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Festschrift for Jürgen Habermas

System and Life-world, or Systems and Systemic Environments? Reflections on the Social and Political Theories of Habermas and Luhmann

There are a number of plausible approaches to understanding the distinction between system and life-world that is so central to Habermas' theory of communicative action and key, too, for a thorough understanding of his ideas on historical evolution and political legitimacy. In part the distinction is a response to Weber's musings on disenchantment and the Weberian thesis that the promise of Enlightenment reason inexorably becomes, in the course of industrialisation and democratisation, the reality of ubiquitous rationalisation. Habermas insists that Weber's view of rationalisation is too one-sided and to a considerable extent obsolete when one considers the complexity and diversity of modern society. According to this interpretation the rationalisation and disenchantment theses are part of the epistemological dead weight that the idealist tradition in Germany passes on to Marx and then Weber, though of course Habermas also sees a markedly Nietzschean dimension in Weber's reflections on legal-rational legitimation. Habermas maintains that Weber forfeits the potential explanatory capacity of his ideas on rationalisation by seeing it at work everywhere, such that it becomes a kind of sociologically refracted cultural pessimism rather than sociology proper. In the course of his development as a thinker Habermas comes to the view that many of the

most damaging methodological problems in the work of Marx and Weber are integrated into the main body of ideas of the first generation of critical theorists, and that these problems can also be found, in different guises, in the ontological, republican and post-structural critiques of instrumental reason. Hence from early on in his theoretical trajectory, he sets out to theorise action in the rigorously interactive and social terms demanded by the 'linguistic turn' in social and political thought referred to at the end of the first volume of the *Theory of Communicative Action*.¹

His counter argument is that although instrumental reason does indeed shape some of the un-democratic steering mechanisms operative in modern industrial societies - especially those processes propelled by money and power - these societies are also capable of generating and indeed must generate forms of communicative rationality which enable them to deal with social complexity in ways that also facilitate integrative political participation. That is, whilst instrumental rationality in practice tends to marginalise, exploit, and coercively reconcile, communicative rationality enables the citizens of modern states to reach understandings on democratic principles of organisation and inclusion, and, moreover, these understandings are not strategic compromises reducible to the zero-sum adjudication of socio-economic conflicts. Without disputing the non-instrumental character of aesthetic reason, Habermas seeks to establish the reality of *politically and normatively relevant non-instrumental communication* against what he regards to be the implicit irrationalism that post-

¹ *Theorie des Kommunikativen Handelns (Theory of Communicative Action)*, Volume I, pp. 531-2. Habermas actually calls this development the communicative-theoretical turn of social and political theory (p. 531), which is now widely referred to in the English-speaking world as the linguistic turn. See too Habermas, *Vorstudien und Ergänzungen zur Theorie des kommunikativen Handelns (Preliminary and Complementary Studies of the Theory of Communicative Action)*, 1984) Frankfurt, Suhrkamp, 1995, chapter 4. Interesting in the context of Habermas' call for a move beyond Marx, Weber and the impasses of first generation of critical theory is what seems to be an almost total disregard for the work of Simmel.

structuralist thinkers like Foucault and Derrida allegedly pick up from Nietzsche and Heidegger, and the forlorn retreat to aesthetics he sees in Adorno. At the same time, whilst striving to address the sociological deficit in first generation critical theory, he refuses to endorse the implicit post-normativity in Niklas Luhmann and systems theory.² As will be explained below, Luhmann poses particularly difficult problems for Habermas' distinction between life-world and system. The comparison between Habermas and Luhmann will form the basis of this chapter.

System, Life-World, and their Difficult Mediation: Introductory Remarks

For Habermas reason is internally differentiated, such that whilst some forms of institutionalised reason marginalise, others integrate and reconcile on a non-coercive basis. Indeed, it is this internally differentiated reality of institutionalised reason that harmonises instrumental, systemic reason with civic, communicative reason. Central to his mature writings is the residually Hegelian claim that strategic constellations of power and historically evolved structures of need connected with private law and the division of labour are operative in civil society. In a parallel vein, civic communication, when

² Habermas, *Wahrheit und Rechtfertigung (Truth and Justification)*, Frankfurt, Suhrkamp, 1999, pp. 250-3, and *Kommunikatives Handeln und detranszendierte Vernunft (Communicative Action and de-transcendentalised Reason)*, Stuttgart, Reclam, 2001, p. 2001, pp. 8-10. The title of the second book is significant in that it captures a central aspect of Habermas's overall project: the "de-transcendentalisation" of Kant and of reason generally can in theory provide the bases of a theory of this-worldly rationality against the claims of the philosophy of consciousness and metaphysics. It is not Hegelian reason in history, or the state as mind objectified, as such. It is the reason embodied in the speech acts of partners in dialogue which, he suggests, is teleologically oriented toward mutual understanding and agreement.

properly channelled, underpins the workings of public law and the state. Hence a crucial difference between Habermas and Luhmann concerns their respective conceptions of *mediation*. Habermas believes that the life-world (and sometimes civil society in later writings) mediates between socially interacting individuals and political authority. Although the structure of communication is pyramidal, it flows openly in ways that guarantee maximum transparency and accountability. As will be seen presently, he attributes crucial importance to the public sphere in this regard. The state therefore retains a kind of vertically structured political primacy over the contractual, strategic, and professional calculations that predominate in civil society – it is patently more and other, in qualitative terms, than a monopoly on the legitimate use of force within a thoroughly disenchanted world in which power is the ultimate reality principle. Weber’s theory of rationalisation is radicalised by thinkers as diverse as Schmitt, Lukács, Benjamin, and, to a certain extent, by Heidegger. In opposition to these and other opponents, Habermas seeks to re-articulate what he calls ‘the unfinished project of modernity’ by defending a significantly modified version of the Enlightenment concept of reason. It can be argued that he offers convincing responses to the overwhelming majority of the aforementioned. It is however less clear that Habermas has adequate answers to some of the more pressing questions posed by Luhmann and Luhmann’s investigations into the political and normative implications of functional differentiation (FD). It is striking, by way of introduction, to note a fundamental difference between Habermas and Luhmann regarding the fundamental issues of communication and mediation, and illuminating, as well, to consider key ambiguities in their respective positions in this regard. As stated, for Habermas the pyramidal structure of communication between citizens and the modern

state flows openly in ways that guarantee maximum transparency and accountability. Luhmann challenges this model with his thesis that communication in modern society flows according to consistently horizontal patterns. So whilst Habermas retains an implicitly hierarchical model of the ways in which politically relevant information is channelled, he is nonetheless adamant that it is structured by significant citizen input and democratic control. His more recent works stress that citizen input of legal and political significance is now being channelled along transnational lines.³

Luhmann abandons the hierarchical model. But he does not do so in the name of the enhanced political legitimacy that in principle might be institutionalised through rigorously horizontal authority. In fact, a close reading of *Soziale Systeme, Die Gesellschaft der Gesellschaft, Die Ausdifferenzierung des Rechts*, and *Die Politik der Gesellschaft* raises the question as to where, if anywhere, democratic political authority is to be located in late modernity for Luhmann. According to a strict systems-theoretical reading, the political system is merely one of many discrete, self-referential social systems, with no discernible legislative primacy over other systems, and no particular sovereign power. One will not find any theory of the *demos* or *pouvoir constituant* in Luhmann. The principal ambiguity that will be addressed below thus concerns the political implications of their respective conceptions of life-world, system, and systemic environments. Habermas is happy to acknowledge that systemic realities exist and are part of what it means to live in a post-traditional, functionally differentiated society. But in his work following the publication of *Legitimationsprobleme*, he does not seem to think

³ Habermas, 'Konstitutionalisierung des Völkerrechts und die Legitimationsprobleme einer verfassten Weltgesellschaft', in *Philosophische Texte Band 4: Politische Theorie*, Frankfurt, Studienausgabe Suhrkamp, 2009, pp. 402-424, and *Zur Verfassung Europas: Ein Essay (On Europe's Constitution)*, 2011), fifth edition, Berlin Suhrkamp, 2014, pp. 62-74.

that systems can ever definitively interrupt the active mediations between the life-world and political authority. He repeatedly maintains that it is this bond that distinguishes a democratic state of law from an arbitrary, authoritarian state; he also thinks that it is this same bond that distinguishes an actually functioning democratic state of law from what he takes to be Luhmann's fanciful vision of a self-governing society of mutually adjusting social systems.⁴ Hence the question arises: what is the real evidence for the claim that twenty-first century democracies are characterised by the mediated unity of citizens and states through law and the public sphere? The power of the institutions of international governance, such as that recently witnessed in Greece and elsewhere, as well as the renewed spectre of populism, suggest that Habermas may have greatly overestimated the extent to which the life-world and public sphere harbour special reservoirs of politically influential communicative reason. Luhmann's position is similarly beset with problems, in that it is not clear what role politics or the state has to play in a social reality in which there is no life-world or civil society to speak of, but only systems and their environments. It is time to examine some of the issues that might emerge from a non-polemical exchange between these two prolific observers of political and sociological modernity.⁵

⁴ Habermas, *Die postnationale Konstellation*, Frankfurt, Suhrkamp, 1998, chapters 4-5.

⁵ In 1974 Habermas and Luhmann co-authored *Theorie der Gesellschaft oder Sozialtechnologie – was leistet die Systemforschung?* But little emerges in terms of dialogue: the theories of communicative action and social systems are expounded without much reference to each other. Since then, and up until Luhmann's death in 1998, their explicit references to each other's work have been terse and elliptic. See Habermas and Luhmann, *Theorie der Gesellschaft oder Sozialtechnologie – was leistet die Systemforschung?*, Frankfurt, Suhrkamp, 1974.

