

Global Justice and the Public Sphere: The Dynamics of Fraser's Critical Theory

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Date Submitte: July 17, 2010

Final Revision Complied: Oct. 10, 2010

Plagiarism Detection: Passed

License No. 944146510808541

Original: 91.50%

Abstract - In this paper, I locate Fraser's theory in relation to Rawls' concept of justice as fairness, but particularly to Habermas' shift of focus to the social institutions and practices where deliberation takes place, in a decentered idea of justice. I identify Fraser's key intervention through her feminist-inspired critique of Habermas in relation to power and its effects upon the structural exclusions from the public sphere. At the same time, I note that Fraser drew attention to power struggles within that sphere; it is contested internally thanks to the deliberations of a plurality of competing publics drawn from among the dominated. I also trace the development of Fraser's theory of justice through the various stages of her familiar double-headed account in terms of recognition and redistribution, to its current form in which, in the post-Westphalian context, the third dimension of the political site of the injustice of misrepresentation has been integrated. I argue that this new prominence given to the political is in part the result of the exchange with Honneth. Finally, I turn to the concept of a nascent global public sphere, developed along the lines of Habermas' decentered notion of authority, using the example of the challenges to the legitimacy of the US and UK

decision to declare war against Iraq.

Keywords - misrepresentation, recognition, post-Westphalian, public sphere, critical theory

The conception of justice as fairness put forward in John Rawls' Theory of Justice (Rawls 1971) established the importance of a focus on justice and on how our views of justice need to change in the context of plural modern societies. In a way, Rawls' Theory of Justice restored important moral questions to the status of serious philosophical research. Rawls concentrated on our need to think about the organization of society that could validly be described as a just society. He returned to the idea of the social contract to redesign it in an intersubjective mode. His view of the social contract differed from preceding views in that he sought to generate basic political principles of pure procedural justice. He highlighted the idea that rights do not belong to the state of nature but to a political order, and that there are moral elements in the contract procedure that are best represented by the idea of the veil of ignorance to secure moral impartiality. Later, Rawls pursued the premise of political autonomy to define how we could find a translation of the concept of justice into the political realm. Political Liberalism (Rawls 1993) is the work in which Rawls established the idea of a political concept of justice in a plural society. His paradigm of justice, because it defined fairness in terms of certain procedures that generate an adequately just outcome, entailed not just an idea of moral equality but a rough equality of powers and resources.

If Rawls defined justice as fairness, Habermas redefined it as a decentered process of deliberative measures, shifting focus from the social contract to the social institutions and actual practices through which deliberation takes place. With this move Habermas articulated the notion that justice is an ongoing deliberative process of social inclusion, instantiated in his reconstruction of the idea of the public sphere. This is the reason why solidarity plays a major role in his definition of justice. Cooperation and dialogue—rather than the founding moment that is usually the case with social contract theories—serve as the basic premises on which the legitimating processes of political authority are

articulated through the exercise of deliberation. Instead of resorting to the device of a social contract, as Rawls had done, Habermas took up the Kantian premises apparent in Rawls' project and turned them into the communicative premises of his own discourse theory. They became the rules of the legitimizing processes required for the building up of collective authority. Instead of a veil of ignorance Habermas proposed a principle of universalization that defines impartiality as a procedure of ideal role taking and thus moved to an embodied, decentered idea of justice. Habermas' pragmatic presuppositions articulated the idea that there are possibilities of an inclusive, non-coercive rational discourse between free and equal participants where everyone is required to take the perspective of everyone else. In this way, Habermas connected his earlier conception of the public sphere to the sphere of justice and thus made rational discourse the device needed to find the generalizable interests that would emerge step by step with collective deliberations. Contrary to Rawls' translation of the social contract, Habermas no longer needed to define principles of justice prior to the deliberating processes by which societies ordered their interests. Instead, he sought to find a more open procedure of argumentative praxis without giving up the Kantian idea of the public use of reason or the pluralist view of modern societies.

