the communicative process we must return to Habermas’ view on the relationship between linguistics and pragmatics illustrated in Chapter 1.193

One of Habermas’ major reasons for relying on pragmatics as opposed to linguistics in forming a critical theory of society is that he believes linguistic meaning can not be divorced from

193 See page 58. Evidence of this reification can be found in Habermas’ work as early as Legitimation Crisis. While discussing the way that social systems are able to retain their identity Habermas notes his view on the relationship between ideas and language:

Language functions as a kind of transformer; because psychic processes such as sensations, needs, and feelings are fitted into structures of linguistic intersubjectivity, inner episodes or experiences are transformed into intentional contents—that is, cognitions into statements, needs and feelings into normative expectations (precepts and values). (Legitimation Crisis, 10).

Thus, for Habermas ideas are nothing more than inputs into the process whereby language and subsequently communication is created.
the way that language is used in utterances. Linguistically meaningful sentences are not simply generated in a vacuum. Rather they are exposed to “extralinguistic orders of reality” when they are uttered and validity claims are raised.194 Because sentences are employed in utterances it is important, in Habermas’ view, to recognize the performative aspect in language and therefore use pragmatics to complement linguistic understanding. Habermas recognizes, however, that this proposition is not immediately obvious. He writes:

The production of sentences according to the rules of grammar is something other than the use of sentences in accordance with pragmatic rules that shape the infrastructure of speech situations in general. But this raises the following questions. (1) Could not the universal structures of speech--what is common to all utterances independently of their particular contexts--be adequately determined through universal sentential structures? In this case, with his linguistically reconstructable linguistic competence, the speaker would also be equipped for mastering situations of possible understanding, for the general task of uttering sentences; and the postulate of a general communicative competence different from the linguistic could not be justified. Beyond this there is the question, (2) whether the semantic properties of sentences (or words), in the sense of the use theory of meaning, can in any case be explicated only with reference to situations of possible employment. Then the distinction between sentences and utterances would be irrelevant, at least to semantic theory (as long as, at any rate, as [sic] sufficiently typical contexts of utterances were taken into consideration).195

The first objection asks if linguistic theory is, on its own, able to include the performative aspect of language and provide a reconstruction of universal speech competencies. The second objection questions whether pragmatics is sufficient to comprehend both the linguistic meaning of sentences as well as the way that they are uttered. Both objections challenge Habermas’ separation of pragmatics, the basis for his critical theory of society, from linguistics. The central thrust of his essay “What Is Universal Pragmatics?” in Communication and the Evolution of Society is to present a detailed study of why each of these two objections conflates an essential aspect of language. Habermas believes that both objections result in the reduction of key aspects of the communicative process, and, therefore, linguistics and pragmatics must remain separate fields of inquiry despite the connections between the two. Linguistics captures dimensions of language, e.g., the syntactical and semantic levels, that pragmatics can never access, just as pragmatics is

195 Habermas, Ibid, 27.
sensitive to a dimension of language, the way that utterances are employed in communication, that linguistics on its own could never capture.

Rather than discuss the explicit relationship between linguistics and pragmatics that Habermas documents, I want to focus on the unspoken assumptions that lie at the base of this relationship. For Habermas, the key to both linguistics and pragmatics is the role of language in expressing ideas. That is to say, language exists in order to convey ideas on both the semantic level of meaning and the pragmatic level of utterances. This point may seem so trivially true that Habermas does not bother considering it but I believe the fact that language expresses ideas is an essential aspect of discourse and it can not be overlooked. Ideas serve as the fundamental units of analysis in both linguistics and pragmatics: in the former, ideas are examined with regards to how meaningful sentences are created while in the latter, ideas are looked at in terms of how they are conveyed from speaker to listener. This way of using ideas, however, involves a reification of their essence. I say that it is a reification because Habermas' conceptualization of ideas abstracts the process by which ideas are generated from their concrete historical circumstances and draws from this only the fact that with the generation of ideas meaning is created. The process by which ideas are created is overlooked in favor of the end result of this process--the content that is generated. Although he takes pains to justify the different types of analysis used in linguistics and pragmatics, Habermas conflates the ideational core of both with the language that symbolizes and systematizes that meaning and allows it to be conveyed to other subjects. That is to say, Habermas is careful to separate out different aspects of language but he does not give the same treatment to exploring the role that ideas have in the process of giving language its content. Habermas is content to ground linguistic analysis in the pragmatic interest in utterances (which focuses on historical and social contexts) but he neglects to ground the ideational component of language in the same way. As Herbert Marcuse asked in his critique of contemporary linguistics,

[t]he object of analysis, withdrawn from the larger and denser context in which the speaker speaks and lives, is removed from the universal medium in which concepts are formed and become words. What is this universal, larger context in which people speak and which gives their speech meaning...?... [Such an analysis of the universal, larger context] uncovers the history in everyday speech as a hidden dimension of meaning--the rule of society over its language. And this discovery shatters the
natural and reified form in which the given universe of discourse first appears. The words reveal themselves as genuine terms not only in a grammatical and formal-logical but also material sense; namely, as the limits which define the meaning and its development—the terms which society imposes on discourse, and on behavior.\textsuperscript{196}

Through his analysis of universal pragmatics Habermas is successful in linking linguistic meaning with its employment in specific contexts, but Habermas overlooks how the semantic dimension of linguistics—the creation of meaning—must also be given similar treatment. As my subsequent examination hopefully will show, it is essential that the process through which ideas are generated be taken into account prior to assuming that ideas merely provide the meaning for language. It is grossly oversimplistic to assume that ideas are nothing more than sets of meaning which give language its semantic dimension. The fact remains that ideas are created by subjects who are situated in specific historical contexts. Within this historical context thinking subjects do just that—think—prior to the translation of ideas into a set of symbols that we call language. Just as Habermas calls attention to the importance of contextualizing the linguistic dimension of language within the world in which they are uttered, so too is it critical to relate the ideas that lie behind language to a broader social, political, economic, and historical context.

Evidence of Habermas' reified usage of ideas can be seen in his definition of system and lifeworld functions. For Habermas the lifeworld is a set of background meanings that allow the subjective outlooks of individuals to be mediated so that intersubjective relations can be formed; the lifeworld creates the conditions that facilitate understanding between interlocutors. Using the foundations that the lifeworld establishes Habermas then analyzes the types of communication that are possible. Habermas never considers, however, what sort of ideas are a prerequisite for the lifeworld. I.e., he assumes that lifeworld contributes meaning to individual utterances so that intersubjective relations can be formed but Habermas does not examine how this meaning is created. The shared traditions and outlooks, traditions, and worldviews of a culture create it, but we are left wondering what sort of ideas the lifeworld is based on and how these ideas are generated. In order to prevent the lifeworld from appearing as simple requirement of

communication that is based on an ideal confluence of cultural factors Habermas would have to investigate the concrete ways that ideas are formed to create this background set of meanings.

Similarly, system is understood by Habermas as the way that social systems are able to control the means of material reproduction. To this end, individuals must be organized and exchange relationships established. This approach assumes a set way of acting towards the world yet it never documents the ideas that make these types of actions possible. Habermas takes for granted that individuals have generated ideas about the world in a certain way and thus he concerns himself only with how these thoughts are then used to establish labor relations. To remedy the simplifications inherent in Habermas’ approach to system and lifeworld we must develop a theory which can explain the formation of ideas and then relate this formation back to the process of communication.

At the heart of the creation of ideas is the relationship between a thinking subject and the world about which and in which they think. This world includes all the experiences to which an individual has been exposed and, roughly speaking, is anything about which a person can think. Thought thus requires two things: a thinking subject and something to think about. What interests me in this truism is how an individual orients themselves to world that exists without. How does a person appropriate that world and form it into an idea and what allows an individual to bridge the separation between him or herself as a thinking subject and that which he or she is thinking about? Or put another way, how can an individual be said to “know” things about the outside world, i.e., those experiences that exist beyond and give definition to the self? I want to focus on the aspect of producing ideas that involves mediating the separation between

197 I use the term “ideas” in a somewhat idiosyncratic way. As I understand them, one can only generate ideas (which are then translated into language) with regard to actions in which another individual or object is engaged or involved. Therefore, an utterance that is communicated to me or someone else about an individual or object can not be within the domain of ideas. Utterances and statements about subjects or objects exist only within the context of language and therefore have no independent existence outside of language. Actions an individual or object is engaged in, however, do have an independent existence aside from the sentences and utterances created about them. For example, if someone tells me that they just saw someone fall down the stairs I can understand that occurrence only through the medium of language. If I did not see the event then it has no existence in my mind beyond what language can tell me of it. If, however, I saw someone fall down the stairs I can then generate a thought about that event prior to translating it into language. My concern is with how an individual who views an event is able to appropriate that event so that they can then form sentences and utterances about it. I want to know on what basis an individual is able to comprehend the experiences that provide language with its content.
thinking subject and the outside world—what I call “individual world orientations.” Following this I will then turn to how this set of relationships affects an individual’s ability to then generate ideas.

As I noted earlier, Habermas divides discourse up into two types of communicative relationships that can be established: an individual can communicate either to or with other subjects or about other subjects and objects. Communicative action establishes intersubjective relationships, and purposive-rational action relates the speaker to other subjects and objects as quantifiable entities that can be empirically and analytically manipulated. The formation of ideas mirrors these forms of relations based on discourse that can be created: people can create ideas in relation to other subjects or about objects and other subjects. I will now explicate what is involved in these two types of relationships.

I propose that when a subject thinks about other subjects he or she is able to relate ideas to other individuals in two ways: First, the thinker can project him or herself onto the other subject, thereby linking him or herself with that subject by way of identity. Second, the thinker can relate to the other in terms of an abstraction which situates the other in a conceptually-based category or grouping. Both of these relations imply something about how a thinker can come to know what it is he or she is thinking about, i.e., how what the thinker is thinking about is able to enter his or her mental processes. The first individual world orientation posits knowledge and ideas about another subject which are formed because the thinker is able to recognize him or herself in the other. This type of relationship holds that the thinker can understand the subject he or she is thinking about because the thinker can visualize, if you will, the experiences of the other in terms of him or herself.198 The starting point of thought processes, the thinker, understands others because the thinker is self-aware, i.e., understands how events affect themselves. A simple example will help to illustrate this point: I am standing in a field watching a friend build a fence when she hits her

198 I do not mean by this that an individual must have experienced what the other subject is now experiencing in order for identity to be established. Rather, I mean that it is possible for a person to see themselves in a situation that another is in so that they can then imagine what the other person is experiencing. For example, suppose I have never been intoxicated before and I see another person quite drunk. Although I have no analogous set of experiences that can help me understand what the other person is feeling I can imagine what it is like to be drunk by observing the ways that that person acts; I can imagine how it must feel to not be in full control of my own body and mind. In this way I can know what that person is feeling and create and idea about it. Even if my impressions are incorrect I can still think about what it is like to be drunk and create a misconception about the experience.
thumb with a hammer and shrieks with the pain. A thought generated about this event would be linked to the event because I can imagine the pain of hitting my own thumb with a hammer. I know the other subject because I can vicariously experience her pain. The thought generated is linked to the subject by way of identity. I can then translate the idea of a smashed thumb which was appropriated through my identification with the pain into sentences which are formed according to linguistic rules that are oriented towards the pragmatic dimension of utterances. An intersubjective understanding can then be created through these utterances. I can also relate this idea of my friend smashing her thumb to previously established intersubjective norms which tell me that smashing one's thumb is a foolish thing to do (a normative judgement). Before this happens, though, I have to understand the subject of my thought which then allows the thought to enter my mental processes where an idea is created and then translated into language. One way for this to be done is if the thinker is able to judge the actions or reactions of others to events in terms of their own responses which are known or can be speculated about.

It is also possible for a person to relate to another individual by way of negative identity, i.e., the effects that another individual, the subject of the thinker's thought, has on other individuals. Again, an example will help to illustrate this point. Adolf Hitler is a man with whom I have trouble relating. Although I could relate to Hitler using our example of a smashed finger (if he hits his thumb with a hammer), outside of involuntary responses to painful stimuli there is very little in Hitler that I can project onto and in which I can see myself. How then can I know Hitler so that an idea can then be formed about him? One possible way is to relate to the how Hitler's actions have impacted other people's lives. Hitler murdered and tortured many innocent people and I can project myself onto those other people and experience through identity the horror of Hitler's actions. Hitler is thus negatively defined to me through what he does to others and not who he himself is. I can then formulate an idea based on this knowledge, translate the idea into language, and refer to the intersubjective norms which tell me that the murder and torture of innocent people are abominable acts.
Individuals can also formulate ideas about other subjects through reliance on abstraction. This way of generating ideas about other individuals works through the relation of individuals to abstract categories not grounded in something with which the thinker can directly identify. Let’s look at a not-so-hypothetical situation to demonstrate this. I am from Florida but recently moved to New York. When my friends ask me how I like the people of New York as compared with the people of Florida I usually say something to the effect of “New Yorkers are callous, ill-mannered, and unfriendly.” Now if my friends had asked me what I thought of a particular person who lived in New York I would be able to generate an idea about that particular person either by identifying with something he or she does and then translating this into a language that could refer to the intersubjective norms created through dialogue or I could do the same through negative identification of what that individual does to or with others. But in this example my friends ask me my opinion of all the citizens of New York. Clearly I cannot, in formulating an answer to this question, attempt to identify or negatively identify with every person in New York and then engage in discourse based on this identification. Instead what is called for is that I make a generalization based on an amalgam of the citizens of New York with whom I have come into contact. This requires that in thinking about and creating ideas describing the citizens of New York I create an abstract entity called “New Yorkers.” It is doubtful that any one citizen of New York matches the profile of my idea about New Yorkers in general so my concept transcends reality. Not every person in New York is “callous, ill-mannered, and unfriendly” nor are those who are “callous, ill-mannered, and unfriendly” like that in the same way as my statement about New Yorkers in general identifies. Part of the advantage of using an abstraction to describe all New Yorkers is that the adjectives I use to describe them are not specific to particular ways of being “callous, ill-mannered, and unfriendly.” My orientation towards the world is then centered on an abstraction that has its basis in reality but it is not a mirror of reality. When I create an idea about someone through identification I, in a sense, find that person in myself and myself in that person and based on self-knowledge I can reconstruct the other. In this way identification attempts to mirror the reality of the other. When I think in terms of abstractions, however, strictly speaking I am not
mirroring reality but instead am abstracting from it and distilling parts of it. Always, however, the abstract entity transcends reality as it actually is. In this case I know and create ideas about the citizens of New York mediately through the abstraction “New Yorkers”--subjects are understood via their linkages to a broad category or grouping to which they belong.

Having argued for this distinction between two forms of knowing and generating ideas about subjects I now want to back down on the rigidity of this distinction. As I have presented it so far, the separation of ideas formed via identification and abstraction is a hypostatization. It is quite possible, if not inevitable, that an individual knows another subject both through identification and abstraction. Again, an example will be useful here. Country X has been, for the past few months, bombing country Y. On the news I am continually exposed to pictures that detail the effects of this bombing. On one level I generate ideas about what I see by way of identification. I can imagine what my life would be like if my community were destroyed and my friends and family killed; I can project myself onto the individual citizens of country Y. On another level, though, I relate, on the plane of ideas, to the citizens as members of a larger abstract whole that is called country Y. Country X (an abstraction) bombs country Y (another abstraction). Of course these countries are both composed of individuals with whom I can relate to by way of identification but I can also think of them in terms of what an entire nation does. E.g., the Serbs bomb the Moslems.

What determines how much of my idea formation is the product of identification as opposed to abstraction is the strength of the identification which is a function of two things: First, I may be able to project myself on to the other individuals without much difficulty because they are similar to myself either in who they are or because the situation they are involved in is familiar to me. Second, I may have a strong identification because what is occurring--in this case death and destruction as a result of bombing--taps into powerful primal or socially constituted instincts I have. Thus, even if I were unfamiliar with the people of the country being bombed it is possible for me to identify with them because of the primal aversion I have to pain and suffering. Because

199 Whatever one's definition of reality may be.
humans have a strong propensity to avoid misery, the fact that the people of a country are suffering allows me to put myself into their situation and imagine that my own life and community are in jeopardy. My interest in risk avoidance overcomes my unfamiliarity with the individual citizens of the country being bombed. The more fundamental the interest that is implicated in a particular experience is to what an individual holds to be important in their own lives, the stronger the sense of identification.

It is also possible for these two aspects of identification, familiarity and the intensity of the interest implicated, to be in tension with one another. Thus, I may be wholly unfamiliar with what is happening to individuals, as would be the case of my seeing starving children in Somalia, but the notion of starvation is so devastating that I could imagine and formulate ideas about the horror of being deprived of food. On one level I have trouble identifying with starving children in Africa because I myself have never know extreme hunger nor I have known anyone else who has been deprived in this way, but on another level the effects that starvation has on the body are so profound that I could understand what it would be like if my own body were malnourished. In this case the identification with the latter would outweigh the former and I would be able to relate to the situation and generate ideas through identification. The need for food is so fundamental that it overrides differences between myself and other individuals.200

Obviously, however, there is not a complete identification, nor could there be unless the thinking individual had experienced exactly the same situation as the person or persons about which she is thinking. As a result, part of the way I can understand what is happening to the starving children is by way of abstraction. I would also understand the starvation in terms of “the hunger in Somalia.” (“Hunger” and “Somalia” being artificial constructs based on actual occurrences but distinct from these actual occurrences). “Hunger” would be associated with the

200I am not claiming here that there is some sort of biological determinism at work because the need for food, a basic biological instinct of living organisms, dictates that identification always dominates abstraction. Indeed, it is quite possible for this biological source of identification to be trumped by a socially constituted doctrine, e.g., the Malthusian thesis, which argues that the starvation of some is sometimes a necessary consequence. In this case the biological tendency to link an individual with other via identification would be mitigated by a social doctrine which says that some must suffer and die so the health of the whole society can be preserved.
abstract notion of the deprivation of food and "Somalia" would correspond to an abstract category that links together various individuals who live in a part of Africa. In short, abstraction and identification occur together but the extent to which an individual relies on one over the other is centered on his or her ability or inability to grasp the reality of the event in terms of him or herself. The less an individual is able to project him or herself onto others the more that he or she will be forced to rely on an abstraction to comprehend what is happening to other subjects. The abstraction relates the individual to whom they are thinking about by way of generalities that do not require identification with specific manifestations of characteristics or events.

I believe that the two ways of comprehending other subjects prior to the formulation of ideas are linked to Herbert Marcuse’s contrast between concepts and conceptions which he claims are the two fundamental levels on which ideas are created. These two levels play a key role, in Marcuse’s view, in shaping how individuals view the world and subsequently how forms of social and political discourse function. What I want to explore, then, is how I believe that the way an individual comes into a relationship with and understands the world around him or herself affects the types of ideas, as outlined by Marcuse, that are then translated into language.

In One-Dimensional Man, one of the most insightful and profound books I have ever read, Marcuse claims that an individual generates ideas either in terms of a concept or a conception. In a somewhat lengthy description, Marcuse defines a “concept” as follows:

"Concept" is taken to designate the mental representation of something that is understood, comprehended, known as the result of a process of reflection. . . [Concepts] have become objects of thought, and as such, their content and meaning are identical with and yet different from the real objects of immediate experience. "Identical" in as much as the concept denotes the same thing; "different" in as much as the concept is the result of a reflection which has understood the thing in the context. . . of other things which did not appear in the immediate experience and which "explain" the thing (mediation).