Kant and Habermas: the Public Sphere and Rational Political Authority

Habermas' interpretation of Kant's ideas on the public sphere offers a good point of departure. In his critique of Kant he grapples with two central theoretical and practical political problems. First, how does one criticise liberal notions of universal legality and instrumentally rational legitimacy, without embracing irrational and communitarian versions of legitimacy? Second, how might it be possible to avoid recourse to predominantly technical and redistributive measures, i.e., measures that can dispense with democracy if need be, to solve the problem of social order and political legitimacy? Marx thinks that communism is the answer to a series of very concrete and material questions about decision-making and conflict resolution in modern industrial society. Similarly, Habermas' defence of democracy is neither purely pragmatic nor abstractly moral: to this extent both are students of Hegel. Habermas is not a liberal, communitarian, or social democrat in any straightforward sense. Hence his reflections on this question mark an attempt to stake out original terrain of potentially great importance. Whereas Kant seeks to rescue epistemology from the dead ends of empiricism and rationalism, Habermas is determined to rescue social scientific methodology from what he finds inadequate in first generation critical theory, Marxism, and systems theory. This leads him to adopt a number of different positions vis-à-vis liberalism depending on the book he is writing and the historical period in which it is written.⁶ He is at times critical

⁶ Habermas' (born in 1928) writings extend from the 1950s to the present, and cover a wide range of topics which, in addition to his theoretical works, include pedagogical issues concerned with the student movement in Germany and the constant debate over university reform there. For a comprehensive

of liberalism in so far as it sacrifices the possibility of rational legitimacy to the socio-economic needs of powerful private interests. But at other times he is unequivocally apologetic of liberal democracy to the extent that he sees it as the only possible institutional means capable of salvaging what remains truly revolutionary in liberal doctrine: it champions the idea that government authority should be based on deliberation and discursively-mediated consensus rather than tradition, more and less harmonious aggregation of interest, constituent sovereign power, or the expedient requirements of functional order. Hence his writings intimate that although one can criticise liberalism from a Marxist or assorted other standpoints, it is nonetheless ascendant liberalism's original claims that must be made good in order to redeem the promise of Enlightenment and modernity. Hence a brief word about the political claims of liberalism will be useful in order to foreground the introductory discussion of Habermas' ideas on Kant, the public sphere and the life-world. Habermas' interpretation of Kant will help illuminate the theoretical terrain that separates him from Luhmann.⁷

Liberalism would seem to have a virtual theoretical monopoly on political reason, which it articulates in terms of legality and legitimacy. Bodies of thought which set out to critique liberalism often seem to be attacking reason altogether or, what amounts to something very similar from a liberal perspective, they seem to demand the

overview see the excerpts included in William Outhwaite (intro. and ed.), *The Habermas Reader*, Cambridge, Polity, 1996. Readers of German can consult the recently published *Philosophische Texte* in 5 volumes (Frankfurt Suhrkamp, 2009), which comprise selections of his major writings on the following subjects: (1) the speech-theoretical foundation of sociology, (2) rationality and speech theory, (3) discourse ethics, (4) political theory (see footnote 3 above) and (5) the critique of reason. Christian Schlütter provides good summary of the contents of the five volumes in the *Frankfurter Rundschau*, 14 June, 2009, p. 35.

⁷ If one had to categorise his social and political thought in recognisable terms, one might say that Habermas combines a commitment to political liberalism with aspects of critical theory, legal theory and communicative rationality. For two excellent introductions, see William Outhwaite, *Habermas; A Critical Introduction*, Cambridge, Polity, 1994 (second edition 2009), and Gordon Finlayson, *Habermas: A Very Short Introduction*, Oxford, OUP, 2005.

institutionalisation of “higher”, more substantial forms of reason and solidarity, i.e., forms of reason for whose implementation the socio-economic, political and juridical *conditions* are not available. From an enlightened liberal perspective, notions of a general will or the withering away of the state may be brilliant ideas, but the conditions for anything other than authoritarian and totalitarian versions of them are not realisable. They are not bad ideas, as such, but rather impossible ideals that seek to go beyond what reason, which is limited in its claims and capacities, permits. For thinkers in the liberal tradition such as Kant, there is a clear distinction between the universal claims of reason formulated by ethically minded, private adult citizens, and positive legal public authority. For Kant, the private individual has a rational will with which he (and it is unequivocally a ‘he’ for Kant) is capable of formulating self-legislative maxims indicating universal principles of morally irreproachable conduct. These maxims touch upon private matters of conscience, and are thus not enforceable by public institutions. Positive laws are enforceable by the state because they regulate external behaviour rather than individual ethical choice. Many liberals after Kant suggest that when a person violates the law, s/he infringes on someone else’s liberty in a way that is fundamentally asymmetrical to the neglect to perform an ethical duty. The former is punishable, whereas the latter is not. That is, liberals tend to maintain that if the positive laws of the state were to dictate the terms of individual ethical duty, individual liberty would quickly disappear. The consequence is that duty, individual morality, and conscience cannot be immediately conflated with government law and the demands of public order.

Kant sees that leaving matters as such is inadequate, for if ethics and politics are irremediably kept apart, the law is likely to be devoid of ethical-epistemological content,

and the citizen has little in the way of compelling motivation to obey the state. The parallel is the Hobbesian converse: once established, state authority need not be too concerned with citizens' rights. Kant wants to refute Hobbes, though without, crucially, fusing the discrete terms characteristic of liberal democratic thought, and without unifying the actual spheres of social life that are only partially mediated in actual liberal democratic practice. Kant sees the possibility of a solution in a public sphere mediating between private and ethical individuals (internalised moral law), and the political authority of government (external regulatory law). It is the possibility of this mediation, initially inspired by his reading of Kant, which Habermas takes up in *The Structural Transformation of the Public Sphere*. Although the conclusions of that early work of socio-historical theory are cautious and some might even say quite pessimistic, Habermas never really abandons the claim that legitimate government in modern societies is underpinned by a non-instrumentally rational mediation of private-individual interests and public-political authority. In his early writings he emphasises that failing this rational mediation, one has something much more closely approximating Weberian rationalisation than rational authority. With the publication of *Between Facts and Norms* in 1992, Habermas jettisons his early scepticism about the capacity of modern industrial societies continually to renew and update their normative bases. Normative renewal in this context means citizen capacity to reach consent and agreement about the laws they choose to govern their lives. This takes him from Kant and to a certain extent Arendt's theory of the public sphere, to a theory of the life-world indebted to Husserl and sociological phenomenology, and from there to a qualified celebration of the legal state.⁸

⁸ Habermas, *Strukturwandel der Öffentlichkeit: Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft* (*The Structural Transformation of the Public Sphere*, first published by Luchterhand in 1962),

Kant maintains that whilst individual private citizens are likely to be ignorant of public affairs and political matters, the members of a public constituted by an independent assembly of citizens are capable of mutually enlightening themselves through informed discussion and critical debate. Two principles inform Kant's ideas on a critical public mediating between morally autonomous individuals and the state. First, and foreshadowing Habermas' notion of the ideal speech situation, the individuals comprising the public are endowed with a rational will that is independent of all empirically existing institutions and experience.⁹ Kant's formulation, which anticipates Rawls' veil of ignorance, stipulates that in order for the will to be autonomous, it must constitute itself in abstraction from socio-economic and political macro-realities, and in abstraction from emotions, impulses, drives, needs and other historically conditioned micro-realities as well. Kant's point is that everyone has different needs and a different conception of happiness. Hence demands to satisfy claims made in the name of needs and happiness are non-rational and, by extension, extra-legal: states entrusted with satisfying such claims act beyond the scope of what is rationally possible and legally universal. They will therefore tend to lapse into authoritarian abuse of power.¹⁰ Second,

Frankfurt, Suhrkamp, 1990, pp. 180-95. Hence whilst it is *The Theory of Communicative Action* (2 volumes, 1981) that announces the advent of the linguistic turn, *The Structural Transformation, Legitimation Crisis* and *The Theory of Communicative Action* all express scepticism about the possible mediation of life-world knowledge and systemic steering. As will be seen, *Between the Facts and the Norms* attempts to provide arguments explaining how this mediation is in fact achieved to a satisfactory degree in the modern *Rechtsstaat*. To this extent the latter publication of 1992 can be likened to Habermas' version of the *Philosophy of Right*. More critical readers might liken it to *The End of History and the Last Man*, in that it that in *Between the Facts and Norms* he more or less declares the modern liberal democratic legal state to be the end station of political humanity's journey to rational individual and collective autonomy.

⁹ Habermas, *Philosophische Texte*, Volume 3, chapter 4, and *Legitimationsprobleme im Spätkapitalismus (Legitimation Crisis)*, Frankfurt, Suhrkamp, 1973, part 3, chapter 1.

