The Equalization of Effective Communicative Freedom: Democratic Justice in the Constitutional State and Beyond

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The fundamental political concern of liberalism has been to secure equal liberties for all citizens. There has, however, been no agreement among liberals on the extent to which this project depends, both normatively and practically, on the democratization of society. Socialism, on the other hand, has been fundamentally concerned with the realization of emancipated forms of life. But socialists too have disagreed with one another on the extent to which political structures of democratic self-government are central to the revolutionary task of emancipation. Social democracy, as a tradition, has involved the attempt to show how these core political projects of the modern era, liberalism and socialism, are mutually interdependent. The most appropriate emancipatory project for late modern, increasingly complex societies, from a social-democratic perspective is to create and maintain a social structure that can deliver equal and effective liberties for all citizens.¹ This achievement is to be best understood in republican terms, as the realization of a democratic form of life in which free and equal citizens engage one another in the collective task of autonomous self-governance. Jürgen Habermas has been one of the most significant intellectual contributors to the development of the idea of social democracy as an emancipatory project. Over several decades from the early 1960s to the present, Habermas has set about recasting critical social theory in terms of a theory of communicative action.² The main legal and political implications of this critical perspective are outlined in his discourse theory of democracy.³ Habermas considers the realization of rights through the democratic self-organization of legal communities to be the normative core of emancipatory politics in the modern era.⁴

In this article I want to explore the implications of Habermas’s reformulation of the normative core of emancipatory politics for our understanding of justice. Habermas stresses that the discourse theory of democracy is focused on the procedures through which rights are to be realized in self-governing legal communities. I will argue that this republican account of democratic legitimacy presupposes a substantive and robust conception of egalitarian justice that remains unelaborated

⁴ Ibid. at xili.
in his own work. We can refer to the key principle of justice that I take to be presupposed by the discourse theory of democracy, as the

*equalization of effective communicative freedom for all structurally constituted social groups in any constitutional state.*

I will discuss the notion of a structurally constituted social group later but will refer to these groups throughout as SCSGs. If a discursively vibrant form of democratic life is to be achieved then it will depend on the creation of a social structure that allows all SCSGs of citizens who participate in the life of the political community to exercise their equal rights and liberties to good effect. This means that all SCSGs should have equal access, relative to the size of the group, to the informal flow of communication that filters through to the formal legislative process. An egalitarian social structure is, therefore, a precondition for the inclusion of all citizens as effective participants in the democratic process. Justice, as the equalization of effective communicative freedom, requires the deconstruction of all hierarchical relations between SCSGs, a project that has radical implications for all modern states in terms of political empowerment, fair distribution and due recognition of particular group identities.

Having sketched the substantive demands of justice that are presupposed by the idea of inclusive self-government that is the normative core of discourse theory, we will then explore briefly one of the main challenges facing any form of emancipatory politics today. This is the complex and multifaceted process of globalization. Social democracy emerged historically from an era in which sovereignty was assumed to reside within nation-states. It has been clear for some time that the golden age of the nation-state as the linchpin of modern political life has now passed. While stories of the demise of the nation-state remain, for now at least, fanciful exaggerations, the opposition between domestic and international politics is constantly being deconstructed in practice. The structures of the global order impinge ever more forcefully on local structures as all boundaries between the state and the global order in economic, cultural and political senses have become porous. If we are to take the republican project of radical democratization as a normative guide to an emancipated form of life, then we need to conceive of it in a way that acknowledges the global transformations that have been experienced throughout the world in the late modern era.

**A Procedural Account of Social Democracy**

From the perspective of Habermas’s discourse theory the social democratic project is concerned with the ongoing realization of a set of rights that is presupposed by the idea of a self-regulating legal community. The formulation of a set of individual

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rights that could claim legal validity depends on the discursive character of political will-formation. It is the way in which the political will is established that is crucial to the process of democratic legitimation. In a self-regulating legal community, citizens must be capable of understanding themselves not only as addressees of legal norms but also as the authors of those norms. The key to Habermas's characterization of this ongoing project is the claim that private and political autonomy, as expressed in terms of morally grounded human rights and the principle of popular sovereignty, mutually presuppose one another.

Reason and will come together in a discursive process of opinion and will-formation that constitutes the mode in which political autonomy is exercised. The free use of communicative reason, where citizens employ language in a way that is oriented to mutual understanding, gives these processes their legitimating force. In a communicatively rational process of will-formation, each participant is free to assess whether or not a contested norm could meet with the agreement of all those possibly affected. It is in this way that Habermas understands the mutual presupposition of private and political autonomy.

