3: Models of Public Space: Hannah Arendt, the Liberal Tradition and Jürgen Habermas


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The art of making distinctions is always a difficult and risky undertaking. Distinctions can enlighten as well as cloud an issue. One is always also vulnerable to objections concerning the correct classification of the thought of certain thinkers. This chapter will side-step questions of historical interpretation and classification in order to delineate three different conceptions of "public space" that correspond to three main currents of western political thought. The view of public space common to the "republican virtue" or "civic virtue" tradition is described as the "agonistic" one and the thought of Hannah Arendt will be the main point of reference. The second conception is provided by the liberal tradition, and particularly by those liberals who, beginning with Kant, make the problem of a "just and stable public order" the center of their political thinking. This will be named the "legalistic" model of public space. The final model of public space is the one implicit in Jürgen Habermas's work. This model, which envisages a democratic-socialist restructuring of late-capitalist societies, will be named "discursive public space."

By situating the concept of "public space" in this context, the discussion is restricted from the outset to normative political theory. The larger sense of the term Öffentlichkeit, which would include a literary, artistic and scientific public, will not be of concern here; for whatever other applications and resonances they might have, the terms "public," "public space," "res publica" will never lose their intimate rootedness in the domain of political life. This approach will help highlight certain very significant differences among political theories all of which on the surface appear to accord central place to "public space" or "publicity" in political life. Not only are there important differences among these three conceptions of public space, but two of these views are severely limited in their usefulness for analyzing and evaluating political discourse and legitimation

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problems in advanced capitalist, and possibly even in what is now being referred to as "soviet style," societies. 1 When compared with the Arendtian and liberal conceptions, the strength of the Habermasian model is that questions of democratic legitimacy in advanced capitalist societies are central to it. Nevertheless, whether this model is resourceful enough to help us think through the transformation of politics in our kinds of societies is an open question. Taking the women's movement and the feminist critique of the public/private distinction as a point of reference, the final sections of this chapter will probe the discourse model of public space from this point of view.

Hannah Arendt and the Agonistic Concept of Public Space
Hannah Arendt is the central political thinker of this century whose work has reminded us with great poignancy of the "lost treasures" of our tradition of political thought, and specifically of the "loss" of public space, of der öffentliche Raum, under conditions of modernity. Hannah Arendt's major theoretical work, The Human Condition, is usually, and not altogether unjustifiably, treated as an antimodernist political work. By "the rise of the social" in this work, Arendt means the institutional differentiation of modern societies into the narrowly political realm on the one hand and the economic market and the family on the other. As a result of these transformations, economic processes which had hitherto been confined to the "shadowy realm of the household" emancipate themselves and become public matters. The same historical process which brought forth the modern constitutional state also brings forth "society," that realm of social interaction which interposes itself between the "household" on the one hand and the political state on the other. A century ago, Hegel had described this process as the development in the midst of ethical life of a "system of needs" (System der Bedürfnisse), of a domain of economic activity governed by commodity exchange and the pursuit of economic self-interest. The expansion of this sphere meant the disappearance of the "universal", of the common concern for the political association, for the res publica, from the hearts and minds of men. Arendt sees in this process the occluding of the political by the "social" and the transformation of the public space of politics into a psuedospace of interaction in which individuals no longer "act" but "merely behave" as economic producers, consumers and urban city dwellers.

This relentlessly negative account of the "rise of the social" and the decline of the public realm has been identified as the core of Arendt's political "anti-modernism." Indeed, at one level Arendt's text is a panegyric to the agonistic political space of the Greek polis. What disturbs the contemporary reader is perhaps less the high-minded and highly idealized picture of Greek political life which Arendt draws but more her neglect of the following constellation of issues. The agonistic political space of the polis was only possible because large groups of human beings like women, slaves, laborers, non-citizen residents, and all non-Greeks were excluded from it and made possible through their "labor" for the daily necessities of life that "leisure for politics" which the few enjoyed; by contrast, the rise of the social was accompanied by the emancipation of these groups from the "shadowy interior of the household" and by their entry into public life; is Arendt's critique of this process also a critique of political universalism as such? Is the "recovery of the public space" under conditions of modernity necessarily an elitist and anti-democratic project which can hardly be reconciled with the demand for universal political emancipation and the universal extension of citizenship rights that have accompanied modernity since the American and French revolutions?