¹⁰ Kant's ideas prefigure those of Habermas here as well. In his critique of the welfare state Habermas suggests that the corporatist compromise between labour unions, government and business associations is a failed response to the tendency of capitalist economies to undermine the conditions of legal universality. The epistemological dimension of law is diluted to insulate the political system from demands for social

and foreshadowing Habermas' partial assimilation of some of the key tenets of systems theory in the *Theory of Communicative Action* period, the critical reasoning and debate of an assembly of rational wills must take place in a sphere of freedom, i.e., not in a workplace, laboratory, or other context where a chain of command organised to solve technical tasks is more appropriate than an assembly of equals. Kant openly excludes women, children and salaried workers from the public sphere because of their supposed lack of autonomy. In his estimation they are emotionally and economically dependent, which means that if allowed to participate in public affairs, they are likely to embrace a politics of irrational need rather than a juridical politics of freedom and rational cognition. If this happens, law is deprived of its epistemological dimension at the same time that the transcendence of natural and mechanical necessity is forfeited. The economically independent, rational men in Kant's public sphere are impartial ethical individuals who mediate between themselves and political authority by formulating principles in open arenas of the public sphere. These discursively redeemed principles serve the purpose of confronting the representatives of political authority and positive law with ethically informed universal claims that legitimate authority cannot ignore. In principle these claims should require positivised, formal law to adjust its contents, thus reconciling order and substantive reason. Hobbes is therefore refuted in the same stroke that safeguards individual autonomy and moral obligation.¹¹

equality that can really only be properly addressed by changing the law instead of "softening it", so to speak, for softening the law undermines its capacity to set out rational grounds for political obligation. See Habermas, *Legitimationsprobleme im Spätkapitalismus (Legitimation Crisis)*, part 2, chapter 5. Claus Offe makes related observations about legality and the long-term prospects of the welfare state in 'Rationalitätskriterien der Administration' in *Leviathan*, 3 (1974), pp. 333-45.

¹¹ Kant, 'Beantwortung der Frage: Was ist Aufklärung?' (What is Enlightenment?', 1783) in Wilhelm Weischedel (ed.), *Immanuel Kant: Schriften zur Anthropologie, Geschichtsphilosophie, Politik und Pädagogik I*, Frankfurt, Suhrkamp, 1977, pp. 57-61. Relevant in this regard are the arguments that Kant

But what happens if public authority refuses to adjust the content of law making to the truths of discursive rationality? Habermas, writing in the early 1970s and taking his cue from Kant, argues that a legitimacy crisis ensues. The claim intrinsic to Habermas' attempt to update Kant is that in modern states it is not so much a crisis concerning the distribution of wealth, status, security or other phenomena which can be administratively or technically supplied. It is a crisis of the autonomy of reason and the epistemological integrity of law. When forms of law are out of step with the truth content of reason, law forfeits the cognitive dimension that separates modern law from more antiquated and arbitrary instances of *Diktat*, privilege and tradition. From the Enlightenment and post-Enlightenment vantage point championed by liberalism, these forms of domination should really be part of the past, and indeed, Kant believes that as the process of Enlightenment unfolds, substantive rationality and formal legality will harmonise to an increasingly greater extent, thus obviating the need for populist forms of legitimacy, civil disobedience and revolution. In 'An Answer to the Question: What is Enlightenment?', Kant intimates that where the law is underwritten by the cognitive content of reason, politics ceases to be the domain of power, privilege and ideological mendacity. In the discursively redeemed speech claims of rational, ethically-oriented individuals in the public sphere, the promise of Enlightenment is redeemed, and as such, humanity need not live in fear of the whims of despots any longer.¹²

Central to the argument developed in the *Structural Transformation of the Public Sphere* and subsequent works is that rather than representing a liberal utopia of political

puts forth in 'Perpetual Peace' and 'On the Common Saying'. These three and other important political essays are available in English in Hans Reiss (ed.), *Kant: Political Writings*, Cambridge, CUP, 1970.

¹² Kant, 'Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht in der Praxis' ('Theory and Praxis'), in Wilhelm Weischedel (ed.), *Immanuel Kant: Schriften zur Anthropologie*, pp. 129-30.

harmony secured under ideal conditions that never present themselves, Kant's views on the public sphere reflect a sociologically-grounded possibility exhibited, to differing degrees, by actual tendencies in early modern industrial societies. This is due to the in Habermas' estimation historically corroborated fact that traditional ecclesiastical and aristocratic political authority was being challenged by theoretically sophisticated articulations of public opinion in coffee houses, universities, newspapers, and the then gentry-dominated citizen associations preceding the emergence of modern political parties. In chapter 4, section 13 of the *Structural Transformation*, Habermas outlines Kant's theory of the public sphere, noting that it is central to Kant's argument that it is the task of the public sphere to harmonise the claims of morality and reason with those of law and politics.¹³ It is clear from the text that Habermas has much normative sympathy with the ideal of rational political legitimacy, and clear too that he has a firm scholarly conviction that, to paraphrase Marx, humanity only poses itself questions for which the solutions are immanently feasible. This is to say that in contrast to the abstract, a-historical approach adopted by analytical philosophers such as Rawls, Habermas seeks to ground his normative claims sociologically, which he initially does with historical documentation and sociological theory. His later work supplements historical and sociological analysis with cognitive psychology, linguistics and legal theory.¹⁴

The major question raised in *The Structural Transformation of the Public Sphere* is whether or not modern capitalist economies and extra-economic public spheres can

¹³ An issue that Habermas does not really address is that morality and reason also entail a natural right to private property for Kant. The possible explanations as to why Habermas does not touch upon this are addressed in this chapter.

¹⁴ Habermas, *Strukturwandel der Öffentlichkeit (The Structural Transformation of the Public Sphere)*, pp.178-195, *Zur Rekonstruktion des historischen Materialismus (The Reconstruction of Historical Materialism)*, Frankfurt, Suhrkamp, 1976, parts 2-3, and *Der philosophische Diskurs der Moderne (The Philosophical Discourse of Modernity)*, Frankfurt, Suhrkamp, 1985, chapters 1 and 11.

peacefully co-exist, or if, on the contrary, there is a marked tendency for the logic of commodity production to extend its jurisdiction into the cultural, political, and aesthetic spheres of communication and interpersonal understanding. This is a fairly important query, since the status of the normative bases of the state is at stake. Since the young Marx's critique of Hegel's theory of the modern state there has been much debate and real upheaval concerning the respective of roles of economy and polity (Luhmann would say economic system and political system) in the generation and resolution of social conflict. Whilst it is very improbable that the state is 'nothing other than an executive committee for managing the affairs of the entire bourgeoisie', as Marx quips in the *Communist Manifesto* of 1848, it is also doubtful that the supposed political universality of citizenship, which in theory does not recognise differences of race, religion, class and other social factors, is not affected by patterns of property ownership or the systemic requirements of industrial production. Mainstream liberal theorists tend to insist on the autonomy of politics from economics (insisting too, to varying degrees, on the primacy of private individual rights over public political rights), whilst Marxists question the degree to which there can be real political autonomy from socio-economic realities. Like Arendt, therefore, Habermas suggests that both liberal and Marxist approaches are flawed. He argues that in their legal institutions and public spheres, early modern societies have an historically unique capacity to generate discursive understanding of conflict. The reflexivity induced by this reasoning makes the loci of conflict transparent, and, under ideal conditions, susceptible to critique and reform, thus echoing the Kantian claim that revolution and civil disobedience should in principle become superfluous. Central to the structural transformation thesis is the claim that this capacity is forfeited if

the spheres and institutions necessary for consensus are undermined by systemic processes of a bureaucratic and technical stamp. Hence whilst the *Structural Transformation of the Public Sphere* is neither liberal nor Marxist, it leans toward a modified Marxist account of how the liberal dimension of liberal democracy can be undermined by capitalism.¹⁵

This contributes to the originality and unusualness of the book: a Kantian-Weberian-Marxist argument is deployed in order to critique the actual functioning of liberal democratic states as a part of a defence of liberal ideals. Its author is committed to the postulate that rational agreement rather than bourgeois or working class power *should* be the basis of political legitimacy, and that modernity offers an unprecedented and non-ideological possibility of converting that *should* into an *is*. To this extent one discerns not merely the influence of Kant, Weber and Marx. Habermas is also guided by Tocqueville's intuition that some form of democracy is going to accompany the transition from feudal-agrarian to industrial-democratic society. Hence the real question is not democracy versus some other form of government. Habermas follows Tocqueville in asking: will it be a liberal or a despotic form of democracy? Since both are conceivable and indeed possible, much is at stake depending on the robustness of the institutions mediating between private (commercial) and public (republican) forms of liberty. Tocqueville's stress on the importance of *corps intermédiaires* is echoed in some of Habermas' reflections on the public sphere. Moreover, Hegel's influence is evident in the immanent dialectical methodology which stipulates that the solutions to normative

¹⁵ Habermas, 1990 introduction to *Strukturwandel der Öffentlichkeit (The Structural Transformation of the Public Sphere)*, pp. 33-50, and pp. 195-209 in the text. The modified Marxism in question is clearly informed by close readings of Weber and Adorno at this early stage of Habermas' development as a thinker.

'ought questions' (Sollen, later *Geltung*) are to be sought in the 'is realities' (Sein, later *Faktizität*), that is, already existing institutions offer the key to reconciling what can and what should be done.¹⁶

The thesis of structural transformations and constitutional transitions has a history within critical theory that needs brief attention in order fully to understand Habermas' enormous contribution to social and political theory and adequately to appreciate what may be considered his departure from first generation critical theory. In 1941 Institute for Social Research member Friedrich Pollock (1894-1970) attempted to theorise the transition from free market to late (sometimes also called state) capitalism, explaining that late capitalism introduces planning to co-ordinate supply and demand, though without thereby becoming a system of production based on the satisfaction of human needs or the desire for creative work. State capitalism is thus not state socialism on the Soviet model, and certainly not libertarian socialism as Marx had envisaged when discussing human as opposed to merely political emancipation. Late capitalism can be characterised instead as an attempt to anticipate and forestall demands for political control of the economy by stabilising economic processes through managerial planning rather than democratic participation in key decisions about production and investment.¹⁷

Pollock's ideas on the correlations between determinate stages in the evolution of

¹⁶ Habermas, *Strukturwandel der Öffentlichkeit (The Structural Transformation of the Public Sphere)*, pp. 209-24. Although in the early to mid-1960s Habermas continues to rely on Marx, Weber, and Adorno, one can already see some of the characteristic lines of his mature thought starting to emerge. He develops a critical stance toward the first generation of Frankfurt School theorists in that he remains sceptical toward the negative theological tendency to glimpse the conditions of a reconciled world in terms of their manifest absence (a tendency sometimes discernible in Adorno), and is also hesitant to attribute automatic radical political subjectivity to exploited groups and classes (a tendency often found in Marcuse). He asserts that the task of completing the ongoing projects of Enlightenment and modernity turns on re-conceptualising reason without fully embracing or wholly ignoring the rationalisation thesis, keeping in mind the evident reality that one cannot simply re-institutionalise the bourgeois public sphere of early modernity under twentieth century conditions of universal franchise and mass society.