[The] sought-for internal relation between popular sovereignty and human rights consists in the fact that the system of rights states precisely the conditions under which the forms of communication necessary for the genesis of legitimate law can be legally institutionalized.¹⁰

The system of rights that is presupposed by the idea of a self-regulating legal community gives equal weight to the private and the political autonomy of the citizen. These rights are constitutive of the relationship between citizens of a constitutional order. They are rights we must mutually grant one another if we are to regulate our life in common by means of legitimate law.

These rights guarantee equal liberties that secure for the individual a private space where publicly acceptable reasons do not have to be given for her action. In this private space each of us is free to drop out of communicative action.¹¹ But private liberties are not prior to the civil rights that guarantee our participation in the politically autonomous practice of making law. If we are to understand ourselves as authors of the law then we must think of these individual liberties as rights that are granted reciprocally. We confer on one another the status of rights-holding citizens and in doing so we make possible the exercise of our civic autonomy. Legally institutionalized self-legislation of a political community is not possible without a guarantee of individual liberties and these liberties can only be equalized through a democratic procedure that satisfies the demands of political autonomy by ensuring that oppression and violence are avoided. Private and political autonomy are co-original.¹²

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8. Ibid. at 103.  
9. Ibid. at 104.  
10. Ibid. at 119.  
11. Ibid. at 118-22, 454-57.
The Legitimate Enforcement of Rights

If the law is to be binding on all citizens then these rights must be enforced against possible violation. This represents an important aspect of the tension between facts and norms around which Habermas reconstructs his account of law and the constitutional state. The facticity of coercive law that enforces respect for the system of rights is inextricably intertwined with the law's claim to validity. Legal norms 'have to bring about willingness to comply simultaneously by means of de facto constraint and legitimate validity.'12 Our motives for complying with the law are left open. We might comply for prudential reasons because we want to avoid the consequences of not doing so; but it must also be possible for us to comply because we have good reason to recognize the validity of the law.13 In this way law relieves citizens of the burden of constantly engaging in communicative action in order to satisfy their need for social integration. It stabilizes behavioral expectations by securing the compatibility of citizens' liberties and so it allows moral contents to 'spread throughout a society along the channels of legal regulation.'14 But law can only make morality effective in this way if its legitimacy is grounded in the principle of popular sovereignty and if the citizens can understand themselves as authors, and not only as addressees, of the law. How is this possible in complex modern societies?

Habermas offers a social-theoretical account of the way in which political autonomy is exercised in modern constitutional states. The language of law acts as a transmission belt, or transformer, that picks up messages originating in the ordinary language of everyday communication among citizens. It then translates them into an abstract but binding form that is comprehensible to the complex anonymous systems that mediate interactions among strangers.15 Law is the hinge that makes communication possible between the lifeworld of everyday communication and the systems of state administration and economic markets.16 Citizens become aware of new problems, and they spontaneously begin to form opinions about them. Through their activity in civil society, these problems are opened up for discussion in the informal public sphere. The public sphere acts as a warning system for the formal constitutional structures by identifying new problems and providing some potential solutions for them, before legislative bodies take them up.17 This flow of public influence can only be transformed into communicative power, however, after it has passed through the institutionalized procedures of democratic opinion and will-formation that act as a system of sluices, or a set of legitimation filters.18 So while popular sovereignty has its origins in undistorted flows of communication in the informal public sphere, it generates legitimate, political power only through formal law-making procedures.

12. Ibid. at 27.
13. Ibid. at 83, 114-18.
14. Ibid. at 118.
15. Ibid. at 81, 448-49.
16. Ibid. at 86. See also Habermas, supra note 2.
18. Supra note 3 at 356, 371-72, 440.
Maximal Social Inclusion as a Precondition of Democracy

Habermas’s account of these procedures of democratic legitimation aspires to be maximally inclusive in that it highlights the way in which a public sphere which is sensitive to the needs of citizens throughout society can transmit issues from the periphery to the formal political system at the center. But the question arises as to how we might ensure that the public sphere will be truly sensitive to the needs, of all citizens. Habermas is alive to the danger of oppression that arises if the public sphere is vulnerable to subversion by the distorting effects of illegitimate social and economic power or an overextension of administrative and bureaucratic imperatives. He draws on Nancy Fraser’s distinction between the ‘weak’ public of unregulated communication that generates public opinion and the ‘strong’ public of institutionalized decision-making processes.\(^9\) In the weak public sphere, communication is entirely unrestricted and spontaneous thus making it possible for associations and social groups to engage in open processes of sensitive problem formulation, expressive identity clarification and reflective need interpretation. This ‘wild’ complex of ‘overlapping, subcultural publics’ each with ‘fluid temporal, social and substantive boundaries’ forms an anarchically structured ‘pluralistic public sphere’ that drives the democratic agenda in a politically autonomous manner.\(^20\)