Nancy Fraser has undertaken the challenge left by Rawls' and Habermas' theories of justice to develop further the complex and dynamic view of justice they advanced. The aim of this paper is to present how this has been achieved, the significance of her position in the wider debate about justice and the possibilities it offers when viewed in the light of recent debates about globalization and cosmopolitanism. The historical context out of which her work and this larger theoretical project evolved had to do with the emergence during the 1960s of struggles for civil rights, of emancipatory social movements against racism, of peace movements and of feminism both as a form of activism and as a theoretical position. It also had to do with the emergence of new social movements which, in reaction to the earlier ones, began to question the idea of justice more exclusively in terms of identity politics and social recognition.

I. INTRODUCING POLITICS INTO THE SCHEMA OF JUSTICE

It was not a coincidence that Fraser turned her interest in justice to explore the role of power. Indeed, as a feminist, she questioned why the role of power did not appear as a basic premise in Habermas' discourse theory. In "What's Critical about Critical Theory?" (Fraser 1988) Nancy Fraser questioned Habermas' theory of communicative action for not paying attention to the important criticisms coming from feminism. Focusing on the Habermasian distinction between the symbolic and material aspects of reproduction in modern societies, Fraser showed how women's activities are considered under a questionable patriarchal design. Fraser's interpretations of the symbolic contents of women's labor, and of the ways in which economic injustice is hidden through its symbolic content, led her to point out the limitations of the Habermasian distinction between system and the life-world. The most important question, however, that Fraser was able to illuminate was that actions related to the nuclear family are regulated by power and that Habermas' earlier conception of power reduces it to its bureaucratic dimension. Fraser showed how far male dominance is intrinsic to the ways in which institutions are designed. She understood that the meanings we give to our actions, the expression we give to our needs and the interpretations we make of how things are, are all sites of political struggles. She targeted the double dimension of Habermas' conception of reproduction—system and life-world—precisely because it missed how the struggle for meanings is also a struggle of power.

In a second stage of her criticism of Habermas, the target of her thinking was Habermas' notion of the public sphere. In her famous essay, "Rethinking the Public Sphere" (1988), Fraser criticized Habermas for defining the idea of the public sphere in a narrow way, as if it were one, compact, singular entity. Fraser demonstrated that in Habermas' description of the public sphere, we find accessibility to the public sphere to be a given. For Fraser, by contrast, the exclusion of women and of other groups of people was central to the whole process of constituting a bourgeois public sphere. She observed that: "it was the arena, the training ground, and eventually the power base of a stratum of bourgeois men, who were coming to see themselves as a "universal

class" " (Fraser 1997). In "preparing themselves to assert their fitness to govern" (Fraser 1988: 73) men excluded women from active citizenship. According to Fraser, Habermas' view of the public sphere was idealized because it gave no account of this structural exclusion and gave no space to thinking about reactions from other competing publics. By erasing the site of the power struggles in the public sphere, Habermas had been blinded to the efforts of counterpublics to question the processes of social inclusion and deliberation itself. Competing publics are a crucial part of an emancipatory concept of the public sphere and as counterpublics they react against exclusion and develop their claims for social inclusion precisely because they are not considered capable of being part of the more general public sphere.

With the aid of the concept of publics and counterpublics, Fraser was able to develop a more dynamic idea of social struggles for inclusion in modern plural societies and at the same time to add a more political dimension to the notion of the public sphere. She was arguably one of the first social theorists to develop a decentered notion of the public sphere and address its dynamics as a political site of struggle. She was also capable of defining this process with new terms that helped us understand the different levels in which publics gain some kind of authority. By distinguishing between weak publics (civil society) and strong publics (parliament), Fraser could locate the territory of a decentered notion of authority and of the influence of different social actors in political terms; that is, as a struggle for hegemony. For Fraser, the importance of the public sphere as a site of domination as well as solidarity lies in how processes of hegemony effectively unfold. Fraser insisted on the need to understand such strategies of power as political; for example, how cultural processes of legitimation in public debates bracket inequalities in the status of women (and of other groups) as if we were all equal. In our empirical experiences of the public sphere, Fraser concluded, these processes mask how in stratified societies "unequally empowered social groups tend to develop unequally valued cultural styles" (ibid.: 79) and accordingly do not foster what she was to call the right to participatory parity. Fraser's achievement was to situate power in relation to struggles around meanings that we associate with life-world actions and social institutions.