If the concept never denotes one particular concrete thing, if it is always abstract and general, it is so because the concept comprehends more and other than a particular thing--some universal condition or relation which is essential to the particular thing, which determines the form in which it appears as a concrete object of experience. If the concept of anything is the product of mental classification, organization, and
abstraction, these mental processes lead to comprehension only inasmuch as they reconstitute the particular thing in its universal condition and relation, thus transcending its immediate appearance towards its reality.

By the same token, cognitive concepts have a transitive meaning: they go beyond descriptive reference to particular facts. And if the facts are those of society, the cognitive concepts also go beyond any particular context of facts--into the processes and conditions on which the respective society rests, and which enter into all particular facts, making, sustaining, and destroying the society. By virtue of their reference to this historical totality, cognitive concepts transcend all operational context, but their transcendence is empirical because it renders the facts recognizable as that which they really are.\textsuperscript{201}

Concepts involve a curious balance between the historically grounded and the transcendent: on one hand the concepts refer to actual occurrences in the world,\textsuperscript{202} but on the other hand, the description of these actual occurrences is at a high enough level of generalization that the reference to the world is something more that what is being assessed. As Marcuse notes, the concept has an "'excess' of meaning over and above" particular occurrences in the world.\textsuperscript{203}

Since it operates at a high enough level of abstraction and generalization a concept holds within it a potentiality that can never be manifested in reality. This potentiality, according to Marcuse, is the striving towards the universal element that is inherent in the concept. He writes:

Universals are primary elements of experience--universals not as philosophic concepts but as the very qualities of the world which one is daily confronted. What is experienced, for example, snow or rain or heat; a street; an office or a boss; love or hatred. Particular things (entities) and events only appear in (and even as) a cluster and a continuum of relationships, as incidents and parts in a general configuration from which they are inseparable; they cannot appear in any other way without losing their identity. They are particular things and events only against a general background that is more than a background--it is the concrete ground on which they arise, exist, and pass. This ground is structured in such universals as color, shape, density, hardness or softness, light or darkness, motion or rest. In this sense, universals seem to designate the "stuff" of the world: . . . [According to Bertrand Russell "]the stuff of the world consists of things like whiteness, rather than of objects having the property of being 'white.'["\textsuperscript{204}

\textsuperscript{201}Marcuse, One-Dimensional Man, 105-6. (Emphasis in original)
\textsuperscript{202}Marcuse writes:

Abstraction is a historical event in a historical continuum. It proceeds on historical grounds and remains related to the very basis from which it moves away: the established societal universe. Even where the critical abstraction arrives at the negation of the established universe of discourse, the basis survives in the negation (subversion) and limits the possibilities of the new position. (Ibid, 134).

\textsuperscript{203}Ibid, 106.
\textsuperscript{204}Ibid, 211-2.
Concepts function as the “background” on which the world sits and attribute meaning to that world without simultaneously becoming a part of it. Concepts remain universal and, therefore, transcendental, serving as a potential that can never be realized. Thus, an object may be “white” but it never can be “whiteness.”

Snow is white but not “whiteness;” a girl may be beautiful, even a beauty, but not “beauty;” a country may be free (in comparison with others) because its people have certain liberties, but it is not the very embodiment of freedom. . . . There is more in the abstract noun (beauty, freedom) than in the qualities (“beautiful,” “free”) attributed to the particular person, thing, or condition. The substantive universal intends qualities which surpass all particular experience, but persist in the mind, not as a figment of imagination nor as more logical possibilities but as the “stuff” on which our world consists.205

It is within the potentiality of the concept, the excess meaning that is above and beyond specific manifestations in reality, that Marcuse finds the source of critical negation that is the real origin of social and political freedom.

A full discussion of Marcuse’s understanding of the concept as negation of the status quo is beyond the scope of my current inquiry. It is sufficient to note only the transcendental aspect of the concept in relation to its particular manifestations—conceptions. A conception is attributing the qualities of a concept to a specific individual, thing, situation, etc.206 Unlike a concept, a

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205 Jbid, 213.
206 Legal theorist Ronald Dworkin sheds light on this distinction between a concept and a conception when speaking how both manifest themselves in laws. Using a hypothetical community that has an interest in maintaining fairness in their social interactions Dworkin describes the difference between a concept and a conception. He writes:

[M]embers of [a] community who give instructions or set standards in the name of fairness may be doing two different things. First they may be appealing to the concept of fairness, simply by instructing others to act fairly; in this case they charge those whom they instruct with the responsibility of developing and applying their own conception of fairness as controversial cases arise. This is not the same thing, of course, as granting them a discretion to act as they like; it sets a standard which they must try—and may fail to meet—because, it assumes that one conception is superior to another. . . .

On the other hand, the members may be laying down a particular conception of fairness; I would have done this, for example, if I had listed my wishes with respect to controversial examples or if . . . I had specified some controversial and explicit theory of fairness, as if I said to decide hard cases by applying the utilitarian ethics of Jeremy Bentham. The difference is not just a difference in the detail of the instructions given but in the kind of instructions given. When I appeal to a concept of fairness I appeal to what fairness means, and I give my views on that issue no special standing. When I lay down a conception of fairness, I lay down what I mean by fairness, and my view therefore is the heart of the matter. (Ronald Dworkin, Taking Rights Seriously, (Cambridge: Harvard University Press, 1977), 135. (Emphasis in original).
conception lacks the element of potentiality and universality because it is used to describe a particular thing, e.g., white snow. In short, a conception is the application of a concept. In exchange for abstraction a conception gains concreteness but loses the open-ended quality of the concept. The conception, however, is linked to the concept from which it springs. Marcuse notes that the two are interconnected because

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\text{[t]hought is always more and other than individual thinking; if I start thinking of individual persons in a specific situation, I find them in a supra-individual context of which they partake, and I think in general concepts. All objects of thought are universals. But it is equally true that the supra-individual meaning, the universality of a concept, is never merely a formal one; it is constituted in the interrelationship between the (thinking and acting) subjects and their world.}^{207}
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Concepts and conceptions ideally remain in a healthy tension with one another. The concept refers to its specific manifestations in the world and the conception refers to the essence that it can never become.

But how is Marcuse’s thinking of concepts and conceptions related to my above analysis on the relationship between the thinking subject and the subjects that she thinks about? Recall that identification is founded on an individual’s knowledge of another person based on understanding the other in terms of him or herself. This process would result in conception-generated thought because identification is concerned with the particulars about the other as well as the concrete situation in which the other finds themselves. Only if specific details are known can the thinker then project him or herself on to the other and experience what the other is experiencing. It is the case, therefore, that knowledge created through identification would be based on conceptions. Similarly, knowledge gained through abstraction also involves ideas created on the level of the conception. In this case abstract groupings have characteristics attributed to them. For example, I can describe women as being “smart” but clearly they are not the conceptual essence of “smartness.” The difference between a conception being used to describe an individual known through identification and a conception being used to label an abstract grouping is that in the latter case that which is being described transcends the individual. In abstraction a category the thinker

\[\text{207Marcuse, One-Dimensional Man, 138-9.}\]
has created to allow that which is being thought about to enter his or her mental processes takes on a specific set of characteristics.

Of course, as I noted, concepts and conceptions are linked with one another: individuals are seen in their supra-individual contexts—the realm of the concept. Just as a subject can be understood by way of both identification and abstraction, so too ideas can be created on both the level of the concept and the conception. In this way the concern for the individual and the specific context can be linked to a larger, trans-historical context. Concepts remain focused on the particular historical circumstances that they serve as the background for, and conceptions remain oriented towards their potentiality which can never be manifested. This combination allows for the generation of thoughts critical about the status quo, thoughts which can then be articulated through the medium of language—the domain of Habermas’ universal pragmatics.

Individuals do not, however, formulate ideas solely based on knowledge gained from other subjects. A key aspect of human interaction involves the relationship between a thinking subject and an object. This sort of relationship involves a thinker’s observations of a thing and is the ideational equivalent to Habermas’ purposive-rational action. Whereas such observation with regard to another subject requires identification to access the dimension of the subject not readily apparent to the thinker, i.e., thoughts, feelings, emotions, etc., with objects all that is needed to be known exists on the surface. Objects can be understood through characteristics that manifest themselves in the appearance or the actions of the object. No additional level of thought or emotion need be considered since none is presumed to exist. A dog can be understood with regard to its physical appearance and its characteristic set of actions—its behavior. Similarly a chair can be understood through its physical structure and how it is used. The thinker does not require an interpretative device such as identification or abstraction in order to assess what it is that they are

\[208\text{By object I mean any non-human thing, e.g., a dog, a book, a chair, or any human being that is treated as non-human, i.e., as a means to achieve an end. This will become more clear in what follows.}\]  
\[209\text{I believe however, that it is also possible to have an intersubjective relationship with a dog or other animal. One need only look at the relationship between a pet and a pet owner to see that the former is clearly something more than an object to the latter.}\]
thinking about. With an object all that a thinker needs to know exists before them and need only be observed.

It is also possible for subjects to be treated as objects. In this case the thinker does not refer to the other dimensions of the subject, i.e., thought and emotions, but instead creates ideas about the individual with reference only to surface characteristics. In this way the subject becomes objectified, i.e., treated as nothing more than an object. Human beings can be related to, on the plane of ideas, in the same way as a chair or a dog. What is important to thinker in this situation is only the observed characteristics of the subject. No attempt is made to connect the individual or individuals either with the thinker’s self or with an abstract category.

Like subjects who are comprehended by way of identification and abstraction, objects (both of the human and non-human kind) can be grasped only by way of conception; abstract concepts are revealed as manifestations in specific things. While a vast number of social interactions retain the conceptual background of understanding, however, Marcuse argues that science and technical-empirical rationality which analyze things as objects operate solely on the level of the conception.\(^{210}\) Such a rationality strips concepts of their universality and potentiality.

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\(^{210}\) I am aware of the tension between Marcuse and Habermas’ positions on technical rationality and technical domination. Marcuse sees the foundations of unfreedom in contemporary society in scientific-empirical logic while Habermas sees technical rationality as an essential type of social activity. Marcuse sketches out his position in this way:

\[\text{S}cience, \text{by virtue of its own method and concepts, has projected and promoted a universe in which the domination of nature has remained linked to the domination of man—a link which tends to be fatal to this universe as a whole. Nature, scientifically comprehended and mastered, reappears in the technical apparatus of production and destruction which sustains and improves the life of the individuals while subordinating them to the masters of the apparatus. Thus the rational hierarchy merges with the social one. If this is the case, then the change in the direction of progress, which might sever this fatal link, would also affect the very structure of science—the scientific project. (One-Dimensional Man, 166). (Emphasis in original).}\]

Marcuse argues that by restructuring the sciences it is possible to move away from the technical domination of nature and the ensuing technical domination of humanity. In contrast, Habermas claims that technical domination of nature is a necessary outcome of purposive-rational action, one of the two basic forms of human activity, and therefore it can not be eliminated by modifying scientific procedure. Habermas concludes:

\[\text{Marcuse has in mind an alternative attitude to nature. . . Instead of treating nature as a the object of possible technical control, we can encounter her as an opposing partner in a possible interaction. We can seek out a fraternal rather than an exploited nature. At the level of an as yet incomplete intersubjectivity we can impute subjectivity to animals and plants, even to minerals, and try to communicate with nature instead of}\]

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and instead links them to the actual functioning of people and objects. Marcuse labels this tendency “operationalism” and explains that

\[t\]he feature of operationalism--to make the concept synonymous with the corresponding set of operations--recurs in the linguistic tendency “to consider the names of things as being indicative at the same time of their manner of functioning, and the names of properties and processes as symbolic of the apparatus used to detect or produce them.” This is technological reasoning which tends “to identify things and their functions.”211

Under technical reasoning words are linked to how a thing operates and the background meaning--the excess of meaning of the concept--is abandoned. “Whiteness” is relevant only insofar as the snow has the quality of being “white;” “freedom” is considered only with regard to how a particular society is “free.”

The common feature [of operationalism] is a total empiricism in the treatment of concepts; their meaning is restricted to the representation of particular operations and behavior. The operational point of view is well illustrated by P.W. Bridgeman’s analysis of the concept of length:

“We evidently know what we mean by length if we can tell what the length of every and any object is, and for the physicist nothing more is required. To find the length of an object we have to perform certain physical operations. The concept of length is therefore fixed when the operations by which length is measured are fixed: that is, the concept of length involves as much and nothing more than the set of operations by which length is determined. In general, we mean by any concept nothing more than a

merely processing her under condition of severed communication... Be that as it may, the achievements of technology, which are indispensable as such, could surely not be substituted for by an awakened nature. The alternative to existing technology, the project of nature as opposing partner instead of object, refers to an alternative structure of action: to symbolic interaction in distinction to purposive-rational action. This means, however, that the two projects are projections of work and of language, i.e., projects of the human species as a whole, and not of an individual epoch a specific class, or a surpassable situation. The idea of a New Science will not stand up to logical scrutiny any more than that of a New Technology, if indeed science is to retain the meaning of modern science inherently oriented to possible technical control. For this function, as for scientific-technical progress in general, there is no more “humane” substitute. (Habermas, “Technology and Science as Ideology,” 241-2.) (Emphasis in original).

While a resolution of this conflict would make for an interesting paper (one I someday hope to write) it is not something that I will presently undertake. I am less concerned with each man’s views on how fundamental the technical domination of nature is than I am with the way that Marcuse’s focus on the fundamental levels on which ideas are generated reveals oversimplifications in Habermas’ understandings of social and political discourse. Thus, by drawing on Marcuse’s analysis of concepts and conceptions I am not taking a position on whether or not technical thinking must always involve some sort of domination. Rather, I take from Marcuse his view on the type of idea that is at the core of technical rationality regardless of whether such rationality is inherent in human activity. For an interesting discussion on the tension between Marcuse and Habermas’ approaches to the technical domination of nature, a discussion highly critical of Habermas’ view, see Chapter 5, “The Failed Promise of Critical Theory,” in Robyn Eckersley, Environmentalism and Political Theory. (Albany: State University of New York Press, 1992). 211Marcuse, One-Dimensional Man, 86-7.
set of operations; the concept is synonymous with the corresponding set of operations."^{212}

Technical rationality results in the particularization of concepts and subsequently closes off an entire horizon of possibilities; conceptual essence is abandoned in favor of operational definition.

Based on my analysis of the formation of ideas it is now possible to give a more accurate definition of system and lifeworld. Lifeworld interactions, since they are centered on intersubjective agreements, find their grounding in the world of ideas in terms of individual knowledge gained through identification and abstraction. Only after the thinker has situated him or herself vis-a-vis the subject being thought about can an intersubjective relationship be established. But, as I noted in Chapter 1, Habermas made it clear when distinguishing between universal pragmatics and his theory of communicative action that utterances based on intersubjective knowledge by themselves are not meaningful. Only when one considers how such utterances are employed in securing intersubjective agreement between interlocutors can an adequate theory of communication be developed. Up to this point I have only argued for the level of ideas that thinkers operate on when forming ideas; I have not said how these thinkers are able to come together and form intersubjective agreement. My theory of knowledge through identification and abstraction tells us only how thinkers, in their own subjectivity, generate ideas. How then is this subjective knowledge mediated so that two thinkers can come to any sort of agreement?

In order to answer this question we have return to Marcuse's analysis regarding the linkage between concepts and conceptions. Marcuse notes that when conceptions are formed they are also viewed through the supra-individual context of the concept. In other words, concepts provide the background of meaning on which specific manifestations in conceptions become intelligible.

When we say snow is white we also implicitly acknowledge the concept of whiteness upon which our description of snow is based. Therefore, if I tell someone else that the snow on my lawn is

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^{212}Ibid, 12-3. (Emphasis in original).
white they are able to comprehend what I am saying by referring to the concept of whiteness. Though they may not necessarily see the snow that I am describing (the specific manifestation of whiteness) they can comprehend what I am saying because they have knowledge of the non-contextualized concept of whiteness. My subjective understanding of white snow is meaningful to someone else because of the concept that mediates our communication. The same would hold true if I were describing a just society. I may say to someone that our society is just but my specific understanding of what justice implies in the case at hand is intelligible to another because they are able to come out of their own subjective understanding of justice by referring to the concept of justice. The excess meaning of the concept allows the subjective positions of two speakers to be mediated through a common ideal. As long as both speakers are familiar with the concept behind the conceptions being implied then debate, deliberation, and mutual understanding are possible.

In this sense both Michelman and Perry are correct when they speak of a common fund of meaning or of aspirations that make deliberation possible.\textsuperscript{213} Like Habermas and his analysis of the lifeworld, Michelman and Perry recognize the need for a background set of meanings so that participants in social debate have a common point of reference that links together different specific perspectives. Concepts serve this function since they transcend historical contexts and the conceptions generated in those contexts. Whereas conceptions create subjectivity since they posit the thinker in relation to other individuals, with concepts this is not possible. It is impossible for the thinker to situate him or herself vis-a-vis a concept since does not "exist"—concepts are prior to context. Consequently, concepts provide the necessary degree of objectivity that allows the subjective circumstances of the thinker to be bridged.

The communicative action of the lifeworld is thus predicated on the linkage between the concept and the conception. Only if the conception-based intersubjective knowledge of an individual gained through abstraction or identification is connected to the concept on which that

\textsuperscript{213}Of course, neither Michelman nor Perry sees the way that these aspirations or common funds of meaning can be taken over by technical rationality that makes intersubjective agreement impossible. Therefore, although he might agree with both Michelman and Perry in terms of how their analysis suggests, in an undeveloped form, his notion of the lifeworld, Habermas would most certainly be critical of each man for failing to take into account the lifeworld's relations to system.
conception itself is based is it possible for there to intersubjective agreement and, subsequently, the values and norms that guide society. In this way the convergence theory of the lifeworld that Habermas argues is connected to my theory of ideas.

Similarly, system also assumes a basic set of ideas in order for it to function. System imperatives are guided by an instrumental rationality that emphasizes the way that objects (or subjects qua objects) can be manipulated according to a calculus centered on efficiency and order. Purposive-rational action then requires the thinker to relate to the external world via conception. Unlike the conceptions formed in intersubjective thought, however, the conceptions generated in technical thought are only concerned with the characteristics of the objects as they are revealed on the objects surface; there is no subjective domain that (is assumed to) exist so the thinker is not required to understand the object in terms of him or herself. Technical thought, since it does not require mediation between interlocutors, does retain a linkage to concepts. As Marcuse noted, in technical thought concepts are only understood insofar as they operationally manifest themselves in the manipulation and functioning of the object. The generality and transcendental character of the concept is disregarded. In this way Habermas' depiction of system as at the point of convergence between the substance and structure of discourse can be supplemented with my theory of ideas.

Using these revised definitions of system and lifeworld I now want to demonstrate that Habermas' analysis of system colonization of the lifeworld can be understood by focusing on what I see to be the mutually reinforcing dialectical relation between the convergence of the substance and structure of discourse and the realm of ideas and individual world orientations. By using my revised theory of system colonization of the lifeworld I think that is also possible to demonstrate that the public/private split that Habermas' uses as an abstraction to explain the convergence of substance and structure and the rise of technical rationality can be better understood as the cause of the rise of technical rationality. Unlike Habermas, I believe that the very fact that the public and private spheres were originally differentiated is significant in understanding how system was able to colonize lifeworld. To begin, let's return to Habermas' initial portrayal of the public and private spheres in early bourgeois society.
Rethinking the Rise of Technical Rationality: The Role of the Public/Private Split

In *The Structural Transformation of the Public Sphere*, Habermas recognizes two distinct areas of social and political life called the "public" and the "private." These two spheres then serve as points of reference that are used to chart the varying forms of discourse that accompany the rise of capitalism. According to my analysis in the first part of the chapter, the main purpose of this separation in Habermas' theory is to serve as an abstraction for examining forms of discourse. As I argue below, because of the mutually reinforcing dialectical connection between the convergence of substance and structure in discourse and the formation of ideas, however, it is crucial to explore the significance of the fact that at the point of convergence there exists both a public and a private sphere. That is to say, I believe that the configuration of the public and private spheres at the point of convergence has implications for the separation of the public and private spheres in the realm of ideas—a separation which allows conception-based thought to become so prevalent that intersubjective communication centered on concepts becomes impossible. I think it is possible to demonstrate that the public/private split at the point of convergence caused the decoupling of the public and private spheres in the realm of ideas thereby precipitating a set of interactions between ideas and institutions that ultimately led to the rise of technical rationality as the dominant form of social and political communication.