It seems clear that the procedures of legitimation that Habermas sees as the core of the social democratic project can only function effectively under certain conditions. This procedural vision of a radically inclusive, democratic society presupposes a social context that is regulated by a substantively robust conception of egalitarian justice. The flow of undistorted communication that originates in this ‘wild’ public sphere must be protected by a set of constitutional rights that makes equal citizenship socially effective for all. If these rights were not universally effective then there would be unequal access to the sources of communicative power among groups of citizens, and the subversion of the public sphere by illegitimate power would be inevitable. It is only under conditions of universally effective citizenship that the communicative power generated by a radically inclusive, non-oppressive democratic process will be unleashed. All citizens must be guaranteed conditions of private autonomy if political autonomy is to be realized. We can refer to the substantive standard of egalitarian justice presupposed here as the normative requirement that effective communicative freedom should be equalized among all structurally constituted social groups (SCSGs) in a democratic community.

The effectiveness of discursive procedures of democratic legitimation depends, therefore, on the realization of conditions of maximal social inclusion. This requires the deconstruction of all hierarchical relations between SCSGs. No structural inequalities can be tolerated in such a democratic order since all SCSGs should be free to articulate their own perspectives on matters that affect them. Furthermore,

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20. Supra note 3 at 307.
they should be capable of articulating their distinctive perspectives with equal effectiveness. All SCSGs should, in other words, have ‘equal voice’ relative to their size in public discussions about matters of shared concern. Inclusive public discourse releases communicative power as citizens engage one another in the practice of collective, discursive will-formation. This exercise of collective political autonomy generates legitimate democratic outcomes. The legitimacy of these outcomes depends on the quality of the process of will-formation and the relevant standard of evaluation should be that the process is driven by reasons that free and equal citizens can come to share through public deliberation, not by structural conditions that deny some social groups equal and effective opportunities to exert political influence.

**Inclusive Justice and Outcome Justice**

By securing equal and effective political liberties, we ensure that the ongoing interpretation of the political constitution of any state will be just. According to Habermas, the same civil rights are valid in all contexts, even if they are interpreted in different ways given the historically unique context in which each constitutional state is embedded. But the content of the basic rights to substantive living conditions that secure equal opportunities for the exercise of our civil and political rights must, from Habermas’s procedural perspective, be determined not by theoretical reflection but by citizens engaged in actual discourses in different political contexts. It is implausible to deny, as Habermas seems to here, that discourse theory relies on certain presuppositions as to the substantive demands of justice. We need to introduce a distinction here that will help to clarify the extent to which discourse theory, in spite of Habermas’s apparent denial, presupposes a substantive principle of justice. We must distinguish between two aspects of democratic justice. The first concerns the inclusiveness of the democratic process and the second involves those normative conclusions that emerge as legitimate outcomes of that process. Let’s call these ‘inclusive justice’ and ‘outcome justice’ respectively. Habermas argues that no substantive matters of justice can be justified through theoretical reflection but rather, that all such substantive issues should be worked through democratically, by citizens themselves. But this is misleading since an inclusive democratic process must presuppose certain social conditions that are regulated by a substantive account of justice. I’ve indicated already that the principle I take to be the appropriate one here is the equalization of effective communicative freedom among SCSGs.

What I am suggesting is that the discourse theory of democracy presupposes a core substantive principle of ‘inclusive justice’ but that it does not prejudge any aspect of ‘outcome justice’. The *equalization of effective communicative freedom among SCSGs* is a principle of inclusion that is clearly substantive, robust and demanding. As a principle it does not, however, prejudge democratic outcomes

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since it remains sensitive to the fact that normative theory cannot override the political autonomy of citizens. No theorist or observer can take on board the perspectives of all social groups and so all citizens must be allowed to represent themselves in an inclusive dialogue that can lead to collective insights about the substantive demands of justice in particular contexts. These insights must be allowed to emerge as legitimate outcomes of the democratic process. This concern to respect the political autonomy of actual democratic communities is the main reason why Habermas has sought to resist the philosophical attempt to derive substantive principles of justice. And while his intuition seems sound here, he is mistaken if he believes that the procedures of democracy that he defends do not themselves make substantive normative presuppositions about the requirements of justice.

The distinction between the requirements of 'inclusive justice' and those of 'outcome justice' is helpful here, therefore, in that it makes it clear that if just outcomes are to emerge through the democratic process, then that process itself must satisfy the prior demands of just inclusion. The remainder of my argument is concerned only with the requirements of the first of the two aspects of democratic justice that I have distinguished here, 'inclusive justice' as opposed to 'outcome justice'. I will be assessing briefly below how we might assess the demands of 'inclusive justice' as the equalization of communicative freedom at national and global levels. But first, we need to ask why it is appropriate to focus on SCSGs rather than individuals, or on other collectivities that could be referred to as 'social groups'?

