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Legitimacy and Complexity

Introduction

In this paper I would like to reflect on the problem of social complexity and how this challenges legitimation within Jürgen Habermas's deliberative democratic framework. I will first explain Habermas's conceptions of legitimacy and the public sphere as developed in *Between Facts and Norms*. This will then be followed by a brief discussion of Habermas's conceptions of complexity. In this part I will rely both on *Between Facts and Norms* and his earlier work *The Theory of Communicative Action*. Following this, I will argue that Habermas's notion of social complexity is fundamentally a problem of time conceptualised as a resource. Finally I will conclude with a brief reflection on the eight-hour working day claiming that this work practice is incompatible with deliberative democracy.

The Legitimacy of Law- and Policy-Making

Habermas grounds the legitimacy of law- and policy-making in the principle of democracy. This principle results from the legal institutionalisation of a more fundamental principle: the discourse principle. Therefore, in order to explain Habermas's theoretical framework of legitimacy, I must (1) first explain the discourse principle, then (2) explain how this principle is transformed into the principle of democracy through legal institutionalisation, and (3) finally, I will identify the legitimacy conditions that are implied by the principle democracy.

Habermas defines the discourse principle as follows:

"D: Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses."[1]

According to Habermas the "discourse principle...merely expresses the meaning of postconventional requirements of justification."[2] This principle is neither moral nor legal or political in character, but expresses the criteria of action-norm justification *in general*. It is the

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[1] Jürgen Habermas, *Between Facts and Norms*: *Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge: MIT Press, 1996), 107.
[2] Ibid., 107.

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argumentative or discursive counter-part of communicative action, that is, of action oriented towards mutual understanding.

The discourse principle, Habermas continues, is legally institutionalised as the principle of democracy. This principle states: "only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted."[3] This formulation offers three legitimation conditions. First, lawmaking must take place within the bounds existing laws. Second, it must be based on a discursive process seeking consent. Third, laws must be backed by reason. With regard to reasons, Habermas says that they can be "pragmatic, ethical-political, and moral reasons."[4]

Core and Peripheral Discursive Domains

A key concept in Habermas's theory of deliberative democracy is that of the public sphere. This concept was first introduced by Habermas in *The Structural Transformation of the Public Sphere*, published in 1962. In *Between Facts and Norms*, published in German in 1992, Habermas appropriates the model developed by Bernard Peters and reformulates the concept of the public sphere in terms of core and peripheral discursive domains. The core domain consists of formal institutions such as the administration, parliament and the judiciary. These are highly regulated institutions and derive their power from the law that institutionalises them. The periphery is composed of a number of overlapping public spheres in which communication is more diffused and on the whole unregulated by law. The actors in these periphery public spheres range from individuals who may engage in episodic communication about social and political issues, to organised interest-groups founded to promote particular interests.[5]

The periphery domain is central to Habermas's theory of deliberative politics. This domain is characterised by two paradoxical features. On the one hand, actors in this domain can potential engage in "*unrestricted* communication."[6] Every participant has the opportunity to initiate a discussion on any topic whatsoever without being constrained, as formal domains are, by the burden of decision-making. On the other hand, however, this domain is always "vulnerable to the

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[3] Habermas, *Between Facts and Norms*, 110.
[4] Ibid., 108.
[5] Ibid., 354 – 6.
[6] Ibid., 308.

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repressive and exclusionary effects of unequally distributed power, structural violence, and systematically distorted communication."[7] One can speak, but one may not be heard. Ultimately, communication in the periphery can only become effective communication if it is captured by the core domain and transformed into effective action. As Habermas points out:

> [O]nly the political system can 'act.' It is a subsystem specialized for collectively binding decisions, whereas communicative structures of the public sphere constitute a far-flung network of sensors that react to the pressure of society-wide problems and stimulate influential opinions. The public opinion that is worked out up via democratic procedures into communicative power cannot "rule" of itself but can only point the use of administrative power in specific directions.[8]

Habermas distinguishes three ways in which the political system, or the core domain, and the public sphere, or the periphery domain, can influence each other. First, political communication can commence in the political system and remain there "all the way to its formal treatment." In such case, the public sphere plays no role whatsoever. Second, political communication can begin in the core political system but then circulates into the public sphere as well to gain the support of the public. In this second case, the public sphere and its actors are engaged only because political elites *require* their support. Third, political communication can begin in the periphery, and then, through "the pressure of public opinion", move to the core where it is turned into effective political action.[9] A truly deliberative democratic system is one in which the third of these cases is the norm rather than the exception. There are, however, a number of factors that can potentially block actors in the public sphere from making effective contributions. One such factor is social complexity.

Habermas on Complexity

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[7] Ibid., 307 – 8.
[8] Habermas, *Between Facts and Norms*, 300.
[9] Ibid., 379 – 80.

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A review of the literature on complexity reveals that the term complexity – to use Aristotle's famous formulation on being – 'is said many ways'. Here, it is not possible to go through all the different conceptions of complexity one finds in the literature; for the purposes of the argument presented in this paper, I will only consider the conceptions developed by Habermas in his two major works: *The Theory of Communicative Action* and *Between Facts and Norms*. The idea of complexity plays a central role in *The Theory of Communicative Action*; in this work, Habermas argues that contemporary societies are characterised both by the unleashing of the rational potential inherent in language (communicative rationality) and by an increase in complexity. The notion of complexity appears in *Between Facts and Norms* as well. In this work, unlike in *The Theory of Communicative Action*, the concept of complexity has only a peripheral role in the architecture of the main arguments.