Earlier I noted that Habermas' depiction of the initial relationship between a differentiated public and private sphere observes that each sphere fulfilled a distinct role in an individual's life. Private interactions, which emerged from conjugal family, were centered on self-interest while participation in the public sphere was directed towards mediating the different subjective interests individuals form in their private capacities. Hence Habermas concludes that the separation of public and private functions in the bourgeois state has the effect of both at once confirming the subjectivity of the individual as well as creating the possibility that objective conclusions can be
reached through political debate and deliberation. Since all individuals allowed to participate in the political public sphere were considered equals in the eyes of the law, it was believed that objective conclusions about the subjective circumstances of the private sphere could be found. Equal citizens, so it was said, employing their reasoning abilities could see beyond their own self-interest and as a result could discover objective truths about the public good. In this way the functions of the public and the private sphere could be reconciled and the social and political systems could legitimize their authority.

Using my above analysis on the relationship of the concept to the conception let’s now analyze the dominant forms of discourse operating in bourgeois public and private spheres. On Habermas’ account the bourgeois private sphere is concerned with individual self-interest. That is to say, something can be properly be called an individual’s private interest only insofar as the individual is at the center of the consideration. In terms of individual world orientations I see three distinct relationships between the thinker and her private world: First, within the private sphere an individual has a technical interest in how the actions of objects and other subjects affect the realization of the individual’s goals. In this type of relationship the individual views subjects and objects according to how they frustrate or complement the individual’s interests. Whatever the source of that interest is in the private sphere thinkers can relate to the outside world based on technical calculations aimed at the realization of a goal. These calculations only look at subjects and objects with regards to how their surface characteristics bear on the goal that is attempting to be satisfied.

It would be a gross misstatement, however, if private life were considered only as an arena for the satisfaction of individual wants through technical manipulation. Clearly, some of the first things that come to mind when one mentions the private sphere involve personal, intimate relations among people. For example, in the relationship between an individual and his or her family family members are certainly more to that person than things which affect the realization of self-centered goals. Rather, intersubjective bonds are created between the thinker and his or her family. (The same analysis could also be applied to friends, close associates, etc.) Since in these cases the
thinker is both quite familiar with the others and most likely has knowledge of the circumstances that affect these others. It is possible for the thinker to gain knowledge of the others by way of identification. Because of his or her familiarity with the family member, friend, etc., the thinker can project him or herself on the other and understand the other through and understanding of the thinker's self.

Finally, the private sphere consists of relations between the individual and abstract entities. Thus, as a private citizen I might think about the starving children in Somalia, the Serbs bombing the Moslems, or the New Yorkers I come in contact with when I go home for the summer. In each of these cases abstract groupings of individuals affect my life and may trigger actions on my behalf (e.g., I may send money to a relief organization, write a letter to the president asking him to intervene more forcefully in (what was) Yugoslavia, or not go home for the summer). The conception formed through abstraction links the thinker to an abstract grouping. Despite the abstractness of this grouping, the thinker still remains at the center of the consideration because first, the thinker created the category, and second, the thinker responds to the actions of the group and its surrounding context.

Since much of what we consider to be a private matter involves either interest maximizing calculations, personal relations with other individuals, or abstract relations with groups of individuals, the private sphere is largely constituted by conception based thought. Technical concern about objects and subjects qua objects and knowledge through identification involve a thinker and his or her self-understanding. In the former, the world is perceived as an operational manifestation of concepts that either help or hinder the realization of individual goals. In the latter, other subjects are known through how they, as manifestations of concepts, affect the thinker. In either case, though, conceptions become concrete so that individual can assess his or her position vis-a-vis what is being contemplated.

In contrast, relationships in the public sphere are centered on concepts and involve more than just an individual thinker. In my discussion of The Structural Transformation of the Public Sphere I noted that for Habermas the emergence of the political public sphere resulted largely from
the increasing scope and interdependency of market interactions. In order to keep the burgeoning market operating smoothly, and in an effort to open new markets, private individuals had to come together so as to coordinate their private activities. Unlike the private sphere where self-interest and immediate personal associations are the primary form of relationships between the individual and the outside world, in the bourgeois public sphere the individual was forced to rise out of subjectivity created by the impact that the manifestation of conceptions had on him or her. The individual had to think in terms of an abstract entity called “the public” and had to interact with individuals who had different perspectives and interests. This interaction was made possible by debate and deliberation about values and norms that should regulate society and the belief that objective reason could be discovered. The most important aspect of this system of public debate deliberation was that interests generated in the private sphere, whether they be the product of knowledge through identification, abstraction, or technical considerations, were to be transferred over to the public sphere where they could then be mediated through reference to concepts such as justice and freedom. That is to say, conceptions in the private sphere were to be generated in isolation from the broader abstract considerations of values and the public good in the public sphere.

Seen in this way, the effect of the differentiation between the public and private spheres was to sever the linkage between concepts and conceptions in the lifeworld. According to Marcuse’s description of an ideal relationship concept and conception always refer to one another. The conception draws its meaning from the concept and the concept is grounded in the specific manifestation of the conception. In this way the conception always retains the potentiality of the concept and the concept does not lose its meaning in a transcendental context divorced from the concrete occurrences in life. When the public sphere is separated from the private sphere this can no longer be the case. Within the private sphere individuals gain intersubjective knowledge about others solely in terms of themselves; a thinker’s actions and reactions stem from how events
involving other subjects impact his or her own life.\textsuperscript{214} Only after having generated self-centered ideas does the individual then attempt to submit those ideas to mediation through concepts in the form of public debate about values and norms. From the outset concepts and conceptions are not linked, a connection between the two is made only after the idea has already been formed at the self-interested level of the conception. In this way the two levels of ideas that the lifeworld rests upon are decoupled. The rise of technical rationality then begins with an \textit{internal} decoupling within the lifeworld that is then proceeded by the decoupling of system and lifeworld.

The initial difficulty with this internal decoupling is that it renders the values and norms of the public sphere increasingly unintelligible. Marcuse observes that it is crucial that concepts remain grounded in specific historical contexts so that their transcendental meaning does not lose its relevancy for concrete social practice. This grounding is lost, however, when individuals enter the political practice with conceptions already established. The knowledge gained through abstraction and identification in the private sphere becomes locked in a conception-based relationship between the individual and the subject of their thoughts. When individuals form ideas about, for example, a just society in the private sphere and then enter the political process their conception of justice has already been established without considering the potentialities for different just societies within the concept justice. Public norms, values, or aspirations regarding justice are disregarded and instead different individuals compete with one another to have their conception of justice implemented. Rather than attempting to form intersubjective agreements about values and norms individuals instead employ strategic action in order to have their goal of a just society implemented. The fact that justice is an open-ended concept that admits varying interpretations is gradually overlooked so that set patterns of justice come in conflict with one another instead of admitting to what Michelman calls “dialogic modulation.” Competing conceptions lose the mediating influence of the concept and thus enter into a perpetually

\textsuperscript{214}I am referring to the individual only in his or her capacity as a citizen. Thus when I speak of the private sphere I am only referring to those aspects of a person’s private life that become inputs into the political process, i.e., those aspects of a person’s life that become the topic of public debate and deliberation.
antagonistic relationship with one another. In this way already existing conceptions serve as the parameters of individual outlook, and concepts become meaningless.

This process continues in the private sphere itself where gradually conceptions resulting from identification and abstraction become victim to technical rationality which treats both subjects and objects as analytically manipulatable entities. As I see it, this process occurs in several steps. Subsequent to the split between the public and private spheres is the emergence of the capitalist mode of production. In order for the capitalist system of production to run efficiently large quantities of information about people are needed so that their labor can be organized and managed. Setting aside his inadequate grounding of power as knowledge that I discussed in the Introduction, I find Foucault’s description of how disciplinary power operates in capitalist societies useful in understanding the type and quantity of information created through the capitalist mode of production.

Like Habermas, Foucault notes that the rise of capitalism was accompanied by the rapid growth a rationality that stressed efficiency, order, and technical manipulation of objects. Although the parallels are not perfect, Foucault’s analysis of disciplinary power corresponds roughly to Habermas’ analysis of technical rationality caused by system colonization of the

215 Foucault pinpoints the rise of disciplinary power with the requirements of an expanding capitalist mode of production.

[T]he peculiarity of the disciplines is that they try to define in relation to [individuals] a tactics of power that fulfils three criteria: firstly, to obtain the exercise of power at the lowest possible cost. . . ; secondly, to bring the effects of this social power to their maximum intensity and to extend them as far as possible, without either failure or interval; thirdly, to link this “economic” growth of power with the output of the apparatuses (educational, industrial, military, or medical) within which it is exercised. . . . This triple objective of the disciplines corresponds to a well-known historical conjuncture. One aspect of this conjuncture was the large demographic thrust of the eighteenth century; an increase in the floating population. . . ; a change in quantitative scale in the groups to be supervised or manipulated. . . . The other aspect in the conjuncture was the growth in the apparatus of production, which was becoming more and more extended and complex; it was also becoming more costly and its profitability had to be increased. The development of the disciplinary methods corresponded to these two processes, or rather, no doubt, to the new need to adjust their correlation. Neither the residual forms of feudal power nor the structures of the administrative monarchy, nor the local mechanisms of supervision, nor the unstable, tangled mass they all formed together could carry out this role: they were hindered from doing so by the irregular and inadequate extension of their network, by their often conflicting functioning, but above all by the ‘costly’ nature of power that was exercised in them. (Foucault, Discipline and Punish, 218-9).
lifeworld. In both cases discourse is employed to use subjects and objects. On Foucault’s view, one of the key disciplinary tools used to manipulate individuals in modern society is the examination. The examination separates individuals according to various criteria so that labor as an input of production can be better controlled.

For a long time time ordinary individuality—the everyday individuality of everybody—remained below the threshold of description. To be looked at, observed, described in detail, followed from day to day by an uninterrupted writing was a privilege. The chronicle of a man, the account of his life, his historiography, written as he lived out his life formed part of the rituals of his power. The disciplinary methods reversed this relationship, lowered the threshold of describable individuality and made of this description a means of control and method of domination. It is no longer a monument for future memory, but a document for possible use... The turning of real lives into writing is no longer a procedure of heroization; it functions as a procedure of objectification and subjection... The examination as the fixing, at once ritual and “scientific,” of individual differences, as the pinning down of each individual in his particularity... clearly indicates the appearance of a new modality of power in which each individual receives as his status his own individuality, and in which he is linked by his status to the features, the measurements, the gaps, the “marks” that characterize him and make him a “case.” Finally, the examination is at the centre of the procedures that constitute the individual as effect and object of power, as effect and object of knowledge. It is the examination which, by combining hierarchical surveillance and normalizing judgement, assures the great disciplinary functions of distribution and classification, maximum extraction of forces and time, continuous genetic accumulation, optimum combination of aptitudes and, thereby, the fabrication of cellular, organic, genetic, and combinatory individual.

The effect of the examination and other disciplinary tools is the generation of a mass of information about individuals and the contexts in which those individuals live. In order to assure that a person is performing their assigned function in the process of production knowledge about that person and his or her environment has to be obtained. The examination and other observational techniques provide information on individual characteristics and allow the individual to be placed into categories which are divided according to functional units. One of the main goals of Foucault’s work has been to document how increasingly individuals have fallen under this disciplinary gaze.

According to my understanding, each man has a similar view of how disciplinary/technical rationality operates but the two men disagree on the source of this sort of rationality. While Foucault sees technical rationality arising in the relationship between power and knowledge, Habermas finds its source in the concrete structures of rationality as manifested in social development. I only draw on Foucault’s depiction of discipline in order to supplement Habermas’ oftentimes highly abstract description of technical rationality. I.e., while Habermas devotes most of his time explicating the origins of technical rationality within the structures of communication Foucault provides a much clearer picture of how this sort of rationality is actually applied in society and politics.

Foucault, Discipline and Punish, 191-2.
Because disciplinary technology/technical rationality uses the individual as an object the formation of ideas and the creation of knowledge occurs at the level of the conception—the information gained about individuals is only concerned with how effectively and efficiently they perform certain tasks. This is significant because the increased level of technical information gained about individuals also facilitates knowing those individuals by way of identification. As I have already noted, two factors allow a thinker to generate thoughts about another individual through identification: First, the thinker must be familiar with whom he or she is thinking about: if the thinker has an awareness of the various characteristics of the subject then it is easier for the thinker to project themselves on to the other. Second, identification requires an understanding of the context in which the subject exists. That is, in order for the thinker to understand a subject in terms of themselves, he or she must be aware of what forces act on the subject and how, given the constraints of that situation, the subject is likely to react.

The type of technical information Foucault specifies can be used to meet both of these conditions and therefore can allow thinkers to comprehend subjects by way of identification rather than forcing the thinker to rely on abstractions and concepts. Using efficiency as a standard, the first goal of technical knowledge is to organize differently situated individuals into discrete groupings. In order to do this details about individuals become increasingly important; the more that is known about a person the easier it is to integrate them into a smoothly functioning system of production—the second goal of technical knowledge. The individual is not only differentiated from others but is also linked to the function they serve in that society.  

Marcuse provides an excellent example of how this happens:

In the most advance sectors of functional and manipulated communities, language imposes in truly striking constructions the authoritarian identification of person and function. Time magazine may serve as an extreme example of this trend. Its use of the inflectional genitive makes individuals appear to be mere appendices or properties of their place, their job, their employer, or their enterprise. They are introduced as Virginia’s Bird, U.S. Steel’s Blough, Egypt’s Nasser. A hyphenated construction creates a fixed syndrome:

“Georgia’s high-handed, low-brow governor . . . had the stage all set for one of his wild political rallies last week.”
reliance on details causes individuals to become differentiated from others and this then is fused with the function that that individual performs in society. The thinker then is presented both with a subject whose characteristics are known, thereby assuring familiarity, and a subject whose position in the overall functioning of society is fixed, thereby allowing the thinker to grasp the forces that act on the subject as well as speculate on the subject’s reaction to a given event. Consequently, technical knowledge which creates a specific conception of an individual as an object allows the thinker to then know that individual as a subject by way of identification. Thus, in a growing number of relationships the thinker is provided with sufficient information such that he or she no longer has to create abstract groupings in order to understand the subject.

This is problematic because it eliminates the possibility that debate and deliberation in the public sphere can ever have the public good as its focus. I have already noted that abstraction facilitates the creation of ideas between a thinker and those whom the thinker can not directly identify with. By constructing abstract categories the thinker is able to comprehend others where the subject-subject relationship of identification is not possible. Thus, for example, to understand the people of New York, with whom I could never identify with on a one-to-one basis, I create the abstraction “New Yorkers” so that I might relate to a group of people. With the increase in individuals’ abilities to have enough information about people so that it is possible for the thinker to reconstruct the other in terms of themselves, i.e., identify with them, then reliance on abstract categories is lessened. This is problematic because at the level of public debate which relies on concepts to mediate subjectivity the thinker loses the ability to relate the norms and values to broader groupings of individuals. If individual knowledge of others is limited to another person in terms of themselves only and connections cannot be formed between these other people then a

The governor, his function, his physical features, and his political practices are fused together into one indivisible and immutable structure which, in its natural innocence and immediacy, overwhelms the reader’s mind. The structure leaves no space for distinction, development, differentiation of meaning: it moves and lives only as a whole. (Marcuse, One-Dimensional Man, 92-3). (Ellipses in original).

Technical rationality pinpoints the identity of the individual by linking him or her directly to the functioning of a larger operational unit.

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concept such as the “public good” becomes meaningless. The more specific the knowledge that a thinker has about other individuals the less likely it will be that that thinker will be able to connect individuals with disparate personal characteristics under generalized headings such as the public. Rather, what will appear to the thinker when he or she engages in public debate is a series of differently situated individuals all of whom have different requirements and different reactions to events. Without divorcing the subject of the thinker’s thoughts from that subjects personal characteristics understood through identification then it is unclear how the broader notion of the public good, what Habermas sees to be the goal of the political process, can ever be achieved.

Technical knowledge, since it initially allows for increased knowledge about individuals qua subjects, hinders the formation of abstractions to which the concepts of the public sphere can then be applied.

This decreasing dependence on concepts and abstractions has the secondary effect of making thinkers unable to enter into intersubjective relationships with others where the subject of discourse is the norms and values that guide society. The original concepts that form the both background of the conception and the core of values and norms manifest within themselves a potentiality that can be subjected to discursive vindication. For example, as long as the concept of freedom is retained different speakers can refer to it and communicate intelligently and intelligibly about competing conceptions of freedom. With the rise of knowledge through identification, however, increasingly a thinker’s perceptions of the world around them becomes locked into a specific set of patterns and interactions. Individuals and objects both merge to form a world where concepts reveal themselves in concrete things and people. One person’s understanding of freedom becomes exclusively defined by this world as it manifests itself in its particularity. With conception-based knowledge already formed in the private sphere individuals can not translate the concrete manifestation of the world around them into concepts; concepts and conceptions must be linked from the initial creation of an idea or the concepts will lose their grounding in reality and the thinker will have the horizon of his or her vision limited to the existing constellation of events as they affect him or herself. Discourse about values and norms, communicative action which is
facilitated by concepts, is limited on the level of ideas by the growing dominance of conception-based understandings of individuals.

The influence of technical rationality does not stop with the erosion of individuals' ability to think in terms of concepts but rather ultimately prevents people from being able to generate ideas on the intersubjective level at all. The same technical knowledge that facilitates a thinker's understanding of the other eventually prevents the thinker from recognizing the other as anything more than an object to be manipulated. That is to say, in the mind of the thinker the subjectivity of individuals eventually collapses into pure objectivity. Although technical rationality furnishes information so that knowledge of a subject through identification is possible this knowledge is purchased at a cost. Slowly the subjectivity of the individual, i.e., those dimensions not accessible by technical rationality such as thoughts and emotions, are reworked so that they too are seen from a technical perspective. The technical (thinking) subject-object relationship which expands the instances of knowledge by identification ultimately infiltrates the subjectivity in the (thinking) subject-subject relationship. The information a thinker uses to identify with the subject is technical information and as a result when the individual reconstructs that subject in their mind in terms of themselves the subjective dimensions of the individual being contemplated are lost. Gradually, the technical information that locates the subject of the thinker's thoughts within a historical context so that the subject can be known begins to become so dominant that the thinker no longer attempts to reconstruct the subject in terms of themselves. Rather, the thinker stops at the operationally defined surface characteristics of the person being thought about and that person thus becomes an object. Consequently, intersubjective relationships become eclipsed and the intersubjective agreement necessary to create values and norms becomes impossible. Of course this process is not immediate and while subjectivity is slowly being eliminated the situation I described above where values and norms become frozen at the level of the conception prevails.