This criticism made a major impact on Habermas' own

understanding of the public sphere and led him to redefine his own initial conception of it. Habermas now acknowledged that "a different picture emerges if from the beginning one admits the coexistence of competing public spheres and takes account of the dynamics of those processes of communication that are excluded from the dominant public sphere" (Habermas 1992: 425). Responding to Fraser's focus on processes of exclusion and domination, he added: we may use 'excluded' in Foucault's sense when we are dealing with groups that play a constitutive role in the formation of a particular public sphere. 'Exclusion' assumes a different and less radical meaning when the same structures of communication simultaneously give rise to the formation of several arenas where, beside the hegemonic bourgeois public sphere, additional sub-cultural or class-specific public spheres [Fraser's counterpublics] are constituted on the basis of their own and initially not easily recognizable premises. The first case I did not consider at all at the time; the second I mentioned in the preface but left it at that. (Ibid.: 425)

Habermas now recognized how such processes of inclusion and exclusion are constitutive of the public sphere.

Just as Fraser needed to reframe Habermas' original conception of the public sphere to expand its emancipatory scope, she also needed to address how his idea of justice fits into feminist foci on systemic relations of inequality, given that the feminist literature was more inspired by ideas of domination and resistance than those of justice. For Fraser, these two different starting points could be addressed critically by reconfiguring our understanding of them in terms of their respective political frames. To be sure, she argued, power strategies are needed to transform societies. However, power unfolds into two different strands: one that connects to the Foucauldian idea of practices of domination in the cultural domain; the other, the more Marxist strand, which focuses on class and what we need to do in terms of political participation. Fraser uses Habermas' progressive approach to justice and deliberation to address the dilemmas arising between these two potentially conflicting dimensions of domination and class struggle.

Thus, though Fraser emphasized the contestatory function of counterpublics, she did not view them (to employ a double negative)

as processes that could not entail claims of inclusion. She maintained that separatist groups which envision themselves as forming enclaves of resistance, still need to have a political program with emancipatory goals in order to transform their societies. Fraser explains how the Gramscian notion of hegemony fits with this idea because “to interact discursively as a member of a public—subaltern or otherwise—is to aspire to disseminate one’s discourse into ever-widening arenas” (Fraser 1988: 82). She argues that in stratified societies counterpublics have a dual character: “On the one hand, they function as spaces of withdrawal and regroupment; on the other hand, they function as a basis and training ground for agitational activities directed toward wider publics.” It is “precisely in the dialectic between these two functions that their emancipatory potential resides” (ibid.: 82).

II. FROM POLITICS TO REFRAMING JUSTICE

It was in response to the problems that emerged in the political arena with particularistic identity groups that Fraser developed her critique of them. Her intuition was that social movements and identity politics have become so self-interested in their own theoretical debates that they have forgotten that justice needs to contemplate a broader axis. In developing novel ideas about recognition, Fraser maintained that we have left behind other important issues that relate to how societies should grapple with violations of justice, and in particular that questions of distributive justice need our continuing attention. We cannot subsume all violations of justice to the spectrum of recognition. Fraser accordingly proposed her now well-known perspectival dualism between recognition and redistribution as two conceptual axes of justice.

Fraser was preoccupied with the problem of the fragmentation of the public sphere: namely, that the mere generalization of particulars makes identity politics lose sight of the political strategies needed to transform societies. Fraser developed her dual notion of justice based on questioning the theoretical separation between the paradigms of recognition and redistribution. Habermas’ intuition about configuring a de-centered notion of justice through processes of deliberation (as legitimizing devices) was rearticulated in Fraser’s view on the