A Non-Essentialist Conception of the Structurally Constituted Social Group

John Rawls took the basic structure of society to be the primary subject of justice since the effects of this on the life-chances of any individual are so 'profound and present from the start.' Rawls did not deliver an adequate account of social structures. Nor did he free himself sufficiently from liberal individualistic commitments that prevented him from getting to grips with the vital role that SCSGs play in democratic life. While social groups seem to appear in his version of political liberalism as those who share reasonable comprehensive doctrines, there is little appreciation of the identity-forming power of groups or of the dynamics involved in democratic interaction between such groups. Nonetheless Rawls had, from the early stages of his career, correctly identified social structures, rather than, say, individual entitlements, or cultural traditions, to be the appropriate focus for theorists

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of justice. Individuals clearly stand in relations of relative advantage or disadvantage to other individuals as a result of their social location within the basic structure. This consists of the main political, economic, social and ethno-cultural institutions and arrangements in society, even if Rawls never considered directly issues of cultural or ethno-national justice. These various aspects of the basic structure intersect one another and impact on one another in complex ways that require, as we will see, sophisticated and analytically differentiated forms of critical exploration.

The main point here is that each of us occupies a specific location within this basic structure from the start of our lives and while we grow and develop a clear view of our strengths and weaknesses, goals and aspirations, our social location can change quite considerably during the course of our lifetime. So too can the structures themselves change over time. While it is clear that many social structures are, within one generation at least, relatively stable (examples might be relations constituted by class, gender or racial differences), all can potentially be disrupted and modified through changing patterns of individual activity. Social groups are ‘structurally constituted’ if members are differentiated from one another by a social relation that impacts profoundly, and from the start of their lives, on the chances they have of realizing their full potential. From the perspective of an account of justice, then, the key focus must be on the fact that the basic structure of all modern societies creates and produces inequalities that result in the historical formation of relatively stable hierarchical group relations. SCSGs emerge historically, therefore, as a result of the inegalitarian consequences of particular aspects of the basic structure.28

So while golfers and tennis players could be referred to loosely as social groups, they are not SCSGs. They are not structurally differentiated from one another. It is hardly questionable to suggest that the impact of the basic structure on the lives of golfers and tennis players, as collectivities, has in most contexts been broadly similar. The same could not be said of relations between children born into families at opposite ends of the income spectrum, or between men and women, or gay and straight citizens. All members of any one SCSG \(X\) have had their life-chances affected in a similar way as a result of the operation of some aspect of the basic structure. Other citizens, who have been affected in very different or opposing ways by that same aspect of the basic structure, will also form an SCSG \(Y\), one that stands in a hierarchical relation to \(X\). For this reason citizens who are members of \(X\) will share a common interest, one that will be opposed to the interest shared by members of \(Y\), at least with respect to whatever particular aspect of the basic structure is the source of the differentiation of \(X\) and \(Y\). Each member of \(X\), and the same will go for \(Y\), is also likely to see the commonality they share as a significant identity-forming bond, an affiliation that feeds, into each one’s sense of self. Apart from class, gender, race and sexual orientation \(X\) could be differentiated from \(Y\) on the basis of religion, membership or immigration status, age, or ability, among other things.

It should be clear by now why we should seek to equalize effective communica-

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tive freedom among SCSGs rather than individuals. In democratic politics SCSGs play a vital role in mediating between the individual and the political community as a whole. We are focusing here on structural relations between groups rather than individuals, because it is these hierarchical relations that are the primary obstacles to the achievement of justice. Since individuals are always situated in a network of group affiliations, group memberships are unavoidable features of each individual’s identity-forming context. Furthermore, the structure of these affiliations is often the source of social antagonism and of conflicting political demands. These affiliations motivate citizens to engage in political activity and they help to shape the political agenda by engendering particular struggles for justice. The sparks that keep the motor of democratic politics running are generated by SCSG relations and not by individuals as such.