Conclusion
What I am suggesting is that Habermas’ description of system colonization of the lifeworld captures only one half of the dynamic of communication. Because he reifies the ideational component of discourse Habermas overlooks the way in which the shift from a situation where concepts and concepts are in tension to a situation where conceptions become the basis for all thought has ramifications for the way that people are able to communicate. A shift from public-centered conceptions to technically-oriented private thought eliminates individual ability to form intersubjective communicative relations—relations which form the core of lifeworld interactions. Because lifeworld interactions at the point of convergence between substance and structure that Habermas understands are based on certain ways that individuals think about the world around them it is crucial that we understand system colonization of the lifeworld as also involving changing forms of ideas that are created. With the emergence of a differentiation between the public and private sphere conceptions are able to erode conceptual thought and the rise of technical rationality in the realm of communication is begins. However, because Habermas centers his analysis of communication on the theory of convergence he is unable to see the active part that the public and private spheres play in causing system colonization of the lifeworld and our current state of unfreedom.

Given that ideas form the basis of system and lifeworld interactions, developing an adequate theory about social and political discourse then centers around the question of how specifically the separation of the public and private spheres has eroded conceptual thinking. In the next chapter I use the theoretical apparatus for analyzing discourse I have constructed here to examine the impact that the emergence of a public and a private sphere during the Founding period had on social and political discourse in America. Using my revisions of Habermas theory I demonstrate the weaknesses in the civic republican approach to discourse and I hope to sketch out solutions to the problems technical rationality has created in this country. I believe that an integration of this revised theory with the analysis of the civic republican scholars can produce important new weapons in the battle against the dominance of technical rationality and the fight for a truly free society.
Chapter 3: The Civic Republican Revival and the Rise of Technical Rationality

Introduction

I noted in the Introduction that one of the major goals of this work was to link Habermas’ abstract theory of communication to the specific social, political, and economic dynamics of America. Coupling Habermas’ own thinking with the revisions I suggested in Chapter 2, I want to complete the cycle of Habermas’ analysis by focusing his thinking on the American context. I think this is worthwhile effort for two reasons: First, since Habermas’ analysis begins by looking at social and political discourse as it developed in specific historical contexts (this occurs primarily in The Structural Transformation of the Public Sphere) and from this generalizes broad tendencies in advanced capitalist societies, it seems only logical to return once again to a specific historical context to see how these tendencies manifest themselves. Second, examining a specific historical context—republican discourse in America—will make the abstract discussion of the previous chapter more clear. In particular, I think that my argument about the nature of the relationship between institutions and ideas in the shaping of social and political discourse will appear more intelligible if they are linked to concrete social and political movements. Thus, the first interest of this chapter is substantive while the second is pedagogical.

Briefly, this is how the chapter is organized: I begin by examining the role that republicanism played during the Founding and assess the effects that republican principles had on social and political discourse. Through an analysis of the transition in American thought from an organic to a mechanistic conception of politics I suggest that republicanism has had the effect of legitimizing the public/private split in American society on the level of both institutions and individual world orientations. It is because contemporary republican scholars see this dichotomy slowly being eroded that they argue for the institutional modifications I outlined in Chapter 1. I argue that in essence, then, Sunstein, Michelman, and Perry’s calls for a republican revival have
the effect of re-legitimizing the separation between the public and private spheres. Drawing on my revision of Habermas’ theory I suggest then that since the civic republican proposals advocated by Sunstein, Michelman, and Perry preserve the distinction between the public and private spheres they advocate a solution to a problem that they, ironically, perpetuate. That is to say, republican principles create a situation where technical thinking becomes dominant and substantive debate and deliberation become impossible.

In the final section of the chapter I end my theoretical investigation and assess the practical implications of my revised version of Habermas’ theory of communication. I begin by noting the limitations inherent in what Habermas sees to be potential avenues for overcoming the influence of technical rationality. Drawing on elements of the legal thinking of the civic republican scholars I demonstrate that the judiciary can play a key role in stimulating discourse and debate (although in a substantially different way than Sunstein, Michelman, and Perry envision). In order to furnish some examples of specific remedies to the problem of technical rationality I conclude with a brief analysis of several Supreme Court decisions. I believe the Court can take the lead in reestablishing the connections between concepts and conceptions by changing the way in which important social issues are approached and subsequently debated about. First, however, I will begin with an overview on how republican principles were used during the Founding Period.

Republicanism and the Constitutional System

The path leading to the eventual inclusion of republican principles in the Constitutional system is, in my opinion, a subject that is not only one of the more interesting topics of historical investigation, (in my far from complete study of republicanism at the Founding I have come across an astonishing array of theories dealing with where the framers derived their republican principles and how they employed them in the design of the Constitution), it also strikes at the heart of a number of fundamental features of the American political tradition. Given the complexity of the
historical debate surrounding republicanism and, as I said, my far from complete study of these debates, I will not attempt to develop a comprehensive account of republicanism at the Founding. Rather, I want to focus my inquiries towards a specific dimension of republicanism: its relation to the public/private split in the American political system. A study of this aspect of republicanism is necessary for two reasons: First, given my analysis in the previous chapter, it allows us to understand the effects that republicanism had in allowing the public and private spheres to become differentiated and how this differentiation subsequently changed the nature of discourse in America. Second, examining the historical dimensions of republicanism will better allow us to determine the effects that proposals by the civic republican scholars will have on communication in contemporary America. To begin this historical study we will have to look at how the relationship between the public and private spheres was viewed in the period immediately preceding the Revolution.

The dominant strands of political thought in America prior to the American Revolution and the Founding of the Constitution were all heavily influenced by one source: the British Constitution and its accompanying theory of society and politics. Since America was a British colony and, by and large, its citizens considered themselves to be subjects of the British Crown it is important that we examine, albeit cursorily, the essential tenets of the British social and

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219 Indeed, even the American Revolutionaries understood their actions largely in terms of preserving the spirit of the British Constitution:

For it was the principles of the English constitution that the colonists clung to throughout the dozen years of controversy with the mother country. They said over and over again that it was "both the letter and the spirit of the British constitution" which justified their resistance. Even as late as 1776 they assured themselves there was "no room at all to doubt, but we have justice and the British constitution on our side." This repeated insistence that they were the true guardians of the British constitution, even enjoying it "in greater purity and perfection" than Englishmen themselves, lent a curious conservative color to the American Revolution. By recurring constantly to "the fundamental maxims of the British constitution... the Americans could easily conceive of themselves as simply preserving what Englishmen had valued from time immemorial. They sincerely believed they were not creating new rights or new principles prescribed only by what ought to be, but saw themselves claiming "only to keep their old privileges," the traditional rights and principles of all Englishmen, sanctioned by what they thought had always been. (Gordon Wood, *The Creation of the American Republic: 1776-1787*, (Chapel Hill: University of North Carolina Press, 1969), 12-3. (Hereafter cited Wood, *Creation of the American Republic*).
political systems. In doing this I will pay particular attention to how the public/private split was conceptualized.

Perhaps the most basic element of the British idea of society and politics was the notion that society and politics consisted of a balancing between three distinct social orders. Bernard Bailyn, a scholar of the American Revolution and the Founding period, nicely describes this aspect of the British system:

What was the secret of [the] success of the British constitution? It lay in its peculiar capacity to balance and check the basic forces within society. It was common knowledge... that English society consisted of three social orders, or estates, each with its own rights and privileges, and each embodying within it the principles of a certain form of government: royalty, whose natural form of government was monarchy; the nobility, whose natural form was aristocracy; and the commons, whose form was democracy.... In England... these elements of society, each independently dangerous, entered into government in such a way as to eliminate the dangers inherent in each. They entered simultaneously, so to speak, in a balanced sharing of power. The functions, the powers, of government were so distributed among these components of society that no one of them dominated the others. So long as each component remained within its proper sphere and vigilantly checked all efforts of the others to transcend their proper boundaries there would be a stable equilibrium of poised forces each of which, in protecting its own rights against encroachments of the others, contributed to the preservation of the rights of all.220

These three social orders balanced one another to form an organic whole; as long as each estate was able to fulfill its function order among the entire society would be maintained. Thus the distinct elements of society, the royalty, the aristocracy, and the common people were all connected by way of the cohesive social whole that was formed by their mutual balancing. The social and political systems were founded on the perceived complementary relationship created among homogeneous social orders.

For my present purposes there are two notable things in this organic understanding of society: First is how it views the composition of the different orders of society, and second how it depicts the relationship between these orders and the political system that balances these interests. With regard to the first, society was seen as undifferentiated enough that the competing interests could be reduced to three fundamental categories. An individual’s interest was at a high enough

level of generality that it could be assigned to a social order: depending on their position in society a person would consider themselves either a royal, aristocrat, or commoner. Differences within these groups, however, were considered to be insignificant. Thus, for example, the commoners, who composed what was by far the largest estate, "were generally assumed to be a homogeneous entity, undeniably composed of an infinite number of gradations and ranks, but still an entity whose interest were considered to be connected and for the purposes of politics basically similar." The same held true for the aristocracy and royalty who were composed of even fewer members who could potentially have different interests.

It is the homogeneity of social orders that provides linkage between the estates and the political system. Because each social order was represented in the political system in effect every individual in society was thought to be represented in the government. The social orders were composed of homogeneous individuals, and so representation of the estates translated into the representation of interests of the individuals of those estates. Gordon Wood observes that

[s]ince the three social orders were thought to be fully embodied in the state, Parliament consisting of "of all estates, that composed the nation..." eighteenth-century Englishmen generally had not yet made any clear distinction between state and society. Hence politics was still described in terms of these medieval social categories, as a kind of negotiating and maneuvering for political domination among the three estates of the realm; and not, as today, in terms of divisions among the people themselves, as a struggle among various groups for control of a semi-autonomous state in order to advance particular economic or class interests.

In this way, under the British vision of society and politics, it is not meaningful to say that there was a distinction between the public and private spheres. Because of the homogeneity of the estates, what was in an individual’s interest was also in the estate’s interest. Because of the organic character of society, what was in the interest of the social order was in the interest of the entire society. It was only through each social order pursuing its own interest that a balance among the estates could be established and a stable, free society secured. In this way public and private interests corresponded with one another. Nowhere in this model is the potential for individual interests to be out of line with the overall public goal of social cohesion.

221 Wood, _Creation of the American Republic_, 18.
222 Ibid, 20.
It is in the context of this organic understanding of society that the American Revolution took place. One of the major influences on the American Revolution was radical British Whig thought. Indeed, Bailyn went so far as to say that “[t]he ultimate origins of [the American Revolution’s] distinctive ideological strain lay in the radical social and political thought of the English Civil War and of the Commonwealth period. . . . These [radical British thinkers] . . . faded subsequently into obscurity and are little known today. But more than any other single group of writers they shaped the mind of the American Revolutionary generation.”

The core of the radical British Whig critique of British society lay in what they saw to be the spread of corruption throughout the body politic. In their view, this corruption, emanating from the monarchy, was dangerous because it threatened to disrupt the delicate balance between the three social orders. Through bribes, threats, and other maneuvers, the monarchy was able to secure influence in the other estates, and, consequently, it was increasingly able to mold the state so that it served the monarch’s interests. As J.G.A. Pocock described when summarizing the general attitude of radical Whig writings towards the monarchy,

> the executive possesses means of distracting Parliament from its proper function; it seduces members by the offer of places and pensions, by retaining them to follow ministers and minister’s rivals, by persuading them to support measures--standing armies, national debts, excise schemes--whereby the activities of administration grow beyond Parliament’s control. These means of subversion are known collectively as corruption. . . .

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223 Bailyn, Ideological Origins, 34-5. (Emphasis added). Bailyn goes on to argue that

> to say that this tradition of opposition thought was quickly transmitted to America and widely appreciated there is to understake the fact. Opposition thought, in the form it acquired at the turn of the seventeenth century and in the early eighteenth century, was devoured by the colonists. From the earliest years of the century it nourished their political thought and sensibilities. (43)

Gordon Wood supports this conclusion:

> By drawing on the evidence of antiquity and their own English past as transmitted to them through radical British Whig tradition the colonists sought to formulate a science of politics and history that would explain what as happening in England and to themselves--an explanation that when joined with a complicated medley of notions taken from Enlightenment rationalism and New England covenant theology possessed revolutionary implications. (Wood, Creation of the American Republic, 17).

224 Quoted in Bailyn, Ideological Origins, 48.
Through calls for political reform the radical British Whigs hoped to end the influence of the corrupt monarchy and restore the harmonious balance between the three estates.\textsuperscript{225}

Drawing on the radical British Whig critique of society the American Revolutionaries were able to formulate their arguments for independence as well as envision the form that an independent American political system should take. Like the radical British Whigs a growing number of colonists found themselves alienated from the existing political system.\textsuperscript{226} However, unlike the radical British Whigs who existed within the confines of mainland England and thus could only take a reformist approach to the British constitution, the colonists, because of their geographical separation from Britain and the vastly different conditions of life, were able create a political theory that, while sensitive to the British conception of politics, argued for a society that was able to exceed the limitations inherent in the British order.

The Revolution was intended...to “form a new era and give a new turn to human affairs.” From the moment in 1774 and 1775 when independence and hence the formation of new governments became a distinct possibility, and continuing throughout the war, nearly every piece of writing concerned with the future of the new republics was filled with extraordinarily idealistic hopes for the social and political transformation of America. The Americans had come to believe that the Revolution would mean nothing less than a reordering of eighteenth-century society and politics as they had known and despised them—a reordering that was summed up by the conception of republicanism.\textsuperscript{227}

Although the intellectual pedigree of republicanism and the extent to which its formulation during the Revolution represented a break with the traditional understanding of politics would both doubtless be interesting studies in their own right, what interests me about republicanism presently are the continuities it demonstrates with the British understanding of society. Like the radical Whigs in Britain, the colonists were greatly concerned with the perceived corruption within

\textsuperscript{225}Bailyn notes that in order to counter the effects of the corrupt monarchy

\[a\]t one time or another, one or another of [the radical British Whigs] argued for adult manhood suffrage; elimination of the rotten borough system and the substitution of regular units of representation systematically related to the distribution of the population; the binding of representatives to their constituencies by residential requirements and by instructions; alterations in the definitions of seditious libel so as to permit full freedom of the press to criticize government; and the total withdrawal of government control over the practice of religion. (Ibid, 47).


\textsuperscript{227}Wood, Creation of the American Republic, 48.
Parliament. "To the eighteenth-century American and European radicals alike, living in a world of
monarchies, it seemed only too obvious that the great deficiency of existing governments was
precisely their sacrificing of the public good to the private greed of small ruling groups."228 Three
factors, however, allowed the American colonists to move beyond the simple reform tactics of the
radical British Whigs and formulate their idealistic republican vision of society: First, the strong
system of local colonial self-government oftentimes made the British imperial authority seem like
an unwelcome intrusion into an otherwise smoothly functioning political system. Second, the
colonists looked upon the increasing control that Britain attempted to exercise over the colonies
(particularly after 1763) as a plot by the monarchy to enslave the naturally virtuous American
colonists. Third, the lack of an established aristocracy in the American colonies made it difficult
for the colonists to see America fitting into the three-part social order of Britain.229

As a result, the colonists took the critique of British politics created by the radical Whigs
and reworked it to fit what they saw to be the unique needs of America. Whereas the radical
Whigs saw opposition in society between the rulers (i.e., the corrupt Parliament) and the
homogeneous estate of the people,230 the colonists, because they viewed themselves as being
distinct from the corrupt and decaying British system, saw no such tension between society and
politics. Rather, the Revolutionaries were able to posit a correspondence between what the people
wanted and what was in the best interest of the state. The radical Whigs saw the people and
Parliament in a constant struggle to prevent the interests of the latter from violating the interests of
the former. Hence, the reforms they proposed were an effort to maintain the symmetry between
the two. In contrast, the American Revolutionaries believed America would not have similar
problems circumscribing the scope of state authority or the aims of state power. Instead, they

228Ibid, 54.
230According to the Whig view

politics was nothing more than a perpetual battle between the passions of the rulers,
whether one or few, and the united interest of the people. . . . This notion of political
dualism between the rulers and the ruled. . . . was at the bottom of the Whig's beliefs. . .
their notion of a dichotomy between power and liberty. . . . their idea of governmental
balance. . . (Wood, Creation of the American Republic, 18).
thought that there would be a natural harmony between the state and the people. As a result, the Revolutionaries saw no difficulty in conceptualizing a republican system of government wherein individuals would think solely in terms of the public good and, at the same time, still be doing what was in their best individual interest.

The sacrifice of individual interests to the greater good of the whole formed the essence of republicanism and comprehended for Americans the idealistic goal of their Revolution. From this goal flowed all of the Americans’ exhortatory literature and all that made their ideology truly revolutionary. This republican ideology both presumed and helped shape the Americans’ conception of the way their society and politics should be structured and operated—a vision so divorced from the realities of American society, so contrary to the previous century of American experience, that it alone was enough to make the Revolution one of the great utopian movements of American history. By 1776 the Revolution came to represent a final attempt, perhaps—given the nature of American society—even a desperate attempt, by many Americans to realize the traditional Commonwealth ideal of a corporate society, in which the common good would be the only objective of government.\(^{231}\)

Despite its origins in the belief that American society was somehow better able to realize the ideals that the British constitution aspired to the approach of the American revolutionaries remained fundamentally similar to the British perspective. Like the British, “[m]ost English colonists did not conceive of society in rational, mechanistic terms; rather society was organic and developmental.”\(^{232}\) Consequently, the republican vision that the Revolutionaries created also operated under the assumption that society and politics were organic wholes.

What made the Whig conception of politics and the republican emphasis on the collective welfare of the people comprehensible was the assumption that the people... were a homogeneous body whose “interests when candidly considered are one.” Since everyone in the community was linked organically to everyone else, what was good for the whole community was ultimately good for all the parts. The people were in fact a single organic piece... with a unitary concern that was the only legitimate objective of government.\(^{233}\)

The republican process of debate and deliberation was to have the effect of providing forums where the natural organic interests of American society could be formed. Through public debate citizens could come to realize the identity between the public good and what was in their own best interests. Despite the idealistic hopes of the Revolutionaries, the republican goal of a harmony between public and private interests was never realized. The immediate period after the

\(^{231}\)Ibid, 54.
\(^{232}\)Ibid, 29.
\(^{233}\)Ibid, 57-8.
Revolution under the Articles of Confederation revealed important limitations in the organic view of society that was at the heart of both republicanism and the traditional British perspective. Under the Articles state after state found its legislatures being used as tools of self-interest whereby majorities tyrannized minorities.

Anarchy and the breakdown of government... no longer seemed an accurate way to describe all of what was happening in the 1780's. An excess of power in the people was leading not simply to licentiousness but to a new kind of tyranny, not by the traditional rulers, but by the people themselves—what John Adams in 1776 had called a theoretical contradiction, a democratic despotism. It was too much government, not the lack of it, that was so frightening to some. Instead of falling into pieces, as could have been anticipated from the conventional theory of politics, the people appeared more capable of oppression.234

The failure of government under the Articles can be viewed from two complementary perspectives. First, the homogeneity of interests that the Revolutionaries assumed to exist turned out to be a gross over-simplification that masked the competing interests in American society. The organic notion of the “people” borrowed from British society proved to be an inadequate portrait of the many diverse groups of individuals with disparate goals who inhabited America. Second, since all individual interests did not naturally harmonize with one another through the political process of debate and deliberation doubt was cast on the strength of people’s virtue. It could no longer be assumed that individuals could or would simply abandon private interests in favor of the good of society or that the process of debate and deliberation would inculcate individuals with a common set of interests.