decoupling of claims about cultural politics (recognition) from claims of social politics (redistribution). The division of feminism into two theoretical aspects, one based on the politics of difference and the other on the politics of equality, became the target of Fraser's arguments inasmuch as they present themselves as either/or positions. Fraser was able to show how these two claims—recognition and redistribution—are both claims about social inclusion that have become historically cogent in the context of social movements. We need to consider them in their relation to one another. The binary opposition between class politics versus identity politics and multiculturalism versus social democracy is too often presented as if their claims belong to two different paradigms: the redistribution paradigm focusing on injustices defined as socio-economic; and the recognition paradigm focusing on injustices understood as cultural patterns of representation, interpretation and communication. In the first paradigm we seek the remedy for injustice in restructuring economic relations; in the recognition paradigm we seek a remedy for social injustice in cultural or symbolic exchange. In the first paradigm we search for equality, while in the second we search for difference. If we understand gender injustice in a larger normative context, we can relocate distribution and recognition as configuring two different kinds of claims that are part and parcel of one paradigm of justice. Economic demands can be seen from this perspective as a basic organizing principle of restructuring capitalist societies and the moral wrongs they seek to redress are located in different forms of distributive injustice, such as gender-based exploitation, marginalization and deprivation. In the other aspect, that is, in terms of how gender lines have been drawn according to andromorphous designs, we need to focus on institutional patterns of cultural valuation. These moral wrongs constitute violations of justice in terms of social relations, institutional designs and cultural practices.

In developing this position Fraser's main addressee was not Habermas but thinkers preoccupied with developing theories of recognition, notably Charles Taylor (1994) and Axel Honneth (Fraser and Honneth 2003). Both developed a Hegelian perspective on recognition, though it was in collaboration with Honneth that Fraser's ideas have taken shape.¹ Taylor and Honneth tie the concept

¹] At the core of Honneth's reading of Hegel is the idea that a social and political theory

of recognition to questions about self-realization and maintain that it is in the quest for recognition by another subject that we seek to fulfill our own identity. To deny someone recognition is to deprive her of human flourishing. Fraser argues that Taylor and Honneth place the concept of recognition in the paradigm of self-realization because they pose questions in terms of the good life rather than justice. She proposes that we conceive of recognition as belonging to the paradigm of justice and treat moral wrongs as questions related to social status: "This means examining institutionalized patterns of cultural value for their effects on the relative standing of social actors" (ibid.: 29). Understanding how patterns of cultural valuation are built in which some people appear inferior, excluded or invisible, allows us to speak of misrecognition or status subordination. Fraser wishes to escape the pitfalls of thinking about recognition in terms of psychological ideas about self-realization and stresses instead that we should conceive of recognition as belonging to institutionalized patterns of cultural valuation. Her insight is into how practices of subordination are related to violations of justice.

Fraser was able to develop this important amplification of the paradigm of justice by connecting its sociological and philosophical sides, that is, by showing how we are dealing with a problem of rights that she identifies under the register of parity of participation. By treating misrecognition as a matter of an externally manifested violation of justice, we understand that what we need to do is to change social practices "by deinstitutionalizing patterns of cultural value that impede parity of participation and replacing them with patterns that foster it" (ibid.: 31). Fraser conceptualizes the philosophical problem of recognition under a scenario of social injustice related to patterns of cultural value, institutional forms of interaction and the ways in which

that works from such atomistic premises cannot account for human beings' constitutive dependency on non-instrumental social relations for the many aspects of their identities and agency that touch upon their integrity as moral subjects and agents. Human beings' moral subjectivity and agency stands in need of the recognitive relations of care, respect, and esteem with others in all phases and spheres of life. Such relations of recognition cannot be accounted for adequately in terms of a model of human beings as self-interested actors or, indeed, in terms of any atomistic model of human agency. On the contrary, such an account requires a model of human agency as constituted in and through relations with others, where one's formation as an ethical subject and agent is dependent on the responsiveness of others with respect to care for one's needs and emotions, respect for one's moral and legal dignity, and esteem for one's social achievements. In the absence of such responsiveness, Honneth argues, one cannot develop the practical relations to self—self-confidence, self-respect, and self-esteem—that are crucial to one's status as a competent ethical subject and agent.

we can change both. Instead of speaking of recognition in terms of needs, she highlights the idea that justice is related to practices that change reality.