A Danger in Groups

This is not to deny, however, that there are serious dangers attached to any normative analysis that relies on groups rather than individuals. Each of us has multiple SCSG affiliations and it is up to us individually to work out what kind of priority the various affiliations that are constitutive of our individual identities should be given at any particular time. No self-styled ‘group-leader’ can dictate to other group members that the source of that particular affiliation must take priority in their lives whether that is asserted as a necessity for a certain historical period or indeed forever. Marxists, feminists, gay activists, leaders of black liberation movements, and of religious, national or ethnic groups—each have provided examples of how this kind of group essentialism can become oppressive of group members. It is dogmatic and oppressive to insist that national liberation must take priority over the demand for gender justice, or that resistance to religious or racial discrimination must be subsumed into class struggle, or that gays and lesbians who do not put first the struggle to end all forms of discrimination on the grounds of sexual orientation are somehow disloyal to their group. Not only should it be left to each individual group member to work out how high a political priority to give to that particular affiliation, there must also be scope to distance oneself completely from the group. This potential is always present since individuals may find themselves drawn to a place where their priorities change and their identities shift. This might be due to new influences in personal relations with non-group members, or with a new awareness of a different group affiliation that cuts across that which had hitherto seemed most significant, or through a sense of no longer ‘belonging’ in the same way as before due to some perspective altering encounter with others that allows one to see things differently. All of these experiences lead us to relativize the importance of any specific SCSG affiliation. In certain circumstances such identity development could lead to an individual exiting a particular SCSG although this

is more likely for groups structured by class, age, membership status or religious differences than gender, race, sexual orientation or ability.

The upshot of this is that we can only make adequate space for individual autonomy in this normative analysis of the requirements of justice if we operate with an anti-essentialist conception of the SCSG. It must be acknowledged that SCSG memberships are constituted by basic social structures, that they motivate political activity and shape the environment in which politics operates. In this way SCSGs, as noted earlier, play a crucial mediating role in the project of realizing democratic justice. Yet SCSG memberships, if conceived of rigidly, dogmatically or in an essentialist manner, are potentially oppressive. For this reason, justice requires that ways be found to ensure that those who seek to represent group interests politically are accountable to all SCSG members. The equalization of communicative freedom among SCSGs must be accompanied, therefore, by strong provisions for individual rights and by measures that ensure substantive equality of opportunity for all individuals. These measures are included by Habermas in his own account of the rights that are to be considered conditions of the possibility of democratic law making.\textsuperscript{30} These civil rights should secure for each citizen adequate protections from discrimination and from all forms of identity-based oppression, whether they come from members of ‘other’ groups or from internal elites within their own group. We should not make the mistake of allowing the pursuit of equality to lead to a bolstering of internal group relations that are oppressive of some SCSG members.\textsuperscript{31}

Having guarded against the dangers of essentialism by reiterating the central role that individual rights and equality of opportunity play in the discourse theoretical scheme, it does, nonetheless, make sense to keep the focus of justice on SCSGs. We should seek to ensure that those groups, and not each individual citizen, enjoy equal and effective communicative freedom in democratic discourse. SCSGs will be made up of a range of diverse individuals with a wide range of talents, abilities and interests. Only some of these people will want to spend much of their time engaging in political activity and only some will have the leadership qualities and talents required to be effective in pursuit of the group’s political objectives. And while it is vital that individual group members are empowered to call their leaders and representatives to account, it is the group perspectives that will contribute to those forms of public discourse that feed into the legislative process. The important point is that if we are to achieve a just and vibrant democracy then the perspective of each SCSG must be articulated clearly and effectively by some of that group’s own representatives on any issue that matters importantly to them. We should eliminate any structural or systematic advantage that makes it more likely that members of one group will have the reasons and arguments put forward by their representative accepted or taken up by others. The reasons and arguments must speak for themselves if the outcome is to be democratically legitimate.

\textsuperscript{30} Habermas, supra note 3 at 122-23.
Recognition/Redistribution and Beyond: Critical Theory and Basic Citizen Capabilities

Effective communicative freedom can be understood in terms of the basic capabilities that are required if SCSGs are to engage constructively in public discourse. The idea of basic capabilities is central to the perspective on equality and justice that has been developed by both Amartya Sen and Martha Nussbaum, but here we need to focus directly on democratic capabilities. If we are to equalize effective communicative freedom then we need to identify which basic capabilities are required that will empower SCSGs to articulate their perspectives on matters of mutual concern. Citizens who seek to articulate and represent their SCSG perspective, while engaging constructively in democratic debate, require at least three basic capabilities associated with political agency. We can refer to these as agenda-setting, assumption-questioning, and claim-evaluating capabilities. First, it is important that citizens from each SCSG in society should be able to contribute to the democratic agenda by introducing new themes into political discourse and by raising public awareness about issues that affect them, particularly those that impact on them in a disproportional way. Secondly, they should be able to question effectively any unwarranted assumptions or prejudices that dominate current discourse and that result in them, or other SCSGs, suffering a deficit of due respect. Thirdly, they should have the necessary cognitive skills that allow them to evaluate critically a variety of competing claims, including the ability to adopt a self-critical perspective towards their own claims.