¹⁷ Friedrich Pollock, 'State Capitalism: its Possibilities and Limitations' in Andrew Arato and Eike Gebhardt (eds.), *The Essential Frankfurt School Reader*, London and New York, Continuum, 1982, pp. 71-2.

capitalism and structural changes in forms of law and state are developed with great analytical precision by two legal theorists associated with the Institute for Social Research briefly touched upon in chapter 3, Otto Kirchheimer (1905-65) and Franz Neumann (1900-1954). In 'Changes in the Structure of Political Compromise', also of 1941, Kirchheimer shows that under late capitalism, the state executive is restructured so that it can perform key planning functions neglected by the market but nonetheless necessary to ensure the predominance of market relations in the economy and, crucially, in the polity as well. Kirchheimer develops what one might call a juridical socialism which, like Pollock's, parts with mechanical notions of base and superstructure, though without embracing the thesis that the political system and the economic system function independently in industrial society. Part of his argument, which anticipates the colonisation of the life-world thesis developed by Habermas in *Legitimation Crisis*, is that the political re-structuring of capitalist social relations can occur because of a subjective factor related to class consciousness and culture, and an objective factor regarding systemic features of capitalist production. Whereas the subjective factor contributes to a stalemate in the class struggle that creates possibilities for authoritarian intervention in the economy and repressive apparatuses of the state, the objective factor results in overproduction crises requiring Keynesian reform. Kirchheimer reckons that it is possible to safeguard the integrity of law as a barometer of human freedom against the tendency for it to become a tool of class oppression when undermined by organised private interests. This however depends, from a specific moment in the democratisation process set in motion by 1789 and 1848, on a transition from socially created wealth that is privately appropriated, to a new mode of production which ensures that the juridical

mediation of humanity and nature first sheds its class, and then eventually its bureaucratic character as well.¹⁸

The implementation of Keynesian stop-gap measures tends to expand the role of the state executive at the expense of the legislature. This helps undermine the democratic bases of the state, thus pointing the way to more and less authoritarian forms of corporatism. The key point made by Kirchheimer which is taken up by Habermas in the *Structural Transformation of the Public Sphere* and then again in *Legitimation Crisis* is that the move from market to late capitalism is accompanied by the transition from the potential of rational and ethical law to the reality of government by command and decree. Habermas sometimes refers to this development as *Verrechtlichung*, which can be thought of as the tendency to adopt legal solutions to various conflicts, without, however, respecting official legal channels and institutions. This development is of course most obvious in the transition from parliamentary democracy to fascism. But that very spectacular and visible collapse of the liberal dimension of liberal democracy points the way toward an ostensibly more benign phenomenon with related origins, which is the blurring of the public/private divisions in post-World War II consumer-welfare capitalism analysed by Arendt. Whilst Arendt stresses the demise of politics in her Aristotelian-republican sense that this blurring brings in its wake, Kirchheimer points out the inevitable conflict between the possible transition from socially created wealth that is privately appropriated to socially created wealth that is socially appropriated, on the one hand, and the thwarting of that democratic and pluralist possibility by various attempts to insulate the prerogatives of capital from legal-rational critique, on the other. What unites

¹⁸ Otto Kirchheimer, 'Changes in the Structure of Political Compromise' in Arato and Gebhardt (eds.), *The Essential Frankfurt School Reader*, pp. 52-7.

Arendt and Kirchheimer's otherwise very different standpoints is the observation that at first glance fascist and authoritarian corporatism more generally seems to be the problem of inter-war Europe. Yet a closer look suggests that there is a more fundamental clash between the imperatives of critical reason and the instrumental logic of capital accumulation. This clash is not easily patched up by staging a return to forms of state which correspond to earlier, now outdated models of equilibrium between class structure, mode of production, and mode of political compromise. Historically stable liberal democratic states may well manage to manoeuvre past the authoritarian transition to a new mode of political compromise in the 1920s and 1930s, but the transition will eventually have to be made in some form, as the institutions bourgeois ascendancy, such as the public sphere, evolve into those of bourgeois maturity and mass electorates. Hence in Kirchheimer's view one must update Tocqueville's question about democracy as follows: will it be a juridical socialist or a despotic form of democracy? ¹⁹

Kirchheimer explains that in looking at the history of European states from 1848 to the National Socialist victory of 1933, one sees that steadily enhanced degrees of political enfranchisement are paralleled by very uneven patterns of social enfranchisement and disenfranchisement. Political equality becomes a lever to pursue social equality, but this movement is halted to varying extents by private ownership of the means of production. Each state is faced with the choice of either socialising private socio-economic rights in order to secure democratic legitimacy, or of enforcing liberal legitimacy by curtailing and in some cases banning democratic rights of citizenship. If the latter choice is enacted, liberal democracy mutates into something palpably more

¹⁹ Otto Kirchheimer, 'Changes in the Structure of Political Compromise' in Arato and Gebhardt (eds.), *The Essential Frankfurt School Reader*, pp. 54-6.

authoritarian. In 'Changes in the Function of Law in Modern Society', published in the *Journal for Social Research* four years prior to Kirchheimer's article, Neumann explores the modalities of political transformation in relation to changes in the capitalist economy and industrial society, and suggests that the idea of law as an example of the collective rational will of the citizenry is bound up with a particular account of the origins and sources of secular authority, and, that such accounts vary with national context. It is clear to him that the sources of authority evolve in history in conjunction with church/state relations, in a first time, and in conjunction with state/capital relations, in a second. The conflicts ensuing from changing church-state and capital-state relations are different depending on a variety of historical and constitutional factors shaping the origins and development of each state's path to industrialisation, and the specific kind of democracy that it adopts. One of the lessons to be drawn from the history of the Weimar Republic is that democracy in anything more than a formal sense requires a significant degree of pre-established social harmony and agreement about the rationality of fundamental institutions, such that it cannot be supposed that democracy will produce such stability, i.e., it is a political form of government that is dependent on a number of extra-governmental factors, as Montesquieu was well aware. The structure of markets, social classes, and public/private mediations is of course key. Constitutional debate on these topics continues apace in the light of Brexit and other phenomena indicating that the transition to global democratic law is going to be anything but smooth.²⁰

Anticipating the *ordo-liberalism* of the West German Bundesrepublik in the post-war period, Neumann shows that liberals too often assume that it is the role of the state to

²⁰ Neumann, 'Der Funktionswandel des Gesetzes im Recht der bürgerlichen Gesellschaft' ('The Change in the Function of Law in Modern Society', 1937), in Helge Pross (ed.), *Franz Neumann: Demokratischer und autoritärer Staat*, Frankfurt, Fischer, 1986, pp. 31-81.

create a legal framework for the protection of private interests. The parallel assumption is that the play of private interests produces public liberty and democracy in the manner of an almost accidental by-product. For Neumann freedom and democracy are terms referring to the rights and real capacity of citizens to make collective decisions and to participate in public life as equals. Equality in this republican and deliberative sense is undermined by attempts to foil the logic of inclusive democratic enfranchisement by reforming economic and political processes so that capital is continually reallocated the privilege to control the labour process, albeit on new bases, in ways that are exempt from accountability. On this rather accurate reading it is ideological to separate questions of reason and legitimacy from questions of freedom, political equality, democracy and, crucially, economic organisation. This point raises a recurrent question in the writings of Kirchheimer and Neumann that Habermas has had to face throughout his career: are liberalism and liberal democracy inextricably bound up with the predominance of private interests over general interests in modern industrial societies, or might there be a way of uniting liberal, republican and socialist tenets into a coherent alternative to liberalism, corporatist social democracy and state socialism? Whilst Kirchheimer and Neumann are very clear as regards their respective positions in response, it will be seen that Habermas' answer is considerably less clear.²¹

²¹ Neumann, 'Der Funktionswandel des Gesetzes im Recht der bürgerlichen Gesellschaft' ('The Change in the Function of Law in Modern Society'), in Pross (ed.), *Franz Neumann: Demokratischer und autoritärer Staat*. Some of Neumann and Kirchheimer's most important essays can be found in English in William E. Scheuerman (ed.), *The Rule of Law under Siege: Selected Essays by Franz Neumann and Otto Kirchheimer*, Berkeley, University of California Press, 1996. For two very good overviews of their main political and juridical ideas, see William Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law*, Cambridge, MIT Press, 1994, and Chris Thornhill, *Political Theory in Modern Germany*, chapter 3. The lack of clarity attributed to Habermas is not meant to suggest political opportunism on his part. He is constantly revising his views in answer to his critics and responding to changing socio-economic and political conditions as well, such as the re-unification of Germany during 1989-90.