At the same time, Fraser introduces a meta-level of deliberation which reconstructs Habermas' original idea of justice as a reflexive concept. She conceives of this meta-level of deliberation about processes of deliberation as the legitimating device of genuine democratic arguments. In so doing, she gives a new political twist to the idea of the legitimating practices of deliberation as inclusive and democratic. The principle of participatory parity presupposes that all (adult) human beings should be conceived as partners of interaction who possess equal moral worth. On the other hand, in relation to redistribution, Fraser conceives of the institutional economic mechanisms by which resources are systematically denied to excluded groups as a violation of justice. Instead of the Marxist understanding of class in terms of ownership of means of production, Fraser understands class as an order of objective subordination derived from economic arrangements that deny some actors the means and resources they need in order to have participatory parity.

III. JUSTICE IN A POST-WESTPHALIAN FRAME

Westphalian sovereignty is the concept of nation-state sovereignty based on two principles: territoriality and the exclusion of external actors from domestic authority structures. In the Westphalian system, the interests and goals of states (and later nation-states) were widely assumed to transcend those of any individual citizen or even any ruler. States, in effect, became the primary institutionalized actors in an interstate system of relations. This system harks back to the Peace of Westphalia, signed in 1648, in which, according to the conventional account, the major European powers came together under the rule of Daniel Lewis, and agreed to abide by the principle of territorial integrity. The idea of Westphalian sovereignty and its applicability in practice have been questioned from the mid-20th century onwards from a variety of viewpoints. Much of the debate has turned on the ideas of internationalism and globalization which, in various interpretations, appear to conflict with Westphalian sovereignty (Gross 1948: 39).

In his critical review of Nancy Fraser and Axel Honneth's book, Thomas McCarthy points out an important problem related to Fraser's paradigm of justice constructed under the two axes of redistribution and recognition (McCarthy 2005). He writes that Fraser's double axis design reminds him of the Habermasian separation between system and life-world, which Fraser earlier criticized in her essay "What's Critical about Critical Theory?". McCarthy points out that when pressed by Honneth (Fraser and Honneth 2003: 156) on why she adopts only two perspectives, economic and cultural, to the apparent exclusion of the legal and political, Fraser falls back on the two basic forms of societal integration, social and systemic, which play such a central role in Habermas' construction (McCarthy 2005: 399). Perhaps in response to such criticism, Fraser has revised her approach to the question of the political in her later work on "Redefining Justice in a Globalizing World" (Fraser 2005).

Fraser's integrated theory of justice signaled in its earliest forms her concern with the global context, but she has taken a full post-Westphalian turn only recently, after her series of exchanges with Honneth. "Globalization" she argues, "is changing the way we argue about justice" (ibid.: 69). Justice claims can no longer be assessed in terms of what is owed to members of a given community, since the injustices suffered by groups and individuals increasingly have their sources outside the boundaries and the reach of national states. "[T]he grammar of argument has altered'. Whether it is distribution or recognition that is contested, it is no longer a matter of "what is owed . . . [but] who should count as a member and which is the relevant community" (ibid.: 72). She argues that these issues may be addressed through the incorporation of a third, specifically political, dimension to her model, alongside the economic dimension of distribution and the cultural dimension of recognition. The injustices specific to this level she names as injustices of representation. The political is distinct from the other two aspects of participatory parity, her general criterion of justice, insofar as it specifies the reach of the other two, to tell us "who is included and who excluded from the circle of those entitled to a just distribution and reciprocal recognition" (ibid.: 75).