As a consequence of these two factors American intellectuals were forced to rethink their entire notions of society and politics.

Americans thus experienced in the 1780’s not merely a crisis of authority—licentiousness leading to anarchy—which was a comprehensible abuse of American authority and republican liberty, but also a serious shattering of older ways of examining politics and a fundamental questioning of majority rule that threatened to shake the foundations of their republican experiments.235

If the power of the state was to be understood as anything other than as a tool for self-interest they would have to compensate for the disjuncture between private interests and the public interest of

234 Ibid, 404.
235 Ibid, 411.
the entire society. Evidently people did not have homogeneous interests, and evidently they did not possess, nor could they be inculcated with, the requisite level of virtue necessary for a republican system to operate. Understood this way

[The American dilemma was to make "such an arrangement of political power as ensures the existence and security of the government, even in the absence of political virtue," without, however, at the same time destroying republicanism. The task was a formidable and original one: to establish a republican government even though the best social science of the day declared that the people were incapable of sustaining it. Somehow, as Madison put it, Americans must find "a republican remedy for the diseases most incident to republican government."236

To concoct such a remedy the framers of the Constitution would have to rethink the entire organic paradigm of politics that underlay the republicanism of the Revolution. The failure of the organic theory of society and politics to explain the relationship between private and public interests required both a new theory of social and political dynamics as well as a new system of government that could legitimize the rule of the state.237

In order to meet these requirements the framers began by changing the basic unit of analysis in their social and political calculations. Whereas organically-based republicanism thought in terms of how various components of society and politics came together to form a cohesive social whole, the framers thought instead of the essentially unharmonious relationship between self-interested individuals. While republicanism started with an organic whole, worked its way down

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236 Ibid, 429.
237 Evidence of the rejection of the organic approach to politics can be seen clearly in Madison's discussion about the role of the Senate in the new Constitution.

[Madison] urged the framers... not to try to represent a certain social order or to represent property in the Senate (although neither of these are entirely absent in Madison's view) but to give their attention primarily to the constitutional organization, power, and operation of the body, which would determine its weight and character and thus its part in the overall balance of government. The Constitution established neither a simple government nor a traditional mixture of orders and estates. Neither was it an attempt, following John Adams and favored (once simple government was admitted to be impracticable) by many Anti-Federalists, to represent the balance the natural orders that exist in any civilized community. It was something new... In former governments, [James Monroe] explained, the object of the distribution of powers had been to maintain "a composition or mixture of aristocracy, democracy, and monarchy, each of which had a repellant quality which enabled it to preserve itself from being destroyed by the other two; so that that the balance was continually maintained." In America, on the other hand, the object of the division of powers is to provide "a more faithful and regular administration," and to prevent a union of governmental power, with all its dangers for the people." (Herbert J. Storing, What the Anti-Federalists Were For," (Chicago: University of Chicago Press, 1981), 59-60. (Emphasis in original).
to the social orders that comprised that whole, and then considered the people that composed those social orders, the framers instead began their analysis with individuals and then attempted to construct a political system based on the propensities of those individuals. As John Diggins notes:

In contrast to the Old World’s classical Whig theory, the Federalist authors framed a Constitution based on the premise that each and every person was part of an interrelated system, that people were inter-dependent, and that this interdependency would balance faction against faction and hence required organizing the branches of government by the strategy of reciprocal distrust. The very interest-bound and suspicion-rooted psychology on which Hamilton and Madison structured the Constitution implied that economic and political action oriented to the behavior of others can depend upon the constancy of that behavior. *It was not merely the forms of government that must be balanced but the emotions and drives of men.*

The result of the framers’ efforts was a mechanistic theory of society and politics which stressed the importance of harnessing individuals’ self-interested tendencies so that the public good could be realized. Diggins continues,

[*the Federalist is studded not with the language of classical or Renaissance humanism but with the language of natural science: Government is referred to as an “orbit,” its influence a “sphere,” its function an “engine;” and political society is referred to in terms of “composition,” “structure,” and “cement.” Even when paraphrasing the arguments of the anti-Federalists, Madison indicated that what the opponents of the Constitution feared was entropy and disequilibrium .... The framers saw themselves as enlightened architects working with forces and weights to erect a government primarily of mechanisms rather than of men. Hamilton, and to some degree Madison, believed that the laws of physics and the “maxims of geometry” could be invoked in such an enterprise. . .*
Through a study of individual behavior the framers hoped to discover the immutable laws that governed people's actions and their social relations. If these immutable laws could be discovered then it would be possible to guide individual actions through the institutions of the political process. Society was no longer seen as a cohesive whole, rather its antithetical elements had to be mechanically manipulated like "natural" forces so that no one private interest prevailed. Understood in this way, the major task of the framers was to devise a system that could utilize citizens' self-interested private motives so that the political system would work for the public good.

The classic statement of the framers' mechanistic solution to the problems caused by a lack of virtue and the dominance of self-interest is, of course, Madison's Federalist 10. In Federalist 10 Madison's particular concern was the growing influence of factions that he saw arising under the Articles of Confederation. He defines a faction as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." Through his definition of faction Madison recognizes, unlike his republican predecessors, that there never can be a natural harmony of interests among citizens in their private capacities. Since people have different "faculties," i.e., skills and abilities, some individuals will always be able to acquire more property than others. And furthermore

[t]he protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties. The latent causes of faction are thus sown in the nature of man...
Taking the "natural" inequalities that arise because of peoples' "faculties" as his starting point Madison sees only one possible form that the government can take: regulation of the inevitable conflicts of interest. Because governments are powerless in correcting a "natural" tendency in individuals it must resign itself to controlling the effects of these tendencies.\footnote{Madison concludes: "The inference to which we are brought is, that the causes of faction cannot be removed, and that relief is only to be sought in the means of controlling its effects." (Ibid. 57). (Emphasis in original).}

Given that the actions of the state and the interests of private individuals could no longer be assumed to be in harmony, the difficulty for Madison was creating a political system, whose actions would appear legitimate to all those over whom it ruled, out of raw materials that stood in direct opposition to this goal. Stated another way, Madison had to both offer a new source of legitimization of state authority since the old one--the organic conception of society--had been discredited, and do so with the recognition that private individuals would always attempt to use the state to secure their private interests. Under the Articles of Confederation public policy was dictated by the private goals of powerful groups. In this way the state was used by the majority to tyrannize the minority, and a situation resulted where the distinction between the public and the private collapsed. This happened because private interests became the sole guide for public action; the public sphere and the state came to simply mirror the private goals of certain segments of the population. Unfortunately, however, this caused a delegitimation of governmental authority since the state could no longer claim to be the manifestation of society's general interest as it could in an organic system. Under the ideal form of government presented by the republicans the lack of a distinction between a public and private sphere could be justified with regard to theory which posited identity between public and private interests. The period under the Articles of Confederation demonstrated, however, that such an identity was at best wishful thinking. The problem that Madision and others faced was developing a theory of the state that could at once recognize the disharmony between the public and private spheres while at the same time structure the state so that its actions were directed towards the good of the entire society.
In order to break the fusion between public and private interests that resulted from the unchecked participation of factions in the political process, and in order to relegate state authority, Madison turned towards the institutional design of the very republicanism whose organic approach to the study of politics he rejected. The Madisonian solution, a hybrid between self-interest and republican deliberation, involved a restructuring of the public so that power would be so fractured that no individual group could come to dominate others. Madison argued for a public power that would create a context in which, when deciding the limits of governmental authority, citizens with different interests would be forced to deliberate with one another and this, in turn, would maintain a clear distinction between the public and private spheres. While the parameters of the private sphere were to be determined in a public sphere, through deliberation it was imperative that diverse sets of private interests be protected in order to prevent faction.

In explaining the republican dimensions of the Constitution, Madison begins by noting the difference between a democracy and a republic.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country over which the latter may be extended. Unlike in a democracy where citizens had direct input into the political process, in a republic citizen input is mediated via representative bodies. In Madison’s view the republican dimensions of the

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244 Mark Tushnet observes the important role that institutional design had in republican theories:

[I]n the eighteenth century republicans were deeply concerned about institutions, for a number of mutually reinforcing reasons. As traditionalists, republicans wished that citizens would develop, not just any characters—which they inevitably would—but appropriately civic-minded characters. Properly designed institutions could instill civic virtues in citizens. In addition, republicans saw the traditions they revered under assault and naturally looked to institutional design as providing a means to reinvigorate their traditions. Finally, republicans did not romanticize human nature. They understood that people would sometimes heed the call of self-interest rather than that of public interest... They argued that alterations in institutional design could constrain corruption directly, by limiting the opportunities for self interest to overcome civic-mindedness, and indirectly, by reinforcing in the citizenry its dedication to the public interest. (“Federalism and the Traditions of American Political Theory,” Georgia Law Review 19 (1985), 988.

245 Madison, Federalist 10, 59.
representative government manifested themselves on two levels. First, because of its larger size, the republic consisted of individuals with many outlooks who were forced to debate and deliberate with one another over the selection of a representative. Since representatives would be responsible to a diverse constituency they could not, so the argument goes, be used as vehicles for the implementation of what Sunstein calls naked preferences. Knowing this citizens would be forced to seek out other grounds on which to base their choice of representatives and would most likely choose “men who possess the most attractive merit and the most diffusive and established characters.”

Determining men who possessed the requisite level of virtue would be possible because of the deliberation that would occur on different levels of the selection process. Although not explicitly spelled out by Madison, at the level of the citizen, through debate and deliberation with one another, individuals and groups with diverse interests would be able to unite behind individuals who could best serve the public good. This would have to be the case since the clashes between diverse private interests would prevent any one particular interest from informing the representatives outlook. In the case of the Senate and the President local deliberation would be further supplemented by intermediary bodies, such as the state governments or the electoral college, that would filter citizen outlook through more debate and discussion. This would serve as another check against the influence of faction.

Second, once the representatives were selected via deliberative process, the representatives would only be able to act in consultation with other representatives and the other branches of the government. The diversity of interests in a representative’s constituency, interests filtered through deliberative processes, would be filtered again through bodies such as the House of Representatives and the Senate. Individual representatives would have to discuss issues with each other thereby increasing the chances that the communal good would be the goal of the federal government. Finally, the system of checks and balances would assure that the different representative bodies, the House, the Senate, and the President, would deliberate with one another and be subject to review by the judiciary—another deliberative body. Thus, on numerous levels the

\[246\text{Ibid.}\]
framers hoped that individual self-interest would be channeled through a republican system centered on public debate, and that this system would preserve the integrity of government action in the face of the previous dominance of faction under the Articles of Confederation. By relying on the republican emphasis on deliberation the framers hoped to convert the self-interested inputs of the political process, interests they assumed to be "natural" and immutable characteristics.

Republican deliberation, which on its own provided an inadequate theory of the society and politics, could, when coupled with an understanding of the forces that drive individual action, help support the distinction between the public and private sphere both on a theoretical and practical level. Recognizing the inevitability of people's self-centered passions the framers relied on republican deliberation to provide a rationale for why the state action could include the interest of the entire nation. In addition, republicanism provided a concrete set of institutions that would thwart attempts by factions to control the state. Only by referring to the idea of deliberation central to republican thinking were the framers able to create a political system that could survive despite conflicting interests of the citizens who participated in it. Indeed, the system could exist only as long as the conflicting interests existed. Thus, the framers had discovered a way of decoupling the formation of public and private interests. Individual interest could be created in the private sphere without reference to a larger public and the public sphere would then channel these private interests in such a way that the good of the entire society would be realized. Despite its success I argue later it was because of this "achievement" that the conceptual and conception-based thinking I outlined in Chapter 2 became separated from one another, and, therefore, Habermas' system colonization of the lifeworld began.

The Public/Private Split and the Rise of Technical Discourse in America

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Since the Founding a great deal has changed in America, including the relationship between the public and private spheres. The separation the framers had established between the two realms has largely evaporated as the technical rationality of the marketplace has fused public and private interactions. Because of the way that the functions of the economy and state have become interconnected, the public/private dichotomy (as it presented itself during the framing of the Constitution) is increasingly obscured. I will not attempt to document this historical process as it has unfolded since the Founding period, but instead will focus on how interpenetration of the two spheres has become particularly acute in the 1980's with the implementation of the Republican Party's social, political, and economic programs under Ronald Reagan. In recent years Republican emphasis on the market and the importance of private initiatives has brought about a major realignment in the relations between the public and private sphere with the consequence that the two have become functionally indistinguishable. Political theorist Sheldon Wolin, in an essay entitled "Collective Identity and Constitutional Power," details how this fusion has come about:

President Reagan once said that "private values must be at the heart of public policies." The distinction between the "public" and "private" had traditionally occupied an important place in our political and legal notions. In the president's words cited above, however, the express aim was to challenge a traditional distinction older than the Republic itself. Among eighteenth-century liberals and progressives the public and private stood for two different realms, each with different ends and controlling ideals. The public denoted the "realm" or "domain" of proper governmental action. ... The public should be the realm of the common good, while public service should be conducted in the spirit of disinterestedness. The private realm, in contrast, was conceived as the domain where individuals were free to exercise the various rights guaranteed by the Constitution such as property and religious rights. It was the realm of discretionary behavior where individuals were expected to pursue their own ends, to follow their self-interest. Historically, the dominant belief has been that the private sphere is frequently threatened by the invasion of the public, that public authority tends to impose regulations on private behavior and reduce freedom of action. In the 1980's, however, there began to be signs that these metaphorical boundaries were being reshuffled. One of the main impetuses was the Reagan ideology of "voluntarism," which encouraged the private sector to undertake a variety of social services hitherto regarded as a public monopoly or predominantly a public function. For a long time private non-profit or charitable organizations have existed alongside and have supplemented public services, especially at the state and local level. But in the early 1980's ... there began a concerted attempt to make a "profitable business out of social problems" previously thought to be in the public domain. ... Thus, a radical inversion has appeared to be in the making: the private realm has invaded the public.247

Led by Reagan, conservative efforts at decentralization inverted the traditional view of the public/private split by allowing private organizations to assume public functions. This inversion is problematic because (as argued by Wolin above) private control over public function strips the latter’s foundations in public participation and deliberation. By delegating public functions to the private sphere the market rationality of the private sphere has effectively eliminated the distinction between the two realms and, therefore, has changed the nature of society and politics.

Like Habermas and Foucault, Wolin sees the fundamental forms of civil society and the private sphere having undergone significant changes with the rise of capitalism. Wolin notes that American civil society was radically changed by the rationalization of society effected by late modern capitalism. Civil society now presents itself as a structure of control and discipline rather than as a paradigm of freedom and spontaneity. The contemporary business organization is not only a mechanism for economic decisions; it is also a carefully cultivated life-form that is deliberately imposed on its employees. In short, civil society now represents structures of power which self-consciously exercise disciplinary functions that erase the differences between state and society, public and private. As a consequence, it becomes increasingly more difficult to discern where the public sector begins and the private leaves off. From this vantage point, “deregulation,” with its faith in market “discipline” and “free economic forces,” appears less as policy than as a Freudian slip. What might be emerging in the United States is a new form of totalizing power that blurs the domination of the state by contracting its functions to the representation of civil society while at the same time the disciplinary procedures of society are being tightened. The new form is represented not as “the state” [as in Nazi Germany] or “the dictatorship of the proletariat” [as in the Soviet Union] but as “the system.” I call it the system of the Economic Polity.\(^\text{248}\)

This “take-over,” if you will, of public functions by private bodies controlled by a market rationality that requires control over large portions of individuals’ private lives is difficult or even impossible for people to separate out the public from the private sphere. The interconnections between the two, rather than a positive event that can bring about harmony and freedom, is guided by a technical rationality that eliminates individuals’ abilities to control the forces that shape their lives. Through decentering its power, the Economic Polity actually increases its power by shielding its disciplinary functions from public scrutiny. Public functions are directed by a rationalized market that has no accountability to individuals outside efficiency, and, therefore formerly public powers can be employed with less concern for the

\(^{248}\)Ibid, 27-9.
(subjects qua) objects affected by that power. Using rhetoric drawn from liberalism and possessive-individualism, the conservatives of the 1980’s have masked the process whereby public authority is surreptitiously usurped by private bodies who then translate that authority into technically defined goals. Wolin concludes by pessimistically noting that “the diffusion of power accompanying the emergence of our new constitution, the Economic Polity, portends a collective identity in which the collectivity—‘We the People,’ in the brave words of the Constitution—becomes the passive object of power than the active political subject.”\textsuperscript{249} The Constitutional vision of diverse private interests filtered through an elaborate set of institutions that were designed to facilitate deliberation has been circumvented by a private sphere that wields more and more power. Sadly, it also subjects individuals to a disciplinary force that eliminates diversity and stresses calculation, efficiency, and order.

At this point the questions to ask are how the framer’s vision became so transmogrified and how American society got itself into this predicament. I do not believe that the blame can be placed solely on the backs of the Republican Party of the 1980’s. Quite to the contrary, using my revised version of Habermas’ theory of communication I hope to demonstrate on a theoretical level that the initial separation between public and private functions within the structure of the Constitution led to this subsequent collapse of the split in contemporary America and that it was this collapse that caused social and political discourse as it was in the late eighteenth-century to become what it is today.\textsuperscript{250}

With the differentiation of the public and private spheres at the Founding, conception-based thought was divorced from its conceptual backdrop right from the start. Because the Madisonian system was based on the belief that individuals developed private interests prior to participation in

\textsuperscript{249}Ibid, 31.
\textsuperscript{250}What I am offering here are only sketches of a general theoretical orientation that can help make sense of the dynamics of social and political communication in America. To complete this study this theoretical sketch would have to be tested in a more exhaustive historical study of the role of the public and private spheres in the period between the Founding and contemporary America.
the public sphere it was impossible for these interests to be related to the concepts which facilitate intersubjective agreement. I noted in Chapter 2 that concepts appear meaningless if they are not linked to specific contexts. Consequently, when individuals formed diverse sets of interests in the private sphere they were unable to interpret the conceptual elements of these interests because the concepts, by themselves, were unintelligible. From the beginning, when ideas were first formed, the conception was separated from the concept thus making the concept meaningless and preventing it from subsequently being linked to conceptions when individuals participated in the public sphere; people would not adapt their thinking to concepts if those concepts by themselves made no sense. Concepts and conceptions must be connected directly from the creation of ideas or the former will lose its significance. The effect of the initial separation between the public and private spheres was to then eliminate a priori the possibility of concept-based intersubjective agreements (i.e., lifeworld interactions) being reached in the public sphere. Without reference to concepts in the public sphere individuals and groups could not mediate their disparate subjectivities.

Turning to the private sphere, the effects of the separation of public and private functions also manifested themselves in the way that associations formed in civil society. Because the public sphere could no longer accommodate debate and deliberation over substantive issues, groups created in the private sphere were forced to narrow their focus so that they were concerned solely with the representation of private interests in the public sphere. Using knowledge of others gained through identification and abstraction without reference to the concepts that mediate public interactions, people were able to locate individuals who shared similar interests and perspectives. This is exactly what the framers hoped would happen so that diversity would be assured and the threat of faction minimized. Groups could not enter the political process in the hopes of forming their interests endogenously through debate and deliberation within the public sphere, as Sunstein would have it, since the elimination of concepts made this impossible. Nothing existed to bridge the subjectivity of individuals with different interests; all interests entered the political process exogenously determined. This process of group formation accelerated as the capitalist mode of
production became more advanced and the disciplinary modality of power furnished greater quantities of information about individuals.\textsuperscript{251} The knowledge of individuals generated by the means of production allowed people to more clearly locate groups that are even more closely tailored to individual interest.\textsuperscript{252} The closer the match among members of a group the easier it was for that group to simply focus on its particular conception of what formerly were the concepts that guided political participation.