Habermas's early work is quite markedly influenced by his readings of Arendt, Kirchheimer and Neumann, and their variously formulated conception of republican action and juridical politics. It is marked too by Horkheimer and Adorno, for whom he worked as a research assistant at the Institute for Social Research in Frankfurt. Needless to say he is also very well acquainted with the German idealist tradition, Nietzsche and Freud, and the sociology of Marx, Durkheim and Weber as well. The author of the *Structural Transformation* and *Legitimation Crisis* has much sympathy with the ideas of Arendt, Kirchheimer, Neumann, and what one might call their strong conception of politics and a positive conception of freedom. In his writings immediately after *Legitimation Crisis*, however, one detects a kind of Hegelian doubt about the possibility of eliminating instrumental rationality and institutionalised private interest from civil society. The allusion to Hegel is appropriate because like the author of the *Philosophy of Right*, Habermas begins to argue that what liberals, Marxists *avant la lettre* and political republicans in different ways all overlook is that there is much more going on in civil society than systematic exploitation and the contractually-mediated pursuit of individual gain. Habermas at times conflates public sphere, civil society, and life-world, and at other times seems to suggest that they refer to distinct institutional realities.²² In any case he follows Hegel in general terms by maintaining that modern societies generate pre-

²² At times Habermas seems to be saying that the life-world exists within civil society, whilst at other times it appears that life-world and civil society are more or less interchangeable terms for him. In the 1990 introduction to the German edition of *Structural Transformation of the Public Sphere* he states that in the *Theory of Communicative Action* and subsequent works he analyses society as the dynamic unity of systems, propelled by money and power, and the life-world, which is maintained through communication. From the early 1990s on he favours the term civil society and the idea of plural public spheres rather than an overarching, unitary public sphere of the kind implied by the initial Kantian version adopted in the *Structural Transformation*. As will be seen what is really at stake is the rationalisation of the life-world which is not, he insists, to be confused with the Weberian notion of rationalisation taken up by Lukács, Adorno, et. al. See the introduction to Habermas, *Strukturwandel der Öffentlichkeit (The Structural Transformation of the Public Sphere)*, pp. 45-8.

government level forms of agreement and understanding that are not simply reducible to strategic compromise. But Habermas goes well beyond Hegel's modest claims for the forms of reason operative in the public sphere and civil society by arguing that modern states cannot successfully cope with social differentiation and complexity without such interaction and the symbolic meanings they transmit and sustain.²³ Hence a brief word about the role of interaction in the argument developed in *Knowledge and Human Interests* (1968) will serve as a good introduction to the discussion of the roles played by communication and the life-world in the *Theory of Communicative Action*.

From Labour and Interaction to Communicative Action

Along with the *Structural Transformation and Legitimation Crisis*, *Knowledge and Human Interests* is a key work on the road to the *Theory of Communicative Action*. In *Knowledge and Human Interests* Habermas introduces the distinction between labour and interaction, which prefigures the distinction between system and life-world appearing in later works. It is somewhat curious that he does not explicitly refer to Arendt or the distinction between labour, work and action developed in the *Human Condition* (1957). Arendt regards action as the self-disclosure of individual citizens who appear in the public sphere as non-identical equals. Action for her is thus plural, open-ended, political,

²³ Hegel is actually quite dismissive of the public sphere, which he denigrates to the decidedly more pejorative status of public opinion in his mature writings. See *Die Philosophie des Rechts* (*The Philosophy of Right*, 1821), paragraph 315, and Schechter, *Sovereign States or Political Communities?*, pp. 31-9.

and indicative of a specifically human capacity to transcend the more limited modes of freedom connected with labour and work. Labour and work are more circumscribed because they are more closely bound to life and the life-cycle with its inevitable beginning, unfolding an end. She intimated that there is, on the contrary, nothing inevitable about the outcomes of action. This is because action transpires in the world, where humans - rather than causally determined nature - are the originators of new beginnings. Central to her view of the world and the place of action within it is the view that each individual acts in a way that is unique. Transcendence of the processes governing the life-cycle is thus not predicated on or synonymous with material abundance or technological prowess, which is why the ancient Greeks understood the distinction between *worldly* political action and *vital* economic growth in agriculture. Hence Arendt and Habermas make important claims for what one might call sub-systemic politics, or politics considered independently from the dynamics of money and power, bearing in mind that prior to *Between Facts and Norms*, Habermas is more likely to use the terms 'interaction' and 'communication', rather than 'politics'.

Whilst for Arendt politics creates spaces where uniqueness and singularity of perspective can be sustained in spontaneous and unpredictable ways that reveal fundamental aspects of the human condition, Habermas submits that the specifically human capacity exhibited in interaction and communication results in understanding and agreement. Thus although they agree on the fundamental importance of the human faculty of speech, Arendt's emphasis on pluralist politics and open-ended deeds is somewhat distinct from Habermas' stress on discursive consensus. Corresponding to this difference is Arendt's generally disparaging view of society and social behaviour, which,

following Heidegger, she construes as conformist for the most part, and Habermas's attempt to develop a theory of social action and an account of societal evolution which he finds missing in liberalism, Weber and Marxism. If Arendt never strays too far from her version of Aristotelian republicanism, Habermas's encounter with Anglo-American pragmatism and developmental psychology in *Knowledge and Human Interests* prompt him to seek paths beyond philosophical idealism, historical materialism and, it can be argued, away from the particular kind of critical theory represented by the main ideas of Horkheimer, Adorno and Marcuse.²⁴ Although he never abandons the Kantian dimension of his thinking, which insists that substantive agreement constitute at least some essential part of legitimate democratic authority in the modern world, he supplements this political dimension with a sociological dimension oriented toward the explanation of social action in the life-world. Hence in the transition from the *Structural Transformation* to *Knowledge and Human Interests* one can discern two shifts in emphasis. The first is that from an ethically grounded notion of politics in the public sphere to a more sociologically grounded conception of interaction in the life world; the second is the evolution from critical theory to communicative theory.

Habermas' interaction represents a sociological equivalent of Arendt's action, though with the notable difference that interaction produces forms of non-technological knowledge and agreement rather than acts of irreproducible singularity. In making this argument Habermas follows Dilthey's hermeneutic distinction between the human and

²⁴ Whilst *The Structural Transformation* and *Legitimation Crisis* can be seen to share a number of the concerns and the methodology of the founders of critical theory, it is doubtful if the same can be said of *Between the Facts and the Norms*. The difficulty of assessing Habermas' relation to critical theory is compounded by the fact that there is no clear agreement as to what constitutes critical theory, and if critical theory should include deconstruction and post-structuralism. For a good introduction see Raymond Geuss, *The Idea of a Critical Theory*, Cambridge, CUP, 1981.

natural sciences and C.S. Peirce's (1839-1914) theory of pragmatic reason. Whereas Arendt refers to the *ontological* difference between labour, work, and interaction, in *Knowledge and Human Interests* Habermas borrows Husserl's use of the term *transcendental* to explain the categorical difference between the natural sciences, which generate technical interests in accordance with the dictates of mono-logic reason and classificatory knowledge, and the human sciences. The human sciences generate practical knowledge as well as emancipatory interests on the basis of hermeneutic knowledge and dialogue that is not only oriented toward agreement, but in principle is receptive to radical otherness as well.²⁵ Within this framework practical interest mediates between technical knowledge and emancipatory knowledge. It is in the context of these fundamental distinctions that Habermas defends the university as an institution capable of facilitating communication between different socio-economic and political spheres, which he suggests that it does by furnishing the bases of critical social science and developing institutionalised modernist reflexivity more generally. This position constitutes a critique of Marx which, as in the *Structural Transformation*, also adopts certain aspects of a Marxist critique of liberal democracy. It is also an implicit critique of Adorno that nonetheless acknowledges the *potential danger* (as opposed to stifling omnipresence) of rampant instrumental reason. Hence in *Knowledge and Human*

²⁵ The idea that dialogue opens up the possibility of non-instrumental knowledge that is also non-scientific in the sense of the natural sciences has become a topic of considerable importance in social and political thought. Whilst Habermas' contribution comes in the form of his notion of the ideal speech situation discussed in *Legitimation Crisis* and elsewhere in his oeuvre, the theme can be found in many other recent and contemporary writers. For some of the most famous examples, see Michael Theunissen, *Das Andere: Studien zur Soziologie der Gegenwart (The Other)*, Berlin, Walter de Gruyter, 1977, Emmanuel Levinas, *Le temps et l'autre (Time and the Other)*, Paris, PUF, 1983, and Axel Honneth, *Der Kampf um Anerkennung (The Struggle for Recognition)*, Frankfurt, Suhrkamp, 1994. The communicative affinities between the potential openness of dialogue and the epistemological dimensions of aesthetic experience are clearly discernible in the philosophies of Adorno and Derrida. See Christophe Menke, *Die Souveränität der Kunst: Ästhetische Erfahrung nach Adorno und Derrida*, Frankfurt, Suhrkamp, 1991.