Yet it is greatly misleading to read Hannah Arendt primarily as a nostalgic thinker. She devoted as much space in her work to analyzing the dilemmas and prospects of
politics under conditions of modernity as she did to the decline of public space in modernity. If we are not to read her account of the disappearance of the public realm as a Verfallsgeschichte (a history of decline) then, how are we to interpret it? The key here is Arendt's odd methodology which conceives of political thought as storytelling. Viewed in this light, her "story" of the transformation of public space is an "exercise" of thought. Such thought exercises dig under the rubble of history in order to recover those "pearls" of past experience, with their sedimented and hidden layers of meaning, such as to cull from them a story that can orient the mind in the future. 6 The vocation of the theorist as "storyteller" is the unifying thread of Arendt's political and philosophical analyses from the origins of totalitarianism to her reflections on the French and American revolutions to her theory of public space and to her final words to the first volume of The Life of the Mind on "Thinking".

I have clearly joined the ranks of those who for some time now have been attempting to dismantle metaphysics, and philosophy with all its categories, as we have known them from their beginning in Greece until today. Such dismantling is possible only on the assumption that the thread of tradition is broken and we shall not be able to renew it. Historically speaking, what actually has broken down is the Roman trinity that for thousands of years united religion, authority, and tradition. The loss of this trinity does not destroy the past...

What has been lost is the continuity of the past... What you then are left with is still the past, but a fragmented past, which has lost its certainty of evaluation. 7

Read in this light, Arendt's account of the "rise of the social" and the decline of public space under conditions of modernity can be viewed not as a nostalgic Verfallsgeschichte but as the attempt to think through the human history sedimented in layers of language. We must learn to identify those moments of rupture, displacement and dislocation in history. At such moments language is the witness to the more profound transformations taking place in human life. Such a Begriffsgeschichte is a remembering, in the sense of a creative act of "re-membering", that is, of putting together the "members" of a whole, of a rethinking which sets free the lost potentials of the past. "The history of revolutions... could be told in a parable form as the tale of an age-old treasure which, under the most varied circumstances, appears abruptly, unexpectedly, and disappears again, under different mysterious conditions, as though it were a fata morgana." 8

Nonetheless, Arendt's thought is not free of assumptions deriving from an Ursprungsphilosophie which posits an original state or temporal point as the privileged source to which one must trace back the phenomena such as to capture their "true" meaning. As opposed to rupture, displacement and dislocation, this view emphasizes the continuity between the past origin and the present condition, and seeks to uncover at the origin the lost and concealed essence of the phenomena. There are really two
strains in Hannah Arendt's thought, one corresponding to the method of fragmentary historiography, and inspired by Walter Benjamin, the other inspired by the phenomenology of Husserl and Heidegger, and according to which memory is the mimetic recollection of the lost origins of phenomena as contained in some fundamental human experience. In accordance with this latter approach, reminders abound in the The Human Condition of "the original meaning of politics" or of the "lost" distinction between the "private" and the "public." The concept that perhaps best illustrates Arendt's equivocation between fragmentary history and Ursprungsphilosophie is that of "public space." This topographical figure of speech is suggested early on in her work, at the end of The Origins of Totalitarianism, to compare various forms of political rule. Constitutional government is likened to moving within a space where the law is like the hedges erected between the buildings and one orients oneself upon known territory. Tyranny is like a desert; under conditions of tyranny one moves in an unknown, vast, open space, where the will of the tyrant occasionally befalls one like the sandstorm overtaking the desert traveler. Totalitarianism has no spatial topology: it is like an iron band, compressing people increasingly together until they are formed into one.

Indeed, if one locates Arendt's concept of "public space" in the context of her theory of totalitarianism, it acquires a rather different focus than the one dominant in The Human Condition. The terms "