The eclipse of the lifeworld became almost total when private groups were forced to compete with one another in the public sphere. Given that intersubjective agreement about values and norms can no longer serve as the motivating force of public participation, groups attempt to exert influence over the political process so that they can achieve pre-determined goals and interests. In this way, the political system functions as Madison expected except that the deliberation he believed would take place between groups is not possible. Instead, private associations are forced to enter into antagonistic relationships so that they can secure what interests they had already established in the private sphere. This is significant because, as Cynthia Ward observes, competition among groups significantly alters the internal structure of those groups:

Groups formed in a pluralist society society tend to become rigid and resistant to change. Having struggled to obtain public recognition, and convinced of their own good intentions, elites of established groups may see newcomers as threats to their hard-won piece of the pie. When older groups are able to win access to the coercive power of the state, the fear of losing benefits turns into the desire to suppress change within the group’s sphere of interest.\textsuperscript{253}

In addition, Ward notes that competition among groups can also lead to a perpetuation of hierarchy within those groups:

Rigidity of structure takes the external form of hostility toward new interests and the internal form of hierarchy. Studies of oligarchic structures of voluntary organizations show that their leaders become increasingly distant from the desires of ordinary members; many leaders are drawn from economic and social elites, and become primarily concerned with perpetuating their own power in the organization and in society. There is a danger of increasing alienation of the citizens not just from the

\textsuperscript{251} On this point, see my discussion of Foucault in the previous chapter. Page 122.

\textsuperscript{252} Witness the recent rise of identity politics in America where interest groups have become ever more exclusive in their membership and focused on problems that impact smaller and smaller groups of people.

In order to compete successfully with others so that privately defined goals can be realized, groups make the above mentioned changes in their internal structure. These changes are guided by instrumental reason that stresses the importance of efficiency and order. The combination of increasing rigidity and more pronounced hierarchical structure within groups both work to further decrease possible lifeworld interactions within private associations. To effectively influence the political process private associations must present a united front to other groups and to the state. Thus, as Ward observes, the tendency exists for private associations to both suppress dissenting opinions and give more control to elites who can best represent the group. In a political system where the only possible relationships between different interests are antagonistic in nature, groups whose members are not organized under the control of a centralized authority will be unable to act with the needed level of efficiency. In this way, the decay of lifeworld interactions in and among private organizations mimics the de-politicizing of the public sphere effected by a welfare state forced to follow the system imperatives of the market. Just as the welfare state’s intervention in the market requires an efficient bureaucratic apparatus and an acquiescent citizenry in order to provide material benefits to the general populous for legitimation to be maintained, so too in private organizations must the leaders of the groups respond to the exigencies of the political market by imposing order on its members so that the goals of the group, its raison d’etre, can be realized.

At this point lifeworld interactions cease to be a possibility as individuals are concerned only with technically securing goals that have become a part of the very structure of their private associational group’s organization. Because of pressures exerted from both outside the group by the political marketplace which requires a group to present a unified front and from internal pressures exerted within the group by the growing homogeneity of its membership brought about by the increasing level of knowledge by identification facilitated by technical information, goals become locked and the private associations only attempt to reach these using technical strategies.

254Ibid, 596.
The technical rationality of the private sphere invades the public sphere causing the latter to lose its ideal functions as a site of social debate and deliberation about substantive issues. Ironically, the initial separation of the public and private spheres, a separation advocated by the framers as a way to protect the interests of the entire society, caused the two realms to collapse and allowed one set of interests—technical interests—to dominate all social and political interactions.

To summarize, the initial separation of the public and private spheres renders public concepts, the backbone of communal debate and deliberation about values and norms, meaningless as they become divorced from the conceptions that connect them to concrete existence. Without the potential for intersubjective agreement in the public sphere, private associations take on the stance of interest-maximization. Groups form through associations between individuals with similar interests and subjective worldviews, and, hence, the potential for lifeworld interactions in the private sphere is decreased. Individuals with common outlooks do not need to refer to as often the concepts that allow individuals with different perspectives to communicate intelligibly, and, thus, thought remains on the level of the conception. This process is intensified with growth of capitalism and its accompanying increase in knowledge about individuals because this knowledge allows for individuals to more effectively identify others with interests that closely match his or her own. The internal erosion of the lifeworld within groups is matched by the rigidification and hierarchization of the group caused by the requirements of the political marketplace. In order to compete effectively with other groups in the public sphere, the only possible form of public interaction, groups must suppress dissent (a potential source of lifeworld interactions) and give centralized control to elites who then use technical calculations to secure group goals. In this way the technical rationality of the private sphere is allowed to permeate public interactions and lead to the fusion of public and private functions that Wolin discussed. As a consequence, the language of freedom espoused by the framers becomes nothing more than ideological rhetoric to cover over the actual unfreedom in American society.255

255 It could be objected that the theoretical model I have developed here is inadequate because it incorrectly assumes that all private interests that become inputs into the political process are filtered through interest groups. One could argue that I neglect two alternative forms of political influence, direct citizen participation and voluntary associations.
The Failed Promise of the Civic Republican Revival

not directed towards the realization of self-interest, and that such alternate forms of influence could possibly give rise to lifeworld interactions. While I do think it would be naive of me to assume that all private political interests are represented by interest groups I do not think that either direct citizen involvement in the political process or voluntary associations call into question my basic argument about the erosion of the lifeworld in both the public and private spheres.

First, voluntary associations can not, in any appreciable way, prevent the collapse of the public and private spheres. Since Tocqueville's analysis in Democracy in America, the importance of voluntary associations in America social and political life has been recognized by numerous thinkers. Harry Boyte and Sara Evans, two contemporary scholars who see such associations as absolutely crucial to American freedom, define voluntary associations in this way:

Voluntary associations... constitute a vast middle ground between private identities and large scale institutions. They are places that ordinary people can often "own" in important ways, spaces grounded in the fabric of daily, communal life with a public dimension that allows mingling with others beyond one's immediate circles of family and friends. They are institutions which people can sometimes shape and reshape, use as alternative sources of information about the world, employ as media for connecting with others in ways more substantive than transitory coalitions or other brief encounters. ("The Sources of Democratic Change," Tikkun, 1 (1986): 49). (Hereafter cited Boyte and Evans, "The Sources of Democratic Change).

Despite the way that voluntary associations provide an intermediate level between the public sphere and the individual, such associations do not allow for the types of lifeworld interactions necessary to fend off system colonization of the lifeworld. Like groups devoted to interest-maximization, voluntary associations presuppose a certain degree of homogeneity among its members. The mere fact that people voluntarily choose to participate in a group, whatever the nature of that group, means that group members have something in common. Thus, for example, a group that devotes itself to the problem of homelessness may have members with many divergent outlooks on the situation and how to best go about creating a solution, but all group members are united by a common belief that homelessness is an issue that is of concern. In this way group members are likely to share certain aspects of their subjective experiences, and these shared subjective experiences militate against the need for intersubjective agreements that occur within the lifeworld. In addition, as is the case with interest groups, the rise of information associated with capitalism still allows people to find voluntary associations more closely matched with their own interests. This, in turn, further erodes the need for lifeworld interactions between individuals. Finally, like interest groups, voluntary associations are forced to compete with other groups in the political process in order to have their interests (however selfless they may be) adopted by public institutions. As a result, voluntary associations experience the same internal pressures towards rigidification and hierarchization of structure that interest groups do.

Of all the forms of private input into the political process direct citizen participation offers the least potential for lifeworld interactions. Whereas both interest groups and voluntary associations require intersubjective agreement on some issues (until the goals of the organization become entrenched in the structure of the organization) since it is impossible for all members to have identical subjective experiences, with individual private political participation the individual inserts their subjectivity directly into the political process and attempts to compete with others. When this is done the individual at no time engages others prior to political involvement: the person does not try to work with others to achieve a certain end but instead appeals directly to the political process. Since the public/private split has made lifeworld interactions in the public sphere impossible the individual can never secure intersubjective agreement with others. At least with interest groups and voluntary associations lifeworld interactions are, in theory, possible (even only for a limited time before the group becomes completely guided by technical rationality).
Having both developed a theoretical apparatus that can be used to analyze communication and applied that theoretical apparatus to the American context, I can now return to the work of Sunstein, Michelman, and Perry in order to assess the effects that their civic republican proposals would have on social and political discourse in America. Recognizing the role that the public/private split has had in causing technical rationality to become ubiquitous in America, the civic republican theories of Sunstein, Michelman, and Perry provide a flawed understanding of discourse for similar reasons.

I will begin with Sunstein. Sunstein takes great pains to create a theoretical blueprint for a public sphere that is both more representative of the general population and makes it easier for individuals to participate in the public sphere. To this end Sunstein attempts to carve out additional institutional space in the public sphere where people can engage in deliberation and debate about matters of public and private interest. In particular, the judiciary is relied upon to adjust the structures of the political sphere in order to stimulate the overall level of political discourse. The hope is that by giving people access to the political process people will be able to better communicate with one another, and, therefore, the dominant trend towards self-aggrandizement can be countered.

As I said in Chapter 1, I find Sunstein's goal a noble one and I hope that his warnings about the dangers of unrestrained self-interest find a wide audience. However, having said this I think that there are important limitations to the usefulness of his theory. Indeed, Sunstein's reliance on republican principles in conjunction with liberalism may actually do more harm than good in the long run. To understand how this could be the case it is essential to recall how republicanism was used during the framing of the Constitution. Because Madison (and others) feared that self-interested faction would always use the political system to secure its goals (even if this meant oppressing others) they drew on republican institutional design in order to create a political system that would channel self-interest towards the realization of the common good. By doing this the framers were able to create distinct public and private spheres. Unfortunately, however, as my theoretical discussion in the previous section indicated, it was because the framers
were able to differentiate the public from the private sphere that lifeworld interactions in both spheres became impossible. The situation has reached such a point that, as Wolin observed, the functions of the two spheres has become conflated under the influence of technical rationality arising from the private sphere.

Seen in this light, through calls for judicial intervention and restructuring of the public sphere, Sunstein is attempting to once again establish the integrity of the public vis-a-vis the private. The is problematic, however, because he attempts to do this without first combatting the technical rationality that pervades most of an individual’s actions and thoughts. Simply providing access to the political process to individuals and groups does nothing to assure that what is said in public discourse is in any way substantive or meaningful. If intersubjective agreement is no longer even an option among participants in the public sphere, as I believe my above analysis demonstrates, then public involvement can only take the form of individuals and groups using instrumental reason to secure pre-determined ends. More institutional space in the public sphere will only mean more places where individuals and groups can compete with one another and employ technical rationality. Individual interests will only find expression in competing interest groups rather than be revised because of public debate and deliberation. As I argued in Chapter 1, it is because Sunstein posits an ideal form of communication without simultaneously checking to see the extent that current institutions interact with the substance of communication to hinder the realization of that goal, that he fails to recognize the inefficacy of a simple expansion of the size and form of the public sphere.

Furthermore, I believe that the republican solutions that Sunstein proposes actually exacerbate the problems he is attempting to solve. By carving out additional institutional space for debate and deliberation and encouraging the participation of marginalized groups in the political process Sunstein only heightens the level of competition between groups. Given the finite resources that it has access to, the state is only able to satisfy a certain number of goals. With more groups included in the political process this would intensify the battle for these limited governmental resources and place further pressures on groups to rigidify and hierarchize their
structures. This would necessarily happen because merely expanding the size of the public sphere does nothing to guarantee the way individuals and groups will use the additional institutional space; creating additional points of access to the political process would only facilitate more technical interactions. Heightened competition among groups would, in turn, only cause the potential for lifeworld interactions to be further limited and cause the total level of technical interactions to be increased.

Perhaps most significantly, by allowing them to more easily participate in the public sphere, marginalized groups that might have been spared the effects of technical rationality are drawn into a situation where they must come under its influence. Groups that have traditionally been excluded from having their interests represented in the political process or have been unable to significantly influence the political process, for example, homosexuals and environmental groups, have, I believe, by and large avoided the tendencies towards rigidification and hierarchization of structure. Because often they take the stance that the existing system is flawed at some fundamental level, they are more inclined to allow the types of lifeworld interactions that would be necessary in order to envision a different political order. That is to say, it is more likely, although surely not always the case, that marginalized groups would not adapt the structure of their organizations towards competing with other groups in the political process since the marginalized groups are denied the ability to effectively compete with other groups. As a consequence these groups are in a position where they, through the discursive communicative interactions of its members, are able to debate and deliberate about values and norms that should be an integral part of the public sphere. What I have in mind are social and political movements that start at the grass-roots level and therefore emphasize active involvement among its members. In such groups the individual thinks of themselves in terms of a larger whole, i.e., a community—a community based on concepts that allow different individuals to reach intersubjective agreements. By including marginalized groups within the political process Sunstein would thwart these group’s efforts and thus take away their critical stance towards the existing system. If a marginalized group feels that is able to contribute to the existing system and secure some of their interests
through participation in the public sphere then it is more likely that these groups will abandon their alternative approaches and become instead just another interest group. A vivid example of this transformation is the civil rights movement that began, with Martin Luther King, Jr. and others, as an idealistic movement directed towards new forms of human association\textsuperscript{256} and, with formal inclusion in the political process, has become just another interest group lobbying the state to provide benefits to its members.\textsuperscript{257} This example demonstrates that before expanding the political process Sunstein must first assure that people are able to debate and deliberate with one another in the way that he envisions. This can only be done if the conceptual thought can once again allow individuals to mediate their subjective interpretations about values and norms.

Michelman takes a somewhat different approach to stimulating political discourse but encounters many of the same problems faced by Sunstein. Recall from Chapter 1 that Michelman argues that individuals must be able to express themselves in the private sphere so that they may then express that individuality in the public sphere. Only if such individuality is expressed can the recollective imagination be established as the foundation for dialogic modulation. It is for this reason that Michelman is highly critical of the Supreme Court’s decision in \textit{Bowers v. Hardwick} since it, by outlawing sodomy, effectively denied homosexuals the right to express their sexuality in private. By denying this private lifestyle Michelman contends that the Court prevents a certain group of people from contributing their individuality to the recollective imagination. Without the inclusion of all groups’ identities into this collective consciousness it is impossible for all individuals to debate and deliberate about the regulative ideals of society, and, therefore, Michelman argues, the jurisgenerative dilemma is not transcended.

\textsuperscript{256}Boyte and Evans describe the goals of the Dr. King and the early civil rights movement:

\begin{quote}
\textit{[W]e remember Dr. Martin Luther King, Jr.'s remarkable capacity to appeal to a broad range of communities through his celebration of America as a great cultural and racial mosaic. . . . What is often forgotten, however, is that King’s Dream was not only a vision for America’s future; it was also, in part, a description of the remarkable living reality in the civil rights movement itself. The history of that movement. . . . is redolent with stories of people from different races and religious backgrounds finding common ground and developing a broader, even transformative understanding of the movement’s goals. (Boyte and Evans, “The Sources of Democratic Change,” 49).}
\end{quote}

\textsuperscript{257}See Habermas’ critique of the American civil rights movement below. Pages 164-5.
In order to demonstrate the flaws inherent in this approach I now want to examine more closely the way that Michelman depicts the formation of individuality that then becomes a part of the recollective imagination. To do this let us look at the example Michelman centers his argument around homosexual rights. Michelman is critical of the *Bowers* decision because he believes it denies the validity of the subjective outlook of one group of individuals in society.

In the circumstances of contemporary society, homosexuality has come to signify not just a certain sort of inclination that “anyone” might feel, but a more personally constitutive and distinctive way or ways of being. Homosexuality has come to be experienced, claimed, socially reflected and—if ambiguously—confirmed as an aspect of identity demanding respect. . . . It seems very likely that among the effects of a law like Georgia’s on persons for whom homosexuality is an aspect of identity is denial or impairment of their citizenship, in the broad sense which I have suggested is appropriate to modern constitutional republicanism: that of admission to full and effective participation in the various arenas of public life. It has this effect, in the first place, as a public expression endorsing and reinforcing majority denigration and suppression of homosexual identity. It also—and for my purposes more interestingly—denies citizenship by violating privacy.258

Because homosexuality is an essential part of a person’s being, a denial of the right to express this aspect of the self constitutes an infringement on a person’s ability to take an active role in social and political interactions. Those dimensions of an individual that shape their subjective outlooks are indispensable to who they are as a person and therefore must be contributed to the recollective imagination.

Just as property rights. . . become, in a republican perspective, a matter of constitutive political concern as underpinning the independence and authenticity of the citizen’s contribution to the collective determinations of public life, so is it with privacies of personal refuge and intimacy. Justice Blackmun’s dissenting opinion in *Bowers* at least begins to articulate this republican appreciation of the political significance of privacy, both by itself explaining the value of intimate association as formative and supportive of personal identity, of self-understanding, and thus of the diverse ways of life, and by its reference to the Court’s earlier rumination . . . on the “central[ity] to our constitutional scheme” of a protected sphere of intimate association. This. . . nicely represents the republican penchant for rights that bridge the personal and the political. . . . The argument realigns out accustomed sense of the relation between privacy and political freedom by regarding privacy not only as an end. . . of liberation by law but also as such liberation’s constant and regenerative—jurisgenerative—beginning. The argument forges the link *between* privacy and citizenship. It attacks the Georgia law for denying or impairing citizenship by exposing to the hazards of criminal prosecution the intimate associations through which personal moral understandings and identities are formed and sustained.259

259Ibid, 1535-6. (Emphasis added).
What is notable in all this is that personal identity, formed through the intimate associations of the private sphere, becomes the basis for individual participation in the public sphere. Only if the individual is able to develop his or her subjective outlook in the way that he or she chooses can the recollective imagination necessary for dialogic modulation be created. Once this is done individuals can then actively participate in the public sphere. Whereas Sunstein sees participation in the public sphere as essential to the formation of individual outlook and interests, Michelman sees a freely formed self as the basis for political involvement.

The problem with Michelman’s understanding, however, is that he sees the formation of the individual in isolation from broader public interaction. It is through relationships in the private domain that the individual develops a sense of self which is then contributed to the recollective imagination. For example, only after homosexuals have, through intimate associations, developed their true selves can they express that self in the public sphere. Unfortunately, though, this analysis does not overcome the separation of concept and conception precipitated by the differentiation of the public and private spheres. Granted, Michelman is aware of the connections between this privately generated self and how the self is able to participate in political discourse but the two realms remain just that--two realms. Because the individual does not view their private self as inseparable from the public self the formation of ideas in the private sphere will remain on the level of the conception and the conceptual backdrop of the public sphere will slowly slip away. And, like Sunstein, Michelman’s active encouragement of formerly marginalized groups into the political process, through the recognition of their lifestyles and unique subjective outlooks, creates a situation where groups that might have previously avoided the effects of technical rationality are now likely to succumb to its overwhelming demands. Thus, both Sunstein and Michelman’s reliance on republican efforts to stimulate political discourse may actually have a chilling effect on individuals’ abilities to reach intersubjective agreements.

Michael Perry’s approach to stimulating discourse in America is quite different from that of Sunstein or Michelman. On first reading, Perry’s civic republican theory appears to be the most sophisticated and persuasive of the three. Perry both develops a theory of moral philosophy and
then connects this theory to the concrete to the American context. Drawing on his vision of moral philosophy Perry is able to articulate a republican theory that is much more philosophically sound than what is presented by either Sunstein or Michelman.\textsuperscript{260} However, of all three theories, Perry’s oversight of the effect that the rise of technical rationality can have on communication is the most egregious. Although plagued by oversights of their own, Sunstein and Michelman are at least conscious of the problematic nature of social and political discourse in America today; both men recognize that self-interest has put into jeopardy the political model that the framers established. It is for this reason that they advocate judicial-led changes in the structure of the public sphere. In contrast, outside of an over-active judiciary, Perry seems oblivious to any factors that might hinder public debate and deliberation.