Interests one discerns the initial formulation of Habermas' mature work. The apparently rigid dichotomies between political and human emancipation (Marx), private and public spheres (Arendt), as well as that between instrumental reason and mimetic reason (Adorno) are deconstructed. What emerges is the thesis that a third term with roots in the reality of everyday life in society - interaction - can and to varying extents does perform important mediating functions between technical, practical, communicative and emancipatory forms of knowledge and the discrete but ultimately connected interests pertaining to the form of knowledge in question.²⁶

Yet the early Habermas does not depart so far from Kirchheimer and Neumann as to say that the mediation processes are always smooth. Indeed, as the latent crisis tendencies of industrial societies became more pronounced in the early 1970s (in some ways reminiscent of the situation at the time of this writing), he was compelled, however provisionally, to revise at least the emphasis of his argument. Whilst continuing to insist on the different logics obtaining in the natural and human sciences, he also becomes aware of the fact that he would be abandoning critical theory altogether by construing the relation between work and interaction as spontaneously self-regulating, or, as Luhmann suggests, system-specific. This would have placed him rather close to the postulates of sociological positivism and systems theory. By extension, it would also place him close to the argument that political legitimation in modern societies can dispense with active citizen input, i.e., that legitimacy and stability are synonymous. In *Legitimation Crisis* the argument in the *Structural Transformation* is slightly modified to explain the dysfunctional dynamics unleashed by flawed mediation processes. These pathological processes become palpably visible when the *life-world*, which takes over the centrality

²⁶ Habermas, *Erkenntnis und Interesse (Knowledge and Human Interests)*, pp. 347-64.

enjoyed by the public sphere played in earlier books, is colonised by technological and instrumental imperatives stemming from the capitalist economy and state bureaucracies. The argument developed in *Legitimation Crisis* is that colonisation in the sense used here occurs when the channels relating technical knowledge with hermeneutic knowledge become blocked. One may regard this as a sociologically-informed modification of the Neumann-Kirchheimer thesis that law is transformed into decree if juridical institutions are hijacked by private economic concerns, in which case legal universality and general interests are hijacked by executive fiat and particular interests. Whilst technical knowledge is bound up with instrumental reason and power, which in institutional terms constitute what Habermas from the 1970s onwards refers to as the system (rather than merely work, as in *Knowledge and Human Interests*), hermeneutic knowledge is linked with communicative reason and understanding, which are firmly anchored in the life-world of speech, interaction, and socialisation. He submits that it is the distinguishing feature of modern societies that instrumental and communicative reason can co-exist and indeed must co-exist if there is going to be anything like non-instrumental legitimacy. His claim is that there is evidence that they can co-exist because science, industry and progress in a technological sense have placed *external nature* at the disposition of humanity. This means that from a determinate moment in the history of the unfolding of humanity's productive forces, which one might locate with the scientific and industrial revolutions, it becomes objectively possible to overcome institutionalised material scarcity, i.e., poverty and entrenched stratification. In a series of parallel but also distinct developments, and in anticipation of the argument developed in far more detail in the *Theory of Communicative Action*, Habermas points out that the secularisation of authority

that accompanies the development of science and technology leads to changes in the relationship between humanity and inner, *human nature*. Habermas insists that these changes have led to a necessary and extensive revision in Weber's rationalisation thesis. Weber's thesis needs correction because from a similarly determinate moment, which one might locate with the Enlightenment and modernity, it becomes objectively possible to overcome the ideological justification of power relations in favour of more transparent and therefore democratic ones. This marks a sharp departure from the line of thinking pursued by Horkheimer and Adorno in the *Dialectic of Enlightenment*. As seen in chapter 3, they reckon that mastery of external nature always also entails, to varying extents, the oppression of inner human nature.²⁷

According to the thesis developed in *Legitimation Crisis*, the problems connected with the colonisation of the life-world and the transformation of law into decree are not immediately attributable to the phenomena of capital and class, nor are they directly attributable to social differentiation and complexity. The problems in question are also not simply matters of contingency. They issue from what Habermas calls the system. Within his explanatory framework this means that in theoretical terms they result from an excess of systemic reason over life-world reason. In practical terms it results in the mutation of parliamentary democracy into corporatism, that is, into a *verrechtlichte* form of government that is more suited to providing predictability and stability than it is to providing democracy and liberty. The corporatist by-passing of the legislature through extra-parliamentary agreements, combined with compensatory palliatives of the Welfare

²⁷*Legitimationsprobleme im Spätkapitalismus (Legitimation Crisis)*, part 1, chapter 3. This clear break from Horkheimer and Adorno is at the same time a less obvious break from Neumann and especially Kirchheimer, for whom the possibility of a transcendence of interactive oppression is contingent on juridical reform of capitalist forms of property and the division of labour.

State, attest to the fact that in post-1968 North America and Western Europe, and especially in the pre-1989 Bundesrepublik, pre-modern modes of political integration are no longer viable. At the same time, however, authentically modern ones have yet fully to develop.²⁸ In Habermas' estimation, the modern industrial democracies of the post-World War II period are confronted with an extremely difficult but ultimately resolvable task. They cannot simply decry the blurring of private and public and the concomitant rise of the social, nor can they attempt to subject the economy to democratic control. The first pseudo-option ignores the facticity of society and social complexity; the second would be tantamount to authoritarian steering. Hence the communicative channels between life-world and system must be unblocked in order to act on the reality that collective learning and socialisation can and to a considerable extent have in practice kept pace with technological innovation and industrial growth. The 2-volume *Theory of Communicative Action* (1981) constitutes his attempt to refute Weber's rationalisation thesis and simultaneously move beyond the impasses he finds in the *Dialectic of Enlightenment*. He reckons this can be accomplished by showing in empirical and theoretical terms why the transcendence of material scarcity as well as the overcoming of ideologically justified power relations is a collective learning process, and by demonstrating too that democracy is the institutional form of human collective learning.

In the course of the trajectory from the *Structural Transformation and Legitimation Crisis* to the *Theory of Communicative Action*, one detects a discernible shift in the reference points shaping the arguments put forth. Whilst partial appropriations and critical responses to Kant, Weber, Arendt, Neumann and Kirchheimer discretely guide the early writings, assessments of the contributions to social theory made

²⁸ *Legitimationsprobleme im Spätkapitalismus (Legitimation Crisis)*, part 1, chapter 5.

by Emile Durkheim (1858-1917), G.H. Mead (1863-1931), and the functionalism of Talcott Parsons (1902-79, author of *The Structure of Social Action*, 1937) mark the evolution of Habermas' work during the period of the 'linguistic turn' and thereafter.²⁹ What Habermas sees missing in Marxism, liberalism, Weberian sociology and first generation critical theory he finds to a qualified extent in the writings Durkheim, Mead, Parsons and other theorists largely ignored by the German thinkers shaping his early years as a theorist. That conspicuously missing element is a theory of the social that does not reduce social action to a series of reflex responses to class conflict, psychological drives, or to unimportant fragments within more overarching narratives of reason (Hegel) or rationalisation (Weber) in history. In Durkheim's reflections on law, Habermas finds supporting evidence for his own thesis that language is more than a mere means in the *functional* mediation of co-operation and conflict. Contrary to the theses developed by Foucault, Habermas is confident that linguistic communication holds the promise of *truthful* mediation and, as a consequence, eventual non-coerced agreement. The implication is that real non-coerced agreement - not the fictitious version reached behind a veil of ignorance in hermetic isolation from others - could in principle become one of the principal bases of legitimacy. If in the early writings agreement is secured in a political public sphere, by the time of *Legitimation Crisis* and the *Theory of Communicative Action*, agreement is firmly anchored in the social life-world. Habermas updates his own ideas by shifting his reference points from mainly German debates on

²⁹ Although Mead perhaps represents the chief pragmatist influence on the *Theory of Communicative Action*, the book is also clearly influenced by the writings of Peirce, William James (1842-1910), John Dewey (1859-1952) and J.L. Austin (1911-1960). Some of these pragmatist influences are already discernible in *Knowledge and Human Interests*. In the *Theory of Communicative Action* Habermas also cites the work of prominent ethnomethodologists, phenomenologists, developmental psychologists and the contributions of other sociological traditions he feels are ignored by Lukács and the Frankfurt School.

Marxism, Kantianism, and political republicanism, to more international debates on communicative rationality and sociological theory. One of the main themes running through the *Theory of Communicative Action* is that it is possible to retain the heuristic value of the public sphere argument provided that its framing is substantially adjusted to suit the evident reality that the classical public sphere is irretrievably gone, and that the epistemological content of republicanism is therefore now to be sought in the practices of communication in the life-world. Without discussing Arendt in any detail, Habermas implies that her political theory is both right and wrong. She correctly detects a non-instrumental dimension to politics that is threatened by technical and administrative processes in modern societies. But she in effect fetishises politics by making it a timeless feature of the human condition that can always be brought back to life in its pre-existing forms, such as those prevailing in the polis or the American Revolution. Therefore although her thought does not share the pathos of the *Dialectic of Enlightenment*, it is a similarly forlorn argument without a great deal of contemporary relevance. This is due to the fact that a substantial part of what she refers to as politics has been absorbed into what Habermas, following Luhmann in both proximity and critical distance, designates as the system.

Habermas and Luhmann: System and Life-World versus System and Systemic Environments

Habermas positions himself between Arendt and Luhmann by suggesting that the system is not ubiquitous, and indeed, cannot function without the cultural understandings and the communicative reason that flourishes in the life-world for reasons which will be explained below. The point for the moment is that against both Arendt and the founders of critical theory, Habermas maintains that society can be conceived of as being comprised of the system *and* the life-world. In his estimation this is more nuanced and helpful in explanatory terms than insisting on the predominance of the political *or* the social, or the prevalence of mimetic reason *versus* instrumental reason. Thus although Habermas is critical of Weber and criticises his theory of social action, he also maintains that one cannot simply ignore the phenomena diagnosed by him: the political public sphere of ascendant liberalism has collapsed, and power-oriented political parties have occupied the space thereby vacated for the foreseeable future. This does not mean that full-blown systems theory must be embraced, however. For the author of the *Theory of Communicative Action*, the non-instrumental dimension of reality that Arendt finds in politics and Adorno discerns in aesthetic reason now has fairly solid if diffused social bases, as Durkheim convincingly shows. The implication is that the mediation functions of the former political public sphere have been replaced by systemic operations, and by a social public sphere, i.e., the life-world.³⁰

³⁰ *Theorie des Kommunikativen Handelns (Theory of Communicative Action)*, Volume II, chapter 6.