As was noted earlier, inclusive justice requires not only that all SCSG perspectives be taken into account, but also that they are articulated with equality of effectiveness. Only equality of effectiveness can ensure that outcomes will be just, as just outcomes should be driven by the weight of reasons put forward in discourse and not by the systematic advantages that one group may have over others. A focus on capabilities encourages critically minded social scientists to design research projects that assess the relative effectiveness of various SCSGs with respect to the basic citizen capabilities of setting agendas, questioning widely held assumptions and participating in the critical evaluation of competing claims. From a normative-theoretical perspective, the priority is to help set such a critical research agenda by identifying the major structural inequalities that disadvantage some SCSGs by denying under current arrangements equal opportunities to influence the political process.

Clearly the social structures that require critical attention include political,

34. Ibid. at 302-04.
economic, cultural and other relations that differentiate SCSGs. There have been a number of important debates among influential critical theorists in recent years exploring various ways of analyzing the requirements of justice. These have focused in particular on the relative merits of redistribution and the recognition of collective identities. Iris Young includes normative claims with economic and cultural dimensions in her account of five faces of oppression: exploitation, marginalization, powerlessness, cultural imperialism and violence. Yet Nancy Fraser accuses Young of failing in her account of justice as the ‘politics of difference’ to integrate adequately recognition and redistribution, and of giving undue weight to the cultural recognition of group identities at the expense of the politics of redistribution. Fraser identifies potential tensions between the demands of recognition and redistribution and she puts forward the idea of ‘participatory parity’ as capturing more effectively the notion that economic distribution and cultural recognition are two irreducible aspects of justice. While many injustices will have both distributive and recognition-related dimensions to them, Fraser believes that each can ultimately be traced back to either the economic structure or to the status order. Participatory parity requires that all citizens can interact with one another as peers and this provides a critical standard that can help us to order these claims. According to Fraser, just patterns of economic distribution provide the objective preconditions for participatory parity, while the intersubjective preconditions are provided by a just status order of cultural values.

Young responds to this critique by suggesting that Fraser’s model exaggerates the tension between cultural and economic struggles for justice and relies on an implausibly sharp distinction between the demands of recognition and those of redistribution. Young perceives an unhelpful dualism in Fraser’s approach, and she suggests that too many different forms of injustice are thrown together into the categories of the economic and the cultural and that this overlooks other forms of injustice to do with law or citizenship for example, that might be better described as being political. At the same time, in her more recent work, Young herself acknowledges that there is a danger that an over-emphasis on cultural differences may distract theorists of justice from their focus on those deep structural cleavages that are the source of entrenched political conflict. On the other hand, Fraser has also engaged in recent debate with Axel Honneth, with the latter claiming that the concept of recognition, if properly differentiated, provides normative grounds for the critique of all forms of injustice including those associated with economics and distribution. Against this claim, Fraser insists that recognition is only one aspect of a larger social and systemic complex.

35. Young, supra note 24.
39. Young, supra note 28 at 82.
What are we to make of these disagreements? It seems that all the participants in the recognition/redistribution debates share the aspiration to articulate and defend a substantively egalitarian account of justice that would be appropriate to a radically inclusive communicative democracy. All acknowledge there are various different forms of structural injustice and that these include material inequalities arising from the economic sphere as well as inequalities of status among identity-groups that arise from the cultural realm. Fraser is right to argue that the demands of recognition and of redistribution are not always in harmony and that to focus only on one would be to undermine some important struggles for justice. Furthermore, it is important to see that most significant injustices have, among other features, distributive and recognition-related aspects to them. There does, however, seem to be little gained by insisting that we theorize the demands of justice only in terms of those two analytical perspectives which the categories of redistribution and recognition provide. Young is right, therefore, to suggest that a multifaceted critical analysis is required. This allows us to tease out the various different aspects of structural injustice that could all be loosely connected to the economic realm: exploitation, deprivation, marginalization and powerlessness for example. It also facilitates the critical analysis of structural injustices that seem to require, say, political empowerment as opposed to either redistribution or recognition as a primary remedy. Structural inequalities that concern decision-making processes, the operation of legal procedures or access to communication networks come to mind. It is clear that we need to maintain a flexible and context-sensitive approach to the critical analysis of the multiple and complex forms of injustice in modern societies.

By arguing for the equalization of effective communicative freedom for all SCSGs I am hoping to provide an overarching conception of justice that is specifically directed to the achievement of a flourishing discursive democracy. Fraser’s notion of ‘parity of participation’ and Honneth’s idea of a just ‘recognition order’ also seek to provide some such overarching perspective on justice. The emphasis I place on communicative freedom gives a shaper focus, however, to the necessary connection between justice and democratic procedures. Furthermore, and in this I follow Young, my account should not be taken to imply that there is a determinate set of analytical perspectives that can help us to interrogate current injustices. For Honneth mutual recognition is all while Fraser argues for the perspectival dualism of recognition and redistribution. Such categories may constrain critical analysis unnecessarily by distracting us into tracing all injustices back to the recognition order or by assessing them all through economic or cultural lenses. If we focus our efforts on assessing how communicative freedom is to be equalized for all SCSGs by focusing on the basic capabilities of political agency outlined above, we needn’t restrict ourselves in this way to these potentially limiting explanatory matrices. We should rather remain open to the possibility that most injustices will have multiple aspects and that each must be interrogated critically in a context-sensitive way that avoids reducing the complexity of the issue under consideration. Regardless then of the analytical perspective we adopt, it seems clear that the effort to equalize communicative freedom for all SCSGs will initiate a program of radical social transformation that takes us far beyond Habermas’s own account of the procedures of a discursive democracy.
Meeting the Challenge of Globalization