Fraser distinguishes two levels of misrepresentation: ordinary-political misrepresentation that is the object of much of the literature

on political systems of representation, and the higher order concern with frame-setting, for the Keynesian-Westphalian frame is a powerful instrument of injustice, which gerrymanders political space at the expense of the poor and despised. Her paper identifies a task that is at once urgent and formidable: "How can we integrate struggles against maldistribution, misrecognition, and misrepresentation within a post-Westphalian frame?" (ibid.: 79). The Introduction to her earlier exchanges with Honneth (Fraser and Honneth 2003: 5) closes with a brief comment on their differences over the nature of contemporary capitalism. Honneth claims that the capitalist economic order is subject to an overarching normative recognition order, while Fraser argues that modern global capitalism is relatively autonomous, with its own mechanisms and processes that are not directly so regulated. However, in her contribution to this collection, Fraser moves away from systems talk as she draws on Castells' model of the network society: "[M]atters, so fundamental to human well-being . . . belong not to "the space of places"" —the space in which nation-states reside—but to ""the space of flows"" (Fraser 2005: 81).

Within a post-Westphalian model of justice, the all affected principle of representation can no longer depend on state-territoriality (ibid.). Fraser shifts attention to the struggle for 'meta political democracy' as she turns her attention and ours to the how of post-Westphalian justice and the demands of a transformative politics of framing that remains dialogic, reflexive and participatory: to processes of collective democratic deliberation.

Many of the important struggles of our times relate to legal discrimination and political domination, and what exactly we mean when we speak of legal equality and political democracy. Furthermore, if we seek to leave behind the Westphalian frame of analysis and turn to a global scenario, as Fraser among many now argues, then politics and law not only appear as vital dimensions of justice but dimensions we would have to comprehend in close connection with one another, since the rights of individuals, regardless of citizenship, are secured in part through the mediation of international law.

Needless to say, this interrelationship also lies at the core of Habermas' concerns in *Between Facts and Norms* (Habermas 1996). At first, Habermas dealt with the interrelationship between law and

politics under the scenario of the nation-state. His basic idea, which he referred to as the co-originality of rights and democracy, is that individual autonomy and political power can only be secured through the mediation of law and that it is the procedure of lawmaking as a collective exercise that begets legitimacy for the rule of law. In this work Habermas differentiates between communicative power (in Arendtian terms) and administrative power. His view of power as the associational ways in which societies transform their self-regulating practices is embedded in a decentered notion of the public sphere and its dynamics. With the principle of popular sovereignty, Habermas argued: “[all] governmental authority derives from the people, the individual’s right to an equal opportunity to participate in democratic will formation is combined with legally institutionalized practice[s] of self-determination . . . and . . . this principle forms the hinge between the system of rights and the construction of a constitutional democracy.” (Ibid.: 169)

Habermas sees the existence of rights as institutionalizing the communicative conditions for reasonable political will-formation. He recognized that the nation-state once represented a response to the historical challenge to find a functional equivalent for earlier forms of social integration; yet when we move beyond the nation-state to the processes of globalization, as we must, we are left with a void. The question is how to fill the mediating role of the rule of law in the schema of global politics and this is where Fraser steps in.

To fill this void, Fraser center-stages the idea of participatory parity at the most abstract level of a theory of justice. In her Spinoza Lectures she places the political dimension of representation firmly alongside that of redistribution and recognition. She acknowledges that in her previous work she did not see that she needed to introduce this third dimension more integrally into her paradigm of justice, and that to do so she has to return to the meta-level of the framework of justice. The intuition she articulates is that the political is about establishing criteria of social belonging’ as well as processes of ‘establishing decision rules and that questions of representation constitute the third dimension of justice alongside those of redistribution and recognition. If we now face the challenge of thinking about justice in a global frame, we need to address normative standards of representation and misrepresentation

to deal with the people's right to participate in political arenas on a par with others. With predatory states, transnational private powers, transnational corporations, international speculators and the way the global economy dictates systems of social interaction, the participatory imparity of more than half of the world population has now become a stark and devastating reality. In order to address and redress this injustice, Fraser focuses on struggles against restrictive framing. By extending and radicalizing the demands of justice, she finds the means to bring the political back into the conceptualization of global democracy.

Fraser uses her well-established idea of participatory parity to confront problems of misrepresentation at this global level. It allows her to face questions of substance and procedure at the same time while making apparent the mutual entwinement of these two aspects. As a form of political authority it offers a substantive principle of justice that helps us evaluate existing social arrangements; as a procedural standard it enables us to evaluate the democratic legitimacy of norms. From the methodological point of view, it allows us to go back and forth from first order to second order questions, and these dialogical moves articulate the need to strengthen the interrelationship between democracy and justice in a radically reflexive template.