According to Habermas' reading of Durkheim, law was once embedded in traditional institutions such as the church. As political authority was gradually secularised, legal institutions and juridical reasoning were de-coupled from religion and tradition, and law emerged as a medium of communication with its own norms. After passing through the stage of being religiously embedded, legal norms became state-judicial in the early modern period examined in the *Structural Transformation*. Since then they have evolved beyond their state-judicial instantiation, which means that they are now firmly anchored in society and the life-world.³¹ These developments in the structure of legal reasoning and understanding correspond to the transition from mechanical to organic solidarity charted in Durkheim's sociology. Readers familiar with the broad outlines of his theory will know that for Durkheim, integration in traditional society results from rituals and customs which do not allow individuals much social space for autonomous reflection and development. Hence in a manner that may be somewhat counter-intuitive to those familiar with Tönnies' (1855-1936) distinction between older forms of *Gemeinschaft* (community) and modern *Gesellschaft* (society), Durkheim shows that solidarity in pre-modern political communities was for the most part mechanical. By contrast, modern societies allow individuals to develop at the same time that the societies secure the foundations of post-traditional sources of solidarity. This point is of central importance for Habermas, for it indicates to him that in a modern context the *differentiation* of individual and authority, institutionalised as the separation of personal morality and positive law, is compatible with and even promotes rational modes of *integration*, that is, it points to the thesis that differentiation need not be

³¹*Theorie des Kommunikativen Handelns (Theory of Communicative Action)*, Volume II, pp. 258-62.

synonymous with fragmentation or the instances of domination usually associated with alienation.

Reading Durkheim and Mead in light of the relatively stabilised and to varying degrees corporatist socio-political arrangements of Western Europe in the 1970s, Habermas concludes that social integration and system integration are propelled by different rationalities and discrete institutional realities. The influence of Parsons, and by extension of Luhmann, comes into focus here, though it is worth noting both thinkers are often criticised by Habermas for the action-theoretical and communicative-hermeneutical deficit in their respective theories. Habermas maintains that knowledge of the processes structuring systemic integration is best aggregated on the basis of the perspective of an external observer, as Luhmann intimates. But knowledge of the processes securing social integration in the life-world is always produced by participants involved in those very dynamics; it is therefore a qualitatively different kind of knowledge than the knowledge experts have of systems. These citizens are reflexive in ways that systems can never be. The major problem inherent in the functionalist and systems theoretical approaches, as already signalled in *Legitimation Crisis*, is that they offer no remedies when system and life-world cease to communicate.³² Habermas suggests that Weber is correct to regard rationalisation as being bound up with increasing social complexity and what almost inevitably goes with it - systemic imperatives requiring calculated predictability in the fields of law, economy, administration, and beyond. But what Weber leaves out of consideration for the most part is that rationalisation also opens up possibilities for the differentiation of individual personality and the transmission of cultural values on fully

³²*Theorie des Kommunikativen Handelns (Theory of Communicative Action)*, Volume I, pp. 232, 335-56, 488, and Volume II, pp. 20-3.

secular and humanist bases. According to the interpretation offered in the *Theory of Communicative Action*, Weber's theory of social action is excessively centred on the means-oriented pursuit of goals, which is the unsurprising consequence of a methodological approach that describes itself as a *Herrschaftssoziologie*. The theoretical parallel to an impoverished account of social action is a one-sided approach to law which regards legality as the legal-rational legitimation of force.³³

Habermas notes that functionalism and systems theory absorb what is generally correct in Weber. This includes the Weberian theses acknowledging complexity and differentiation as hallmarks of modern society, and the related claim that differentiation is accompanied by various instances of integration. But in his estimation they also tend to absorb what is faulty in Weber, which they do in two ways. First, they replicate his diagnosis of social action as the institutionalised competitive strategy of individuals, parties and states. Second, whereas Weber for the most part reduces legality to legal-rational legitimation, Parsons and Luhmann reduce legitimacy to codified procedure and what is necessary to produce social order. They thereby make legitimacy a function of stability and equilibrium, and omit crucial considerations about what makes legitimacy legitimate beyond what is temporarily effective. In insisting that law is just one of many differentiated social systems rather than a conduit between citizens and government, Luhmann, in particular, fails to recognise the rational and democratic qualities of modern law. For Habermas, legitimacy must be a function of communicative action understood as the progressive institutionalisation of discursively redeemed norms. He believes that the normative deficit alluded to can assume extreme forms in systems theory, where

³³ *Theorie des Kommunikativen Handelns (Theory of Communicative Action)*, Volume I, pp. 377-86. Habermas articulates a diametrically opposed theory of legality in *Between the Facts and the Norms*, as will be seen.

social action is often dismissed as the corollary of what is held to be the dubious idea of a social actor naturally endowed with a predictable array of pre-social anthropological attributes (tool-making, speaking, politically engaged, etc.). On this account the social action is explained in terms of what social actors do, which is nothing other than what they already by definition are: they make tools, speak, take part in politics, and so on. From a systems theoretical perspective this is a non-explanation. From Habermas' perspective, and despite his own emphasis on the need for social inquiry to be interpretative, Weber tends to absolutise the perspective of the external observer, so that quantitative categorisation gets the better of qualitative understanding. Habermas insists that this methodological individualism is seemingly transformed but really only re-articulated in functionalism and systems theory, both of which reproduce the defect of exaggerating the role of external observation in sociological explanation.³⁴

By 1981 he modifies this position by implying that when the life-world and system become de-coupled, a crisis of communicative rationality ensues. He asserts that such normative crises cannot be resolved by systemic adjustments to their respective environmental irritations alone. That is because if it can be said that systems *progress*, life-worlds *learn*, and, in evolutionary terms, progress and learning are not synonymous. Learning in this sense is non-instrumental, collective, and interactive, and cannot be established according to the abstractions of an external observer. Legitimacy, as opposed to legitimation, is therefore guaranteed by citizen participation in the life-world, which embraces all individuals despite whatever negative experiences they may have in their contacts with systemic realities. The claim that modern democracies cannot rely on

³⁴ *Theorie des Kommunikativen Handelns (Theory of Communicative Action)*, Volume II, pp. 309-57 and pp. 390-94.

social systems mutually to self-adjust is a central part of Habermas' argument. In his estimation it follows that democratic states cannot be blithely confident about the capacity of government experts to correct communicative rationality crises. In crisis situations the channels between system and life-world must be re-opened, and the impetus for this has to come from the critique of daily life and its implications for policy.³⁵ This argument is put forth in still more affirmative terms in *Between Facts and Norms* (1992).

In this work he explicitly states that this-worldly transcendence is indeed possible, but contingent upon the realisation of radical democracy.³⁶ Yet his radical democracy is not direct democracy, or social democracy, nor the juridical socialism favoured by Kirchheimer and Neumann. It appears to be a kind of republican democracy in which key areas of everyday life such as the economy are not subject to political control. Here one glimpses the political indeterminacy of the theory of communicative action, and the ambiguity of the Habermasian paradigm of modernity in more general terms. Communicative action yields *communicative influence* on the system, but cannot exercise *communicative power* as such. At first glance this looks like a reformulation of the Kantian dimension of the argument in the *Structural Transformation*, combined with select concessions to the social systemic injunction against politicising the economy and judiciary. But Habermas claims that the democracy sustained by communicative action in the life-world is so radical as to contain an anarchistic dimension, i.e., something

³⁵ *Theorie des Kommunikativen Handelns (Theory of Communicative Action)*, Volume II, pp. 440-62, pp. 471-76, and pp. 480-91. There are clearly definite points of converge between the critique of daily life analysed in the previous chapter and the theory of the life-world developed in *Legitimation Crisis*, the *Theory of Communicative Action*, and *Between the Facts and the Norms*. Although these points cannot be drawn out in any detail here, it might be noted in passing that it is the critique of instrumental reason that forms their common matrix, bearing in mind that for Habermas the critique of instrumental reason itself needs to be transformed into a critique of functional reason. This point will be addressed in the conclusion.

³⁶ *Faktizität und Geltung (Between the Facts and the Norms)*, pp.13 and 19.

which was presumably absent from the classical public sphere.³⁷ In the at that time newly arrived post-Cold War political climate, he seems confident that the tendencies he had previously diagnosed in terms of colonisation of the life-world and the de-coupling of life-world and system can and in most cases are overcome by modern law. The explanation why law can accomplish the tasks Habermas credits it with is that the mediation between life-world and system is not merely a more recent version of the mediation of the private and public spheres.³⁸ He suggests that if the private sphere was not completely abolished with the rise of the social, the concept of the ‘private sphere’ is nonetheless a misleading term when used to describe the character of non-systemic communication and intimacy in a post-1989 world. Just as the contract presupposes a valid state that makes the contractual moment of agreement possible, which is one explanation why one cannot provide the grounds of political obligation via contract, communication presupposes a community of speakers who understand one another. This is why complex modern societies need not resort to force or rely on systemic self-steering when mediating between private and public rights and interests. He reckons that whilst resorting to force is the hallmark of traditional society, the theory of systemic self-steering ignores key aspects of normative evolution and constitutional regeneration.³⁹ However, Habermas cautions, it must nonetheless be borne in mind that communicative action has its limits - there can be no question of the life-world colonising the system. Communication would inevitably turn into oppressive, centralised steering if the life-world was to be entrusted with organising the mediation of humanity and external nature. This means that not only does Habermas not entertain the possibility of political control

³⁷ *Faktizität und Geltung (Between the Facts and the Norms)*, p. 10.

³⁸ *Faktizität und Geltung (Between the Facts and the Norms)*, pp. 21, 49-52 and p. 527.