\textit{Morality, Law, and Politics} is addressed primarily to defining the role that the judiciary should play in American society. Using his theory of morality and moral development as a guide Perry suggests that the judiciary is a sort of cynosure of communication. Owing to its role as interpreter of America’s collective past the judiciary, and in particular the Supreme Court, is able to preserve the aspirations that America as a nation should seek to embody. Through its role of mediating the past and the present the courts can, if they heed Perry’s admonition to stay focused on the aspirational qualities of the Constitution, maintain the conditions that allow the American people, through collective discussions, to constantly question and re-affirm what it means to be an

\footnote{In fairness to Sunstein and Michelman it should be acknowledged that their civic republican statements come in the form of law review articles that are intended, presumably, to be sketches of a much more comprehensive theory. Even taking this into account, however, I believe that Sunstein and Michelman’s theories still could benefit from a more thorough philosophical investigation than what is provided. Michelman, for instance, seems to allude to Habermas’ lifeworld in his discussions of dialogic modulation and the recollective imagination yet he evinces none of the analytical rigor demonstrated in Habermas’ analysis. Michelman is aware of Habermas’ work since in “Law’s Republic” he footnotes Habermas twice yet Michelman does seem to be unaware of Habermas’ later work where he explicitly develops the notions of system and lifeworld. See Michelman, “Law’s Republic,” n.29 and n.135. Indeed, the two references Michelman does make to Habermas both refer, either explicitly or implicitly, to Habermas notion of an ideal speech situation—a notion that Habermas rejects in his later work. See my discussion of the evolution of Habermas thought in Chapter 1.

Sunstein is also guilty of not adequately pursuing the philosophical foundations of communication. In “Beyond the Republican Revival” he develops his four principles of republican deliberation while footnoting numerous philosophical sources. Yet nowhere in this article does Sunstein explicitly indicate how he has distilled the four principles of republicanism from these philosophical sources. This is particularly frustrating when Sunstein footnotes Habermas (which he does several times) and gives no indication as to how Habermas’ conclusions impact his conclusions. On this note, however, Perry is similarly guilty as he too footnotes Habermas even though Habermas’ theory of communication calls much of Perry’s theory into question.}
American. At the same time, though, the courts must be careful not to overstep their boundaries and stifle these collective discussions by making substantive decisions about cases (such as abortion) that would best be left the broader public deliberation. In short, Perry advises the courts to be conscious of the specific function that they perform in society, and, if they are, the foundations of discourse will established and protected.

Missing in all of this analysis of the judiciary and its proper role, unfortunately, is any sort of critical investigation of individuals' actual abilities to engage in the type of moral discourse that Perry's philosophy of morals dictates that they should. All we are told is that if the judiciary functions the way it ought to then moral discourse will be the "deliberative, transformative" force that it has the potential of being. Unlike Sunstein and Michelman, who, from the very start assume that forms of individual participation in the public sphere are suspect, Perry builds his entire republican theory on the assumption that social and political communication, as it functions today, is essentially unproblematic. On Perry's view, if the judiciary provides the necessary set of aspirations individuals will be able to engage in intersubjective debate about those aspirations. Obviously, given system colonization of the lifeworld, nothing could be further from the truth. The mere preservation of the Constitution's aspirational qualities by the courts will not allow intersubjective moral debate if the conditions for such debate have been, a priori, eliminated. The separation of the public and private spheres has caused individuals to form ideas at the level of the conception in isolation from their conceptual backdrop. Consequently, court attempts at reinvigorating the conceptual aspect of political life by referring to constitutional aspirations will be ineffectual since these very aspirations have no meaning when isolated from conceptions that link them to specific contexts. Thus, of the three civic republican theories that I have examined Perry's is by far the most impotent. Granted Perry's theory does not cause a chilling effect of debate and deliberation as Sunstein and Michelman's theories have a tendency, but it does something far worse in my opinion: it creates the illusion that social and political interactions are unproblematic. For all their flaws, at least Sunstein and Michelman demonstrate an awareness that change is
needed in America, and because of this they, if nothing else, raise people's consciousness and
challenge existing assumptions.

**Moving Beyond Technical Rationality: An Alternative Approach**

Having argued both for a particular way of understanding the dynamics of social and
political discourse and how republicanism, based on this understanding, is a major contributor to
the rise of technical rationality, I now want to suggest possible ways to stimulate meaningful
debate and deliberation about public issues. I believe that my analysis regarding the interaction of
the substance and structure of discourse and the ideas that contribute meaning to that discourse can
be a helpful guide in exposing potential points of conflict where the ubiquitous technical rationality
can be challenged. To begin, I will return to Habermas conclusions in *The Theory of
Communicative Action* to demonstrate the shortcomings of his solutions to the problems of
contemporary society. I then offer what I hope to be a superior solution by drawing on Sunstein
and Michelman's contention that the judiciary can play an important role in stimulating discourse.

In the almost 900 pages of the two volumes of *The Theory of Communicative Action*
Habermas dedicates just six pages to sketching out what potential concrete social action may be
able to challenge the strangle-hold that technical rationality has on communicative interactions.
Beyond the fact that Habermas does not choose to spend much time giving the reader a sense of
what is necessary if undistorted communication is ever to be realized, what Habermas does say in
the way of practical actions that can be (and are being) taken operates at a high enough level of
generality that it doesn't serve as a very useful guide to action. In the final chapter to *The Theory*
of Communicative Action, “The Tasks of a Critical Theory of Society,” Habermas begins his brief study of possible solutions by identifying the source of potential conflicts:

In the past decade or two, conflicts have developed in advanced Western societies that deviate in various ways from the welfare-state pattern of institutionalized conflict over distribution. They no longer flare up in domains of material reproduction; they are no longer channeled through parties and associations; and they can no longer be allayed by compensations. Rather, these new conflicts arise in domains of cultural reproduction, social integration, and socialization; they are carried out in sub-institutional—or at least extraparliamentary forms of protest; and the underlying deficits reflect a reification of communicatively structured domains of action that will not respond to the media of money and power. The issue is not primarily one of compensations that the welfare state can provide, but of defending and restoring endangered ways of life. In short, the new conflicts are not ignited by distribution problems but by questions having to do with the grammar of forms of life. Studies... confirm the change in themes from the “old politics” (which turns on questions of economic and social security, internal and military security) to a “new politics.” The new problems have to do with the quality of life, equal rights, individual self-realization, participation, and human rights. In terms of social statistics, the “old politics” is more strongly supported by employers, workers, and middle-class tradesmen, whereas the new politics finds stronger support in the new middle classes, among the younger generation, and in groups with more formal education.261

Habermas then proceeds to list examples of such protest groups as they had arisen in what was then West Germany: e.g., “the anti-nuclear and environmental movements; the peace movement; single issue and local movements; the minorities (the elderly, gays, handicapped, and so forth); religious fundamentalism; and, finally, the women’s movement.”262

Not all of these groups, however, has the potential to ward off system colonization of the lifeworld. Habermas distinguishes between groups that have “emancipatory potentials,” (i.e., groups that can help reestablish the integrity of the lifeworld) and groups that have “potentials for resistance and withdrawal.”263 Groups with emancipatory potential attempt to challenge dominant patterns of social and cultural dynamics so that alternative worldviews, worldviews not based on system imperatives, can find expression in social, political, and cultural institutions. In contrast, groups with potentials for resistance and withdrawal attempt to secure an enclaves where group identity can find expression but then use that group identity to realize system defined goals.

Drawing from the American context, Habermas cites an example of each type of group. He notes

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262 Ibid, 393.
263 Ibid.
that in its origins the American civil rights movement was a social group that had emancipatory potential but since has “issued in a particularistic self-affirmation of black subcultures.”

Although Habermas does not provide much detail here, we can extrapolate that what he is trying to say is that the civil rights movement initially challenged the entire relationship between system and lifeworld, ostensibly through its efforts to secure the dignity of all people, but ultimately it bracketed itself from this general concern by focusing specifically on black culture. Through this specialization the civil rights movement no longer was as concerned with the broader relations of system and lifeworld; black culture was celebrated with an eye towards achieving system defined goals (e.g., monetary success). In contrast to this, Habermas believes, is the women’s movement with its emphasis on securing new grounds for communicative interaction.

The struggle against patriarchal oppression and for the redemption of a promise that has long been anchored in the acknowledged universalistic foundations of morality and law gives feminism an offensive movement. The emancipation of women means not only establishing formal equality and eliminating male privilege, but overturning concrete forms of life marked by male monopolies. Furthermore, the historical legacy of the sexual division of labor to which women were subjected in the bourgeois nuclear family has given them access to contrasting virtues, to a register of values complementary to those of the male world and opposed to the one-sided rationality of everyday practice.

The women’s movement, then, can actively redefine system and lifeworld boundaries by challenging the conventional patriarchal system of domination that manifests itself both in the cultural sphere of the lifeworld and in system interaction through its definition of the bourgeois family. It is through the continued activity of groups such as this that Habermas sees the potential for change in the substance of communication and the possible reemergence of the public sphere as a center for rational-critical debate.

Though I find Habermas correct in his reasoning that the site of protest has shifted to the cultural sphere of the lifeworld I have problems with how he addresses the practical activities of the groups that serve as a point of resistance to system colonization of the lifeworld. The first difficulty arises when, after locating the potential sources of resistance, Habermas is unable, because he is operating at such a high level of abstraction, to provide any sort of a blueprint for

264 Ibid.
265 Ibid, 393-4.
action. I realize that the main concern of Habermas’ work is a theoretical diagnosis of the problems that have to be solved and a theoretical approach that can be used to solve these problems, but given the oftentimes overwhelming complexity of Habermas’ oeuvre and the fact that, as I said, *The Theory of Communicative Action* is over 900 pages long, one would expect a bit more than six pages devoted to loosely identifying protest movements. One would also expect more emphasis on the practical dimensions of his theory given that his Frankfurt School predecessors, especially Herbert Marcuse, were intensely concerned social and political movements. Merely recognizing that, for example, the actions of the women’s movement are constructive from the theoretical standpoint of the system colonization of the lifeworld does not directly help the women’s movement advance its positions. Habermas needs to devote more time to translating his astonishingly complex line of reasoning into a practical guide for action that is accessible to the average members (or even the leaders) of social movements. This would help both to keep these groups focused on the underlying problem they are combatting, i.e., system colonization of the lifeworld, and give them the benefit of the practical prescriptions furnished by theoretical abstractions.

Beyond the question of the usefulness of Habermas’ thinking for everyday social action, is the issue of whether social groups of the type Habermas’ mentions can ever by themselves be effective tools for social change regardless of the practical strategies they pursue. One of the central thrusts of my thesis has been to demonstrate that the dynamics of discourse are shaped by the realm of ideas in addition to that of substance and structure. Thus, I have depicted the rise of technical rationality both in terms of how it manifests itself in the functioning of social structures and in the way that it circumscribes how people form ideas. Through the mutually reinforcing relationship between ideas and the interaction of the substance and structure of discourse the conquest of instrumental rationality occurs both within and without the individual. The social protest groups Habermas writes of attempt to break this cycle by presenting alternative ways of

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266 See, for example, Marcuse’s *An Essay on Liberation* (Boston: Beacon Press, 1969) which is both a “call to arms” based on theoretical principles as well as an outline of strategies to be used in the confrontation with the existing system.
comprehending the world and communicating about it to individuals caught in the grips of technical rationality. An important way of making this presentation is through advocating changes in the existing institutional structure so that lifeworld arenas can once again be preserved through structures designed to facilitate intersubjective debate and deliberation. I question, though, whether such efforts, well-intentioned as they may be, can ever bring members of society, who are trapped by the powerful influence of instrumental reason, back to the point where they can enter into intersubjective relations. Habermas acknowledges that the social protest groups he is referring to exist on the periphery of society—"it is this fact which has allowed them critically to question the existing order." If this is the case then it is not hard to imagine the myriad difficulties such groups would face when attempting to make their claims based on the values and norms of the lifeworld intelligible to people caught in the seamless web of technical rationality on both the level of ideas and institutions. In Towards a Rational Society Habermas indicated that from the perspective of instrumental reason values and norms appear unintelligible; a means-end rationality can make no sense of intersubjectively defined goals. In what way then can protest groups revive conceptual thinking in individuals and thus precipitate communicative lifeworld interactions? It would seem an almost impossible task for marginalized social groups to either appeal directly to society-at-large and cause them to once again think conceptually or for these groups to alter the institutions of a political system that consists of a de-publicized constituency responding to system imperatives and a governmental structure dominated by a technocratic bureaucracy. In either case it is more than likely that the lifeworld component of the protest group’s agenda would be rendered meaningless in the face of the overwhelming influence of technical rationality that Habermas documents.

Consequently, I think it is important that any battle against technical rationality be waged on two fronts. First, social protest groups can play an important part in stimulating whatever dimensions of the lifeworld remain. While such groups, on their own, may not be able to reverse the process of system colonization of the lifeworld they can at least slow the process down by

\[267\text{See my discussion on marginalized groups in the previous section.}\]
keeping alive an alternative vision of society. It is important, however, that these efforts be linked
with a battle on a second front—the internal reorientation of the way that individuals perceive and
formulate ideas about the world. Changing the way that individual relate to and generate ideas
about the world, what I will call individual world reorientation, attempts to reestablish the linkages
between concept and conception-based thought that the public/private split severed. Individual
world reorientation can stimulate conceptual thinking on the part of individuals thus making the
appeals of social protest groups more intelligible. Seen in this way, social protest groups and
efforts at individual world reorientation are in a symbiotic relationship with one another. While the
latter breaks the ground, so to speak, and creates new connections between conceptual and
conception-based thinking, the former can further stimulate that thinking through challenges to the
existing order and by building institutional space into which the revitalized lifeworld interactions
can be channeled. Individual world reorientation creates the conditions for lifeworld interactions,
and social protest movements build the institutional framework for such institutions.

Since studies of social protest movements in America already exist, I want to focus on how
individual world reorientation in this country can be effected. Unlike many other advanced
capitalist societies, the American system is fortunate enough to have an excellent mechanism to
cause individual world reorientations: the judiciary. As we saw in Perry’s analysis in Chapter 1,
the federal judiciary occupies a unique position in American society and politics. Because it is
insulated from day to day politics the judiciary is able to critically reflect on social and political
interactions. Judicial decisions, and in particular Supreme Court decisions, can have a strong
impact on the way that social and political issues are thought and argued about. No other organ of
social or political life is able to have such an influence over such a wide scope of daily existence.
The way that the Court chooses to frame issues can have a trickle-down effect that permeates large
areas of social and political interactions. When the Court decides to approach an issue in a certain
way those arguing cases before the Court are forced to tailor their arguments so that those
arguments are congenial to the Court’s approach to the issue at hand. This process continues
down to cases argued in lower courts because Supreme Court precedents serve as the reference
point for lower court decisions. In addition, the Court's approach to issues becomes the subject of scholarly debate among legal experts. This debate which centers around Court decisions then filters down to the classroom where students are taught about the judicial process. The Court's approach to issues can also have an effect on the types of legislation enacted and the way that that legislation is enforced. Obviously, when formulating and executing legislation legislatures and executives at the federal, state, and local levels will shape their actions to some extent so that it is in agreement with the perceived attitudes of the courts who rule on the constitutionality of political actions. Finally, the decisions of the Supreme Court can directly affect the outlook of citizens. The way that the Court frames debate about issues, especially personal issues, can set the parameters of general social debate. One need only look at the current controversy over abortion to be reminded of the way that the Court's decisions in various cases set the battle lines for the opposing forces. Whether one opposes or applauds its actions, the decisions of the Supreme Court, because they have the binding force of law, are a constant source of reference in American social and political debate. For better or for worse the decisions of the Court provide the background for discussion in numerous controversial areas of American life, and in so doing it broadly determines how participants approach the issues of that debate. It is for this reason that Perry has such high hopes for the Court's ability to keep alive the aspirations of the American political tradition.

Given the important role that it fills in American society and politics it is hardly surprising that Sunstein and Michelman would turn towards Court action in order to stimulate republican discourse. As I argued above, although I think the direction that they want the Court to move in is problematic, I do agree with Michelman and Sunstein in placing emphasis on the potential of the judiciary to effect change. Much of the criticism that Michelman and Sunstein's republican theories have received has centered on their seemingly contradictory notion that the only way to increase discourse in society is by resorting to increased intervention on the part of the Court, a countermajoritarian institution. Kathryn Abrams, in her article "Law's Republicanism," sums up the apparent difficulties in this position:
It is ironic that the latest, legal contribution has shifted the focus of republican thought away from popular participants. In their distinctive ways, both Michelman and Sunstein redirect our attention to the activities of a narrower citizenry: members of the judiciary. For Michelman, this redirection is an end in itself: He transforms our understanding of "law," and vastly enhances the role of judges in making it, in order to protect American constitutionalism from the excesses of "popular authoritarianism." For Sunstein, recourse to the judiciary is largely instrumental. His "deliberative" politics is a prescription for participants in all phases of lawmaking. Yet Sunstein views the judiciary as crucial instrument for shaping popular behavior... Each of these views has drawbacks as an attempt to redirect republican theory: The former reflects a retreat from the collective self-direction of mobilized citizens that has been the hallmark of republican thought; the latter a circuitous way of achieving it.268

Abrams bemoans the heavy reliance that both Michelman and Sunstein have on the judiciary because, she argues, the judiciary is too distant from the actual deliberative processes that occur to be able to effectively stimulate discourse. For Abrams the solution is not an increased role for the judiciary, rather local institutions should be redesigned to allow for more participation and communication. Similarly, constitutional theorist Paul Brest attacks the civic republican reliance on judicial intervention for its oversight of other areas of social life where discourse takes place.

Political discourse--including legal and constitutional discourse--takes place in a wide variety of institutions, including conventionally "private" organizations like the family, corporation, union, and civic association as well as in referenda, elections, conventions, school boards, city councils, legislatures, and courts. It may take place in connection with paradigmatic political activities such as lobbying or voting; or as part of "direct action" such as a labor strike or civil rights sit-in; or it may consist simply of talking among citizens. Modern history may not justify great optimism about discursive participation in many of these institutions. Nonetheless, it is at least ironic that much of the legal scholarship of the republican revival, rather than working to promote participation and discourse in those forums, is as court-centered as the pluralist scholarship from which it distinguishes itself. In striking parallel with the work of contemporary (and essentially conservative) public choice theorists, liberal republicans treat the judiciary as the primary if not only place where deliberative democracy can take place. Sometimes with resignation, they treat the judiciary as the [quoting Michelman] "trace of People's absent self-government."... Civic republicans must broaden their focus beyond the judiciary, and indeed, beyond government institutions. A civic republican conception of citizenship supposes that people must be engaged in framing the rules and administering the institutions that govern all aspects of their communal lives.269

Given my analysis of the republican tradition in light of the public/private split, however, the concerns of both Abrams and Brest seem misplaced. Although initially it may seem counterintuitive to seek to increase societal discourse through the operation of a countermajoritarian body, when it is understood that technical rationality has permeated all forms of social interactions then

the judiciary can be seen as one of the only potential source for causing individual world reorientation. The specific dilemma faced by Court attempts at individual world reorientation is stimulating active citizen engagement in the public sphere on the intersubjective level without having that engagement simply channeled into interest groups that operate according to technical rationality. That is to say, the Court must unite individuals and their understandings of themselves with the public sphere while simultaneously bypassing the influence of interest groups. To do this the Court must appeal directly to the individual in the hopes of altering that individuals basic orientation to social and political action. Since the Supreme Court impacts a wide range of social and political life I believe the Court can be an effective tool in effecting this reorientation and causing individuals to once again think in terms of both concepts and conceptions. The Court could, if it abandoned the traditional assumption that the public and the private are distinct spheres, in a sense, help us to redefine ourselves. By framing cases that present the public and private spheres as two separate entities in such a way that the two sphere were once again connected it is possible to make system dependent on the lifeworld. Seen in this light, the centralized nature of judicial authority that Abrams and Brest are critical of becomes a benefit.