The transition from thinking about justice in the frame of the modern territorial state to that of a global order is not easy to accomplish. The political dimension of representation has been as crucial a dimension of justice in the national framework as it is in the global and reflecting on the meta-issue of the frame does not begin with the global. The nation was never as naturalized as it normally appears in retrospect and the dismantling of institutionalized obstacles to the participation of some people on a par with others has been a recurrent feature of past struggles. The question of who is included and who excluded from the circle of those entitled to make justice claims on one another, and the metaquestion of the procedures which structure such public processes of frame setting and misframing, have been the stuff of political argument from the start of the modern era, even if it is true that globalization makes this aspect of the grammar of justice more visible. We do not have to go along with Fraser's ultimacist slogan, "no redistribution or recognition without representation", to see the close

connections between these dimensions of justice.

Fraser's transformative approach seeks both to change the boundaries of the "who" of justice in the light of the fact that many injustices in a globalizing world are not territorial in character, and to democratize the ways in which these frames are constructed and boundaries are drawn. Fraser's tentative solution to post-Westphalian frame setting, the all affected principle, holds that all those affected by a given social structure or institution have moral standing as subjects of justice in relation to it. The principle of doing justice to those affected contrasts with a liberal conception of the public sphere in which the right to express a view upon an issue is not conditional upon one's direct interest in it. However, it leads to problems of determining who is affected and how claims to be affected are assessed. We expect further deliberations around this thorny question of applying democratic processes of determination to the "who" of justice claims.

IV. CONCLUSION: CRITICAL THEORY, THE PUBLIC SPHERE AND GLOBAL JUSTICE

In a further essay, "Transnationalizing the Public Sphere: On Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World" (2007), Fraser returns to her initial concerns about the political character of the public sphere. She acknowledges that this concept was first introduced to give an account of how our communicative practices contribute to a decentered normative notion of justice. It matters, accordingly, who participates and on what terms. As a mechanism for holding state officials accountable for their actions, the public sphere should somehow correlate with sovereign power. When dealing with transnational public spheres, it is no longer adequate to associate the notion of communicative power with sovereign states, but it is a complicated question to figure out how persons who are not considered members of concrete political communities could have equal rights to participate in political life. To address this problem, Fraser argues against both an empiricist approach that sacrifices normative force and an externalist approach that sacrifices critical traction. The alternative she puts forward is to design a critical-theoretical approach that "seeks to locate normative standards and emancipatory political possibilities

precisely within the historically unfolding constellation" (Fraser 2007). It is on this basis that Fraser begins to rethink the relationship between politics and law in the global context.

To be sure, we need to understand how rights have become a space of meanings about wider inclusion than can be seen in a strictly national frame of analysis. A more sociological approach, like that adopted in T.S. Marshall's theory of democratic rights, could offer Fraser some resource to think of sovereignty beyond the constraints of the nation-state. The principle of parity of participation would need to be developed in connection with two differentiated notions of sovereignty. On the one hand, there is the institutional frame of international law designed as a process of social inclusion to protect individuals beyond the scope of the nation-state. This might be thought of as an external concept of sovereignty. On the other hand, the mediating role of international law deals with how nation-states themselves need to comply with agreements about what needs to be done to solve issues of internal justice. This would be an internal concept of sovereignty. That sovereignty is empirically changing should give us some hope as we start imagining new ways of conceptualizing it. Think of the case when even a superpower cannot guarantee the security and welfare of its own population except with the help of other nations. It would appear that in such a case sovereignty is losing its classical meaning. The maintenance of law and order within the nation-state needs now to be re-conceptualized to see how the global demands of justice cope with the protection of the rights of world citizens. This is because at the global scale, one crucial institutional protection persons can have as individuals lies in how their claims for new rights of inclusion should be protected by international law and by agreements among nation-states to enforce it.