My interpretation is that Habermas develops two distinct conceptions of complexity: systemic complexity, which appears in media steered subsystems such as the economy and the administrative system, and social complexity, which appears in the lifeworld. To explain the precise meaning of these two types of complexity it is necessary to first briefly explain Habermas's thesis of social evolution developed in *The Theory of Communicative Action*. Habermas conceptualises the evolution and emergence of contemporary society as the result of two rationalisation processes: the rationalisation of the lifeworld and the rise of the bureaucratic and economic subsystems. In short, the rationalisation of the lifeworld refers to the emergence of a critical attitude in which claims are always open to criticism, and must be justified if challenged. In this regard, social order is conceptualised as resting on rational agreement reached by rational actors. This, Habermas continues, makes social order more fragile and more open to disagreement. To make up for this fragility, some relations, particularly relations pertaining to the economic and bureaucratic spheres, become mediatised and technicised. By mediatisation Habermas means that interaction becomes largely dependent on delinguistified media such as money and power. On the other hand, by technicisation, he means the conditioning of decisions in which the options of possible responses to claims speaking and acting subjects can opt for, are drastically reduced.[10] For example, in the bureaucratic system, the relation between superiors and

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[10] Habermas, *The Theory of Communicative Action Vol. 2*, 281.

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subordinates is mediated primarily by power (thus mediatisation), with the subordinates in most cases having no option but to obey the orders of their superiors (thus technicisation).

I argue that in *The Theory of Communicative Action* Habermas understands systemic complexity as *internal specialised (i.e. function specific) systemic mechanisms the social system develops to deal with problem of internal hypercomplexity*. This definition contains two key ideas. The first is the idea of complexity as 'function specific mechanisms' in which integration or social order is achieved abstractly through impersonal, mediatised, and technicised mechanisms. The second key idea is complexity as hyper*complexity*. This refers to the indeterminacy and contingency that appears in a society integrated or ordered through fallible, not metaphysically anchored, claims. This kind of complexity is not referred to by Habermas as complexity in *The Theory of Communicative Action* but appears as social complexity in *Between Facts and Norms*.[11]

Time, Systemic Complexity and Social Complexity

I would like now to comment briefly on the relation between time and these two forms of complexity. Time can function both as a resource and as a constraint. Simply put, if one has time, then time is a resource which can be utilised to do things; if time is scarce, then it functions as a constraint. Social complexity, that is, the contingency and indeterminacy which results from having to come to an understanding and agreement about fallible claims, brings to the fore the problem of time as a constraint. On the other hand, systemic complexity, which technicises and mediatises relations, solves this problem by conditioning actions and decisions. Buying things, for example, does not require that the buyer and the seller come to agreement about fallible claims; such a relation is technicised and mediatised, and what is needed is that the buyer hands over the money to the seller and the seller the thing for sale to the buyer. The decisions and actions in commercial transactions are largely conditioned (that is, they are technicised) and mediatised (that is, money does 'most of the talking').

Time, Complexity, Deliberative Democracy and Legitimacy

In the first part of my paper I explained that for Habermas law- and policy-making are legitimate if and only if they fulfil the criteria expressed by the principle of democracy. This principle, it

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[11] See for example Habermas, *Between Facts and Norms*, 326 – 7.

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was claimed, states: "only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted."[12] I also explained that Habermas, following Peters, distinguishes between the core discursive domain or the political system and the peripheral discursive domain or the public sphere. A true deliberative democratic society is one, I maintained, in which political communication frequently commences in the periphery and moves to the core.

Social complexity, however, represents a problem to the proper functioning of deliberative democracy. Social complexity makes time a constraint. Habermas identifies two ways how social complexity can be reduced. First, social complexity can be reduced by positive law: "legal rules can compensate for the cognitive indeterminacy, motivational insecurity, and limited coordinating power of moral norms."[13] Second, in certain areas, the problem of social complexity and the scarcity of time are resolved through systemic complexity in which relations are technicised and mediatised. This solution, however, won't do in the context of deliberative democracy. A public sphere that is technicised and mediatised becomes, as Habermas says in *The Theory of Communicative Action Vol. 2*, culturally impoverished.[14] Moreover, citizens tend to adopt an attitude of "non-responsibility" when relations are technicised and mediatised.[15] The solution to this problem, unless we are ready to give up the hopes of a truly deliberative democratic society, must lie elsewhere. If the scarcity of time cannot be overcome through technicisation and mediatisation, then the only possible solution is to increase the resource of time available for public discussion.

Conclusion: Less work, more time

To conclude, I would like to make a daring suggestion that would increase the resource of time and possibly partially solve the problem of social complexity. In the 19th century and in first half of the 20th century, social reformers and workers campaigned for the eight-hour working day. The demand for, and the rationale of, the eight-hour working day was encapsulated in the slogan:

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[12] Ibid., 110.
[13] Habermas, Between Facts and Norms, 326.
[14] Habermas, *The Theory of Communicative Action Vol. 2*, 326.
[15] Ibid., 184.

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"Eight hours for work, eight hours for rest, eight hours for what we will."[16] Until this day, in many liberal democracies this model remains largely unchanged. Moreover, for many workers the 'eight hours for what we will' are much less than eight hours. One only needs to consider the time workers spend going to and coming back from work, the official working break and other necessities workers have to take care of while they are not engaged in their paid work. In my view, there is a clear incompatibility between the eight-hour working day and the possibility of a true deliberative democracy. Unless the eight-hour working day is revisited, achieving a truly deliberative democratic society will remain an unrealisable dream. Surely this is not easy to change; it calls for radical cultural, economic and social reforms. This conference invites researchers to 'ask the difficult questions'. And sometimes, if not always, difficult questions require radical solutions.

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[16] Robert Whaples, "Winning the Eight-Hour Day, 1909-1919," in *The Journal of Economic History* 50, no. 2 (June 1990), 393.