³⁹ *Zur Verfassung Europas (On Europe's Constitution)*, pp. 39-47.

of the economy; he insists that radical democracy must actually dispense with the very idea if, that is, communication and not steering is to remain the basis of legitimacy in post-traditional, democratic states. Communication may break, inflect upon and re-channel power, but it may not become legitimate power (authority). It follows that if communication becomes democratic power, communication would in effect be converted into ideological manipulation – in his estimation political control of the economy would indeed bring about this structural transformation of communication. Hence he discounts the possibility that a libertarian or juridical form of socialism could organise the mediation of humanity and external nature. Any attempt to do so would be fatal for what Arendt calls politics and what he designates as communication and interaction.⁴⁰ This would presumably result in the demise of the modernist individual human nature that emerges from the separation of law and morality. In Habermas's opinion such juridical reform would probably reverse the very learning processes that have made radical democracy a realistic possibility.⁴¹

This brings us to the crux of the matter. It seems that from the time of the separation of work and interaction theorised in *Knowledge and Human Interests*, which subsequently evolves into the distinction between system and life-world and/or system and civil society in later writings, Habermas is aware of the theoretical proximity between his account of communicative action and certain features of systems theory. On the one hand he embraces the thesis that systemic differentiation and increasing social complexity are not necessarily de-stabilising processes, because, in his view, these very

⁴⁰ Hence the break with Arendt, except in terms of from her praise of revolution, is not quite as decisive as it may sometimes seem. Moreover, it would appear that Kirchheimer and Neumann's views on the political potential of bold legal action are retained, on the one hand, whereas the link they make between active juridical intervention and democratic socialism is severed, on the other.

⁴¹ *Faktizität und Geltung (Between the Facts and the Norms)*, p. 361-4.

processes also engender diverse modes of integration as they unfold. His sociological commitment to this thesis is nonetheless partially offset by the simultaneously held normative conviction that crises of legitimacy will result if social systems detach themselves from social actors and political citizens (Luhmann has no doubts that that has been the reality for quite some time). This is why Habermas insists on the co-instantiation of the system and life-world, and the normative and political priority of the latter over the former (lest one give up on the idea that modern societies are complex but also governed democratically). It can thus be said that he tempers the potential normative deficits of the systems-theoretical approach with communicative and hermeneutical inputs. The latter, in turn, are presented in his writings as aspects of what a humanist political theory should look like once it has successfully discarded the baggage of the idealist legacy. In principle this is a political theory capable of rising to the anti-humanist challenge of post-structuralism and systems theory.⁴²

Habermas tends to suggest that if negative dialectics is really disenchanted, negative idealism, systems theory is cybernetic and meta-biological in approach rather than properly sociological. Hence he maintains that although it was necessary to move social philosophical reflection beyond idealism in all its forms, the result should not be a simultaneous abandonment of key anthropological categories such as language, communication and autonomy. He correctly suspects that without these normative

⁴² This has not always been the case. In the early 1970s Suhrkamp published a book with Habermas and Luhmann's respective critiques of one other, highlighting their different approaches to social theory. If not exactly conciliatory, the tone of the exchange seemed geared toward a possible convergence on key points. See Habermas and Luhmann, *Theorie der Gesellschaft oder Sozialtechnologie - Was leistet die Systemforschung?*, Frankfurt, Suhrkamp, 1974. Given that this book was published very soon after *Legitimation Crisis*, it is possible that at this time Habermas was fairly sympathetic to a systems theoretical analysis of late capitalist democratic states. As has been suggested in preceding pages, however, the *Theory of Communicative Action* and *Between the Facts and the Norms* seem to reject any possible rapprochement. It is suggested in this chapter that despite this ostensible repudiation, Habermas nonetheless incorporates aspects of systems theory into his work.

foundations, the state becomes a monopoly on the legitimate use of force and reason must be instrumental. This would amount to a last minute comeback by Weber against Durkheim and Mead. The theory of communicative action adopts sociological perspectives on complexity, integration, and differentiation, and combines these with selected bits of rather traditional political theory concerning agreement and understanding. The fact that developmental psychology and discourse ethics are also at times enlisted does not alter this conservative political orientation, even if Habermas chooses to call it radical. It thus seems fair to ask two questions. If one is going to retain some aspects of anthropological humanism in accordance with the implicit thesis that the legitimacy of the legal state is imperilled without them, why not re-elaborate them in directions that push normative assumptions to the limits reached by negative dialectics and systems theory, instead of trying to make them natural rights and thereby ignore the fact that post-democracy (Crouch et al) is a reality and not a spectre vaguely haunting Europe?⁴³ Does supplementing the system/life-world distinction with universal speech pragmatics and selected aspects of Parsons suffice to transcend the philosophy of consciousness? Luhmann notes that dichotomies such as subject/object and life-world/system can be conceptualised in terms of the reality of form rather than in terms of the illusion of form and the reality of essence. For him this means dispensing with subject/object and life-world/system in favour of internal-external and system/environment. His point is that one can discern the rationality of systems in their contingent relations with their respective environments instead of speculating about the rationality and motives of actors. Stated slightly differently, one can observe that

⁴³ Colin Crouch, *Post-Democracy*, Cambridge, CUP, 2004. Also see Massimo Salvadori, *Democrazie senza democrazia*, Bari, Laterza, 2009, and *Gekaufte Zeit: Die vertagte Krise des demokratischen Kapitalismus*, Berlin, Suhrkamp, 2013.

rationality is a property of systems rather than of actors. It follows that individual autonomy - at least at this historical juncture - has more to do with adjusting to uncertainty than it does with the realisation of Aristotelian (political) or Habermasian (communicative) essences. The corollary is that democracy has more to do with neo-liberal governance and austerity than it has to do with collective self-determination or popular constitutive power. There is no way to alter this without first confronting it squarely. Luhmann intimates that communication takes place between social systems and not between systemic structures and life-world actors. In systems-theoretical terms there is no direct communication between individuals, political system and society, and, moreover, the channels of communication do not culminate in some meta-social institution such as an updated version of the Hegelian state.⁴⁴ Existing forms of legitimacy are therefore achieved in a series of precarious and highly contingent adjustments between systems and environments and not those between citizens and governments via a plurality of ultimately interconnected life-worlds. If one favours an altogether different praxis of legitimacy one must first grapple with the plausibility of this approach and the juridical issues that it raises.⁴⁵

Luhmann uses the term *autopoiesis* to describe the processes through which laws and rights operate on the basis that societies need them. Laws and rights are therefore the products of a juridical system which functions as a series of closed, self-referential processes in conjunction with social systems of value (economy), truth (natural science),

⁴⁴ Luhmann, *Die Politik der Gesellschaft (The Politics of Society)*, Frankfurt, Suhrkamp, 2002, chapter 6, and *Das Recht der Gesellschaft (The Law of Society)*, Frankfurt, Suhrkamp, 1993, chapter 9.

⁴⁵ Luhmann, 'Erkenntnis als Konstruktion', in Oliver Jahraus (ed.), *Niklas Luhmann: Aufsätze und Reden*, pp. 237-8, and *Soziale Systeme (Social Systems)*, Frankfurt, Suhrkamp, 1987, chapters 5 and 11-12. For an excellent exegetical overview see Michael King and Chris Thornhill, *Niklas Luhmann's Theory of Politics and Law*, London, Palgrave Macmillan, 2005.

power (politics), intimacy (family), belief (churches), and so forth. Hence society can be analysed as an ensemble of systems that communicate through codes rather than a collective political centre or its individual counterpart - human speech. This argument is first sketched in *Social Systems* (1984), and then elaborated in the two-volume *The Society of Society* (1997), in which Luhmann explains that social systems generate sense to the extent that they can define their respective boundaries, reduce complexity, and meet expectations to varying degrees. In his view it is thus more rigorous to speak of system rationality than value rationality or inter-subjectivity and communicative action.⁴⁶ Although there is no space here to provide a detailed exposition and critique of the systems-theoretical approach, some may regard it as more consistent than the theory of communicative action in terms of the deconstruction of what have become highly problematic assumptions about the nature of human communication, agency, and political democracy. Habermas may wish to dismiss the conclusion that the end of idealism and the philosophy of consciousness may also signal the twilight of the life-world and politically relevant social interaction, but from Luhmann's perspective it is virtually irresistible. Systems theory eliminates assumptions about social action and the teleology of citizen agreement in those crucial instances of speech and understanding that the communicative action approach tries to safeguard in order to shore up the humanistic ideal of rational legitimacy.

Somewhat surprisingly, given the critical tone of this chapter, there is an underlying utopian dimension to both Habermas and Luhmann. They agree that *legitimacy is based on knowledge* rather than on merely more and less stable configurations of interest aggregation and welfare distribution. Luhmann indicates that

⁴⁶ Luhmann, *Die Gesellschaft der Gesellschaft (The Society of Society)*, pp. 1016-1036.

under existing socio-economic and legal arrangements, it is the very tentative knowledge that systems have of each other through codes, rather than the understandings citizens have with each other through speech and communicative action. Hence for both thinkers what matters is the specific kind of knowledge that defines legitimate law. It may well be that in some regards the analytical triumphs of systems theory represent a rather pyrrhic victory over the problems of humanism that are strikingly evident in the work of Habermas and other democratic theorists. Just because the alternative to epistemological and political metaphysics is not the late democracy achieved by attempting constantly to re-couple life-world and system under the directives of capital and austerity, it does not necessarily follow that the real alternative is systemic *autopoiesis*. In conclusion, one has to be thankful to both thinkers for the critical questions they raise. At first glance they appear to be implacable theoretical enemies. Reading them together, however, one finds, *in nuce*, a succinct statement of the most acute challenges to meaningful politics and legitimate democracy in the twenty-first century.

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