We now need to turn to the challenge of globalization. I will assess briefly how the account of democratic justice I’ve defended here might apply at the global level. One of the undeniable features of late modern life is the ever-increasing force with which structures of the global order impinge on economic, cultural and political life within constitutional states. Right across these varied but interrelated spheres all societies have experienced in recent decades an accelerating process of global transformation. It is now impossible to theorize justice or democracy without attending to this multifaceted process and to the complex problems it generates. These include trade relations, international debt and North-South inequalities, hunger and malnutrition, systematic human rights abuses, the devastating impact of war, protracted ethno-national conflicts, international terrorism, the threat to the biosphere and ongoing environmental destruction, gender inequality and the marginalization of women, HIV and Aids. The project must be to democratize the process of globalization by allowing all those affected by the transnational economic, cultural and political order to participate fully in managing these processes. But how are we to conceive of the equalization of effective communicative freedom as a demand of justice, if the domestic and the international can no longer be distinguished from one another in ways that most assumed possible for much of the modern era? Must the project of radical democratization we have been considering now be presented as a strongly universalist, cosmopolitan vision for a post-national era, or does the constitutional nation-state still have a significant role to play in achieving just democratic structures at a global level? I suggest that we should give partially affirmative answers to both parts of this last question.

In order for the project of democratizing complex processes of global transformation to get off the ground, progress is needed on two levels. First, we require a stronger global public sphere, a forum that by mobilizing citizens across national boundaries takes some aspects of politics into a post-national realm. This global public sphere, which came alive for example in the protests across the world during the build-up to the 2003 war in Iraq, plays at the transnational level a similar role to that of the national public sphere within the constitutional state. Transnational groups and non-governmental organizations mobilize around issues of common concern and they mount protests and make demands on behalf of the world’s most vulnerable people. While activists and leaders of these transnational groups must

remain accountable to those they represent, their effectiveness depends on their
developing the basic citizen capabilities required to set political agendas, question
widely held assumptions and engage constructively in the critical evaluation of
competing claims. But if this process of transnational deliberation and opinion for-
mation is to be transformed into an effective system of just global governance, then
we also need progress at a second level, that of the nation state and the international
political and legal order.

Qualified Cosmopolitanism

There is a tendency in the work of cosmopolitan theorists of a global civil society,
to overlook the significance of institutional agencies of political transformation. 44
Yet institutional networks of political and legal equality at both national and inter-
national levels are essential to the project of radical democratization. We need to
be wary of the danger that some demands for equality within the constitutional state
could be undermined if the nation-state itself is bypassed as a site of political strug-
gle. An exclusively post-national focus for protest might deprive disadvantaged
SCSGs within states of some important opportunities to achieve justice.
Furthermore, since most transnational activists are based in relatively privileged
Western societies, there is also a danger that new hierarchies will be introduced
at the global level that further weaken and marginalize citizens of less privileged
states by making them vulnerable to intervention from richer states. 45 The govern-
ments of many ‘enlightened’ Western societies are more than happy to ride
roughshod over the democratic will of less developed countries when it is in their
interests to do so and they can use cosmopolitan arguments that undermine the
sovereignty of these weaker states to rationalize such neo-imperialistic intervention.

It would seem, therefore, that the international legal order, with its formal assump-
tion of equality between self-determining states, may in some respects, offer better
protection to the world’s least privileged people than would a complete abandon-
ment of state sovereignty in favor of a Western dominated form of transnational
politics. This is not to say that key international organizations such as the United
Nations are not in need of radical reform, but rather to point out that vulnerable
peoples may find a more effective voice through international as opposed to global
networks of communication.