To illustrate how the judiciary can take an active role in bringing about individual world reorientations I shall now briefly examine several Supreme Court cases and suggest alternative approaches that the Court might have taken in each. Let’s begin by returning to the Court’s decision in Bowers v. Hardwick and Michelman’s critique of that decision. Bowers centers around a Georgia law prohibiting sodomy that the respondent, Hardwick, violated “by committing a sexual act with another adult male in his own room.”270 Hardwick challenged the statue on the grounds that it violated his right to privacy as it had been construed in earlier Court cases. In upholding the Georgia statue Justice White, writing for the majority, rejected this claim

that the Court’s prior cases have construed the Constitution to confer a right of privacy that extends to homosexual sodomy. . . . We think that none of the rights announced in [such cases as Pierce, Skinner, Griswold, and Roe] bears any resemblance to the claimed constitutional right of homosexuals to engage in acts of sodomy that is

asserted in this case. No connection between family, marriage, or procreation [the bases of earlier privacy rights cases] on the one hand and homosexual activity on the other has been demonstrated. . . . Moreover, any claim that these cases nevertheless stand for the proposition that any kind of sexual conduct between consenting adults is constitutionally invalidated from state proscription is unsupportable. 271

In Bowers then, the Court rejects the idea that there exists a realm of private life in which individuals can engage in sexual activity totally free of possible state intervention. Justice White’s decision places emphasis on the powers of the public sphere as they manifest themselves in state authority over the right individuals have to explore and develop their own notions of sexuality. As I have already noted, Michelman is critical of this approach because it neglects the way that private rights connect with an individual’s ability to engage in public discourse and, therefore, subsequently misses the importance of this public engagement (by resolving the jurisgenerative dilemma) for creating the legitimate foundations political power. If an essential aspect of a person’s being is suppressed in private then a complete recollective imagination can not be assembled. Michelman directs the Court to consider how activities in the private domain can contribute to the broader social fabric of society and allow America to be both a nation of laws and of people.

In order to avoid the problems associated with Michelman’s view of distinct public and private functions that I noted in the previous section, I think a superior way for the issues presented in Bowers to have been addressed would have been for the Court to indicate, from the outset, that the public and private dimensions of an individual’s self are inextricably intertwined with one another. To do this the Court would have to jettison any notion of a right to privacy and instead conceptualizes rights only in terms of how an issue affects an individual’s ability to participate in the public sphere. In Bowers, then, the Court should have considered only the extent to which an individual’s expression of their homosexuality would help or hinder their contribution to social and political discourse. Thus, under these standards the Court would be allowed to consider Michelman’s arguments about the need for homosexual individuality to be included in the recollective imagination (or Habermas’ lifeworld) but the Court would shy away from discussing

271Ibid. (First brackets in original, second brackets added).
issues in terms of the sanctity of intimate associations (or any other such dimension of private life that exists outside of the public sphere).

Under this standard the Court would only consider those dimensions of an individual’s life that take place in conjunction with social and political discourse; the Court must reject any notion of privacy or any other right that finds its origins in individual life as it exists outside of the public sphere. If the Court were to do this then the identity of the self with the larger whole would remain in tact and events that affect the individual would, from the outset, be linked to their conceptual backdrop. People would understand things not first with regard to how impacts themselves but rather how it effects them as part of a larger society of individuals who debate and deliberate with one another. In this way the individual right would always be linked to the concepts that allow for intersubjective agreement. For example, a homosexual individual would understand their homosexuality with regards to how it allows them express themselves to others through lifeworld interactions. The specific conceptions that an individual has as a homosexual would be associated with the broader conceptions that allow the individual to engage others in debate and deliberation. If individuals understood their subjectivity only as part of a larger discursive world then the tendency in contemporary society for conceptions to become separate from concepts would be prevented, and individual outlook towards the world would less likely become concretized under the influence of technical rationality. By defining rights this way the Court could reorient the way that individuals perceive the world and overcome the damage caused by the separation of the public and private spheres. If the Court redefined rights that were formerly understood primarily in terms of their private merits it could fundamentally alter the way people perceive the world. Redefinition of private rights is ideally suited to this task because such rights involve aspects of the individual most firmly a part of their subjectivity. By changing the way that people are forced to consider their rights in legal confrontations the Court can, I believe, ultimately change the way people understand themselves.

I do not believe, however, that if the Court abandoned private rights in favor of rights understood exclusively for their public significance it must necessarily open the door to
government intervention in all areas of an individual's life. Rather, rights that were formerly considered private rights would instead be justified in terms of how they allow an individual to participate in the public sphere. Michelman proves that rights can be justified in this way in his discussion of Bowers. He notes the importance of that the expression of one's homosexuality has for that person's ability to contribute to the process of dialogic modulation. On its own this justification for rejecting the Georgia sodomy law seems sufficient without any of the arguments Michelman makes on behalf of the private dimensions of an individual's life. Let me be clear, I am not suggesting that the Court should narrow its view of an individual's life or what rights an individual must have in order to flourish. Instead, I am suggesting that the Court must abandon rights that have any sort of justification in individual life lived in isolation from a broader social and political context. Rights understood as areas of life that must be protected from hostile intervention, however, are still quite important. It is critical, though, that people come to understand these rights in a new way.

A couple of other examples will help elucidate this point. Like homosexual rights, the right to an abortion is an issue that has traditionally been framed in terms of the right to privacy. On the pro-choice side abortion has been depicted as a matter vital to a woman’s control over both her reproductive system and her sexuality in general. This view holds that government proscription of abortion indicates a fundamental distrust of women’s judgment and results in an inability for women to express their sexuality as they choose without having to fear the traumas caused by an unwanted pregnancy. In contrast, proponents of the pro-life position often hold that abortion deprives the unborn fetus of its life and personhood and thus must be stopped by the government. The argument here is that the fetus’ right to life (the ultimate private concern) is violated by abortion and therefore must protected by state regulation. In 1973 the Court essentially balanced these two issues in its Roe decision. Writing for the majority, Justice Blackmun indicated that on one level women have the right under the Constitution to decide whether or not to have an abortion:
The right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty [as we feel it is, or [in] the Ninth [Amendment], is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the state would impose on the pregnant woman by denying that choice is altogether apparent. Specific and direct harm medically diagnosable even in the early pregnancy may be involved. Maternity, or additional harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with an unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, [the] additional difficulties and continuing stigma of unwed mothers may be involved.272

This right is not absolute, however, and on another level the state has the right, as the fetus matures and the abortion procedure becomes a greater risk to the mother's health, to regulate abortion:

It is reasonable and appropriate for a State to decide that at some point in time another interest, that of the health of the mother or that of potential human life, becomes significantly involved. . . . We repeat . . . the State does have an important and legitimate interest in preserving the protecting the health of the pregnant woman [and] that it has still another important legitimate interest in protecting the potentiality of human life.273

I will not address the question of whether or not Roe is, from a legal standpoint, a sound decision. Instead, I am concerned with how the Court presented the rights that were at issue. Viewed from the perspective of the damage caused to discourse by the separation of the public and private sphere the decision in Roe was (and is) a disaster. The Court framed the issue as a woman's right to privacy versus the state's obligation to protect the life on an unborn fetus and the health of the mother. This depiction is problematic first because it presents the conflicting interests between the mother and the fetus in private terms. The fetus infringes on a woman's ability to control various aspects of her private life while the woman infringes on the fetus' potential life. As a consequence an important area of a woman's life is defined in isolation from broader political life. Similarly, the general population is implicitly told to view the state interest in protecting the fetus' potential life because of the intrinsic merit that life itself contains. The protection of the fetus' life becomes the ultimate statement of subjectivity: life is fundamentally sacred because it is the essence of a person (the person before he or she engages in any sort of lifeworld interactions).

272Ibid, 924. (Brackets in original). The Court has further refined the notion that abortion implicates a fundamental aspect of a woman in her private capacities in its Casey decision. See n. 66.
273Ibid 923. (Brackets and emphasis in original; First ellipses in original, second ellipses added).
Both the notion of a woman’s privacy and the fetus’ potential life allow individuals to conceive of themselves prior to communicative interactions within the lifeworld and therefore the conceptions of the private sphere render the concepts of the public sphere meaningless.

The decision in *Roe* further accelerates this tendency because it posits the state's interests in opposition to the woman’s right to privacy. Not only is the woman’s right to an abortion defined in private terms in isolation from the state, the state’s interests are defined in terms isolated from the woman. Thus, the state may regulate abortion to protect the health of the mother over and above her private interest in terminating a pregnancy, and the state may limit abortions after a certain time so as to protect the potential life of the fetus that infringes on the woman’s right to privacy. By framing the issue first in terms of competing private interests (the woman versus the fetus) and then opposing the state to the woman the Court eliminates the possibility that abortion, one of the more significant issues in a woman’s life, could ever be seen in public terms. The woman accrues the advantages of abortion away from the state and accrues the disadvantages from the ban on abortion because of the state. The combination of these two factors causes the woman to sever her subjective conception of abortion from the broader political context in which she lives. The result of this is, as I have already mentioned, the growing tendency towards the elimination, *a priori*, of the potential for intersubjective agreements based on universal concepts.

To remedy this situation the Court could redefine abortion in terms of how it affects the ability of the mother and the fetus to participate in intersubjective debate and deliberation. This may at first sound like an odd proposal but I believe that such redefinition can prove to be a viable way of both protecting rights and changing the way people understand themselves. Using just its impact on public participation, the right to abortion could be justified because control over her reproductive processes is essential if a woman is to participate on an equal footing with men. It is not hard to imagine that unwanted pregnancy would place major obstacles in front of a woman in her effort to contribute to the overall discussion of the public good. Beyond the obvious way that

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274 This situation would result in any privacy rights case where the private rights of an individual are placed in opposition to the state.
pregnancy incapacitates a woman physically for a certain amount of time pregnancy also distinguishes men from women on another fundamental level. When men express their sexuality a mistake can result in mental hardship and anguish. However, when women express their sexuality and a mistake results they are forced to literally live with that mistake. When the pregnancy is wanted the time that a woman is bearing the child can, no doubt, be an immensely fulfilling experience. When this pregnancy is unwanted, though, the entire experience can serve as reminder that sexes are quite unequal. This, along with a variety of other factors in society, such as the unequal levels of pay for men and women or the limited chances for advancement in many companies, can reinforce in a woman's mind that in society she is a second class citizen since she has less control over her life. It is not hard to imagine how this would then impact (psychologically) a woman's ability to enter into intersubjective relations with men on equal footing. This becomes particularly problematic when we recall that a certain level of parity is needed between interlocutors if validity claims are to be raised and undistorted communication is to become a reality. The Court could then construe the right to an abortion in these terms without making reference to how control over sexuality is one of the most intimate and personal areas of life. Instead of turning the right to abortion inward towards the woman's subjectivity the Court could redirect the right outwards towards the public sphere where that subjectivity is mediated.

Similarly, the Court could examine the state's interest in protecting the fetus in terms of that fetus' potential involvement in intersubjective debate and deliberation. The Court would still have to make the determination as to whether the fetus is a person, a living thing, a collection of cells, etc., but once it made this determination the Court would then have to consider the fetus as something which someday might engage in public deliberation. The Court would then have to balance the right to abortion as it contributes to a woman's participation in the public sphere with a fetus' ability to (eventually) participate in the public sphere. The standard I am proposing here may sound silly and non-sensical but I believe that is a testimony to how fundamentally ingrained the notion of the private individual has become in our society. It is absolutely essential that this conception be eradicated if the rise of technical rationality is to be thwarted and true discussion
about the public is to be achieved. Since abandoning private rights does not entail abandoning the entire right it seems plausible (at least to me) that the Court could employ a new standard when deciding cases most closely linked to an individual's understanding of themselves.

The Court has used the standard I am suggesting, although only in a few cases. An example of this is *Plyler v. Doe* where the Court ruled on the constitutionality of "a Texas statute that authorized local school districts to deny free public education to children who had not been 'legally admitted' into the United States."275 In striking down the Texas statute the Court opted not to rule that education was a fundamental right protected by the Constitution but instead stressed the social nature of education. Justice Brennan writing for the majority argued that

> [p]ublic education is not a "right" granted to individuals by the Constitution. . . But neither is it merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction. "[S]ome] degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." [In] addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.276

Education is seen as a basic necessity if an individual is to have an active role in social, economic, and, most importantly, political life. Just as the Court attributed social significance to education in *Plyler*, so too could it attribute social significance to abortion in *Roe*. Unfortunately, however, later in the *Plyler* decision the pull towards individual rights is apparently too strong for Justice Brennan to resist because he also justifies the unconstitutionality of the Texas statute because of its effects on the individual.

In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement of the basis of individual merit. Illiteracy is an enduring disability. The inability to read or write will handicap the individual deprived of a basic education each and every day of his life. The inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement make it

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275Ibid, 900.
276Ibid, 901. (Brackets in original; ellipses added).
most difficult to reconcile [a] status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause.277

By discussing the impact that an issue has on the life of the individual in isolation from debate and deliberation Brennan falls into the same trap as the Court did in Bowers and Roe. It is unclear why Brennan was not satisfied with protecting education solely on the grounds of its social impact.

In addition to having the advantage of stopping the trend towards system colonization of the lifeworld my theory of judicial review also has the advantage of de-politicizing Court decisions. In contemporary society the Supreme Court has lost much its former status as a neutral arbiter of law and instead has assumed the role of advocate for controversial opinions. As Robert Bork observed, “There are signs that the law may be at a tipping stage in the public perception of its legitimacy. Americans increasingly view the courts, and particularly the Supreme Court, as political rather than legal institutions.”278 In my view this is largely due to the fact that the Court has spent a great deal of time discussing rights as they impact diverse groups of individuals’ private lives. When many controversial issues, such as abortion or gay rights, come before the Court, the Court, more often than not it seems, has decided to choose between competing subjectively generated opinions. In supporting a woman’s right to an abortion the Court, in effect and regardless of the Constitutional justification, said that one group’s private outlook on the issue was more correct than the opposing group’s view. The private right of a woman to have an abortion was juxtaposed with those who think that abortion is murder. The perception is that the former’s beliefs were validated at the expense of the latter’s. Similarly, when upholding the Georgia sodomy statue the Court, in effect, told homosexual groups (and other sympathetic groups) that their private beliefs were invalid and the state’s statue was valid. In both abortion and homosexual rights cases the Court, by considering the issues in private terms, had a polarizing effect on social relations. Depending on the issue and an individual’s view on the issue he or she was either a winner or a loser as a result of the Court’s decision. While (obviously) every Court

277Bid, 902. (Brackets in original).

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decision must have a winner or loser the effects of the decision do not have to strain social relations and push people further into their subjectivity. If the Court were to view private issues in terms of overall social and political discourse then, no matter what the decision, everyone could find something in the decision that was a benefit to them. Since whatever right were at issue would have to be justified in terms of its contribution to public debate and deliberation among diverse individuals the explosive force of a particular decision, i.e., its atomizing effect, could be minimized, and, indeed it may even have an implosive effect. Everyone would be able to come away from a decision with a sense that the good of the whole was advanced rather than feel like one group benefited over another. Now this would not happen immediately, and some issues may be controversial enough that it never happens, but as individuals became ever more familiar with thinking in terms of public rights the likelihood of it happening would increase. It is only by channeling the diversity of society into the public sphere that the lifeworld can be preserved against the constant onslaught by system and its self-aggrandizing, technically-oriented interest groups. Court-defined public rights, because they achieve this result, can be a powerful tool in changing the fundamental basis of social and political relations.

In closing, it is important to note that in proposing a particular analytical lens through which the Court can view cases I am not arguing that a particular substantive outcome must result. Thus, no matter how much of a supporter of abortion and gay rights I may be I am reluctant to use my theory to justify substantive decisions of this nature. I leave it to the Court to decide how important the particular issue in question is to public debate and deliberation. The Court would, no doubt, be more skillful at doing this than I and, after all, that is what their job is. Hopefully then, I can avoid the criticism that Sunstein and Michelman have received that their theories are just elaborate ways of justifying of their own opinions, and instead be said to have offered a neutral theory of judicial review.
**Conclusion**

Discourse, because of the central role that it plays in social, political, and individual life, presents itself as both an essential phenomena to be analyzed as well as one of the more difficult subjects to approach analytically. Although this paper has only begun to touch on many of the important issues surrounding communication I hope to have illustrated some of the basic considerations that should be included in any investigation of social and political debate. In addition, I hope that I have sketched out some of the significant ways that a study of discourse can contribute to an understanding of the prevailing state of unfreedom in America.

To briefly recapitulate, in developing a theoretical apparatus with which to study communication, I have attempted to demonstrate the six following propositions: First, because communication consists not only of ideas expressed but also concrete structures through which they find expression, communication operates on both a substantive and a structural level. Second, these substantive and structural elements are dialectically connected with one another; the substance of discourse helps determine the structure of social, political, and economic institutions just as the structures of these institutions delimit the forms of discourse that are possible. Third, Habermas, relying on an analysis of the dialectical relationship between substance and structure, has been able to reveal the way that one form of discourse--technical rationality--has come to eclipse all others. Fourth, despite his insights into the communicative process Habermas reduces a key element of discourse--the formation of ideas--and, consequently, he overlooks the role that the public/private split plays in causing system colonization of the lifeworld. Fifth, the lack of substantive debate and deliberation in America can be explained using my revised theory of Habermas' analysis of communication. And finally, sixth, an understanding of the importance of the generation of ideas on the communicative process can reveal important insights into staving off the pervasive influence of technical rationality.
I recognize that the theoretical approach to the study of communication I have advocated here is tentative at best and must be subject to revision in light of a more comprehensive historical survey. Still, I think that, if nothing else, my approach indicates both important issues to which any study of discourse must be sensitive and the direction society must move in if individuals are to take an active part in controlling the forces influencing their lives. In particular, I believe that it is critical that people reconceptualize their understandings of themselves and how they relate to the broader social and political spheres if the dominance of the conception over the concept is to be countered. As long as individuals continue to understand certain dimensions of their lives in terms of a private sphere there will remain a disjuncture between concepts and conception, and, as a result, the lifeworld will remain splintered. It is absolutely essential that people comprehend themselves and their actions with regard to how they are able to engage others communicatively through public debate and deliberation. This rethinking of the self, rather than precipitating the loss of what we consider fundamental rights and interests, will allow society to limit the scope of governmental action for different reasons than previously used, and will allow the individual to realize the essence of those rights: the freedom and progressive development of society. Only if we are conscious of the way that instrumental reason has both narrowed the horizons of and limited our ability to employ human imagination and creativity in shaping a society, can we recognize that rights, understood in terms of a private sphere that is secured away from the government and the public sphere, are essentially empty.
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