The authoritative source of legitimation lies in the idea of a world public sphere. Consider, for example, how the US and UK sought the cooperation of other countries in their decision to go to war in and against Iraq. Few countries were on their side, most were against. The moral authority behind the critique of unilateralism derived from the many expressions of dissent developed in different public spheres. What was most interesting was the process of decoupling political authority from this exercise of force and its connection instead with the legitimating processes of deliberation in a world society. Spain, whose

civil society was in the main against the decision of former Prime Minister Aznar to support the invasion of Iraq, saw the government lose power in the elections that followed. The contradictory ways in which public opinion recovered from the marginalization of opposition to the war has led the international press (and more slowly the internal American press) to publish widely on the lack of legitimacy behind the US and UK decision to go to war. It was in relation not only to international law as such (with all its ambiguities of interpretation and application) but also to normative standards developed within an international public sphere that the moral and political authority of this act of force has been critically evaluated.

Fraser does not have a particularly optimistic view of the normative role of the public sphere in transforming classical political concepts. The key issue is whether the public sphere has the capacity to be a site in which new meanings and new articulations of political practices are generated. The institutional basis of a world public sphere needs the mediation of a reconstructive process that can show us how international law can become a legitimate order when its reflexivity becomes the condition of its institutionalization.² Fraser's own account of justice would have to integrate the idea of a world public sphere to explain how the concept of parity of participation could be considered as a new stage in the development of the right of political participation and a new dimension of human rights for world citizens. Fraser argues that because we do not possess a vision of the role of the public sphere, "we have lost the capacity to use that category critically—in a way that has political bite" (Fraser 2007). However, the most important question about the space of a world public sphere is whether actors can acquire the capacity to act politically within it and how in turn these performances can lead to new processes of lending authority to

²] A further of this issue is offered by Habermas when he comments in *Between Facts and Norms* that both Weber and Parsons operated with a notion that ideas and interests (Weber) or cultural values and motives (Parsons) interpenetrate in social orders through certain collective practices. The reason why Habermas follows Parsons in particular is because Parsons was concerned with the evolution of law in terms of its function of securing solidarity. According to Habermas: "Parsons understands modern law as a transmission belt by which solidarity—the demanding structures of mutual recognition we know from face to face interaction—is transmitted in abstract but binding form to the anonymous and systematically mediated relationship of a complex society." (Habermas 1996: 76) Parsons relied heavily on Marshall's account of the gradual extension of rights of inclusion in order to understand how collective institutions fostered practices of solidarity.

the world community. Claims of inclusion and considerations of how new processes of inclusion could take shape, need the participation of those excluded actors who possess the imagination to make us look at things through alternative perspectives.

If we go back to Habermas' interest in how certain practices provide new clues as where to go from here, we would argue that we cannot dispense with the category of the world public sphere in thinking about any possible transformation. Even though we do not know how this could be accomplished, it is clear that we would have to revisit most of our political categories and see the new forms and shapes they take as they articulate around the idea of world political authority. If it is true that constitutional norms and legal constructs were first introduced by elites, as Habermas has argued, then his commentary about the kind of law making which anticipates the change in the state of consciousness that is triggered among the addressees in the course of its implementation (Habermas 2006), is highly pertinent to this conception of the world public sphere as a sphere that relates to rights. A reflexive internalization takes place when innovatory legal propositions are put into public debate. These processes entail a learning process in which nations, as it were, change their view of themselves and reconstructed practices of sovereignty allow independent actors to discover the benefit of acting as world citizens and members of an international cooperative community.

The defense of the concept of a world public sphere may be considered along the lines of developing a decentered notion of political authority. This means decoupling the conceptual linkage between national law and the state's monopoly on legitimate force in favor of a supranational law that still gets its force by means of the sanctions monopolized by nation states, but is now given authority by the way citizens recognize themselves as authors of international laws. It would certainly be difficult to imagine a new political constitution of a world society without some normative idea of a world public sphere providing the mediation between international law and world politics. This is one way, we think, in which Fraser's abiding concerns with the politics of the public sphere might be integrated with her more recent thinking about post-Westphalian democratic justice.

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