So while it is vital that transnational organizations enjoy effective communicative
freedom in articulating their perspective, it is perhaps even more urgent that we
attend to the current global structure of inequality between states. It is clear that
national governments, and some supranational institutions like the European Union,
remain the dominant actors in world politics. The fact, under current circumstances,
that only they can respond effectively as agents to the issues and problems is

44. David Chandler, ‘New Rights for Old? Cosmopolitan Citizenship and the Critique of State
45. Ibid. at 344-47. See also Gideon Baker, ‘Problems in the Theorisation of Global Civil Society’
brought to our attention through deliberation within global civil society. It is states that wage war on one another and states that intervene militarily in other sovereign jurisdictions, sometimes on humanitarian grounds but often not. States negotiate treaties, or obstruct negotiations, on trade and international debt, the environment, global health concerns, gender inequalities and human rights. Without a constructively co-operative dialogue among nation states, and between them and non-governmental organizations, then little progress is likely on the agendas that are most pressing for many transnational groups and the people they represent. Only some such inclusive system of international co-operation can get to grips with the key challenges of the global era. The main obstacle to the emergence of this system of international co-operation is the current global basic structure. Just as SCSGs stand in relations of relative advantage or disadvantage to one another within the basic structure of a constitutional state, so nation-states stand in such relations to one another within the global basic structure.

States can be considered, therefore, in the context of the structure of the global order, to be analogous to SCSGs within one constitutional state. So long as they remain accountable to their people, state representatives play an essential role in the task of managing the process of global transformation and in establishing a just system of global governance. Indeed the identity-forming power of nation-states as legally constituted communities is such that they satisfy the demand for inclusion that forms the basis of legitimate democratic politics much more effectively than Western dominated transnational groups could do. States play a vital role in mediating between their domestic SCSGs and the global political community. We should, therefore, seek to equalize effective communicative freedom among constitutional nation-states in order to set in place an inclusive international dialogue that can begin to bring processes of global transformation under democratic control. Structural inequalities among nation-states are so stark at present that this system of co-operation, with its promising potential for a future of just global governance, has little or no chance of being established.

**Toward a Maximally Inclusive International Order**

When the outcome of international negotiations is driven by the systematic advantages that one participant enjoys over others as opposed to the force of reason, then we see the subversion of democratic procedures by illegitimate power. But this is precisely the way the existing system of international co-operation is subverted at present. Particularly since 9/11, although things were hardly much different before that, the USA acts unilaterally in military, economic and political affairs as the one and only world superpower. It seeks support from a selected group of allies so as to increase the apparent legitimacy of its actions but is willing to go it alone if no such support is forthcoming. Organizations such as the United Nations remain hopelessly vulnerable, therefore, to the destabilizing impact of power politics, and so the stronger states rule because they have the economic and military power to impose their will on others. In such a context, the warnings that might be generated by the global public sphere on a whole range of crucial issues will
go unheeded. A more integrated Europe could, perhaps, develop into a normative counterweight to the hegemonic power of the USA. This is the hope that Habermas himself has expressed, along with Jacques Derrida and several other leading European philosophers, in a newspaper campaign led by Habermas in the wake of the war on Iraq and the prospects for a European Constitution. But that counterweight to American hegemony would hardly amount to the kind of inclusive international order that justice requires.

What is needed then to meet the challenge of globalization, and to complement an increasingly vibrant global public sphere, is a maximally inclusive international community of states. Each state should have equal and effective communicative freedom, relative to size of population, to articulate its perspective on questions to how various aspect of the globalization process should best be managed. This equalization of effective communicative freedom represents the demands of inclusive justice at the global level and this should ensure that the outcomes of international democratic co-operation are themselves just. But as with SCGs within constitutional states, it is essential that all states within this system of international co-operation respect the individual autonomy of its citizens. This will require each of them to uphold strong provisions for individual rights and measures that ensure substantive equality of opportunity for all citizens. Global justice only requires equalization of communicative freedom among those constitutional states that respect these rights provisions. This is a challenge to all states, not only to those who are privileged by the political, economic and cultural structures of the current global order. The strengthening of human rights provisions within each constitutional state should be thought of as a project that runs in parallel with the achievement of an egalitarian global order and a just system of international co-operation. Within such a system the representatives of each state will have equal and effective communicative freedom, relative to the size of their populations, and will exercise those basic capabilities of political agency that allow them to participate fully as equals in this dialogue. Such participation relies on a radical transformation of the global basic structure.

The next question is how we can begin to identify what needs to be done in order to direct this process of transformation and to make this normative vision into a realistic utopia. That will require the kind of multifaceted critical analysis of globalization processes that I advocated in the previous section for domestic basic structures when discussing the recognition/redistribution debates. While the injustices of the global basic structure will involve even more radically comprehensive strategies of transformation with regard to political structures of representation, the logic of economic distribution and the cultural order of recognition, we need not seek to impose any rigid set of analytical categories on this vast critical project. We should rather remain open to the multiplicity and interrelated nature of the various causes of global inequality, to the structure of any hierarchical relations between nation states, and to the complexity of the many different remedies that might be required in order to address these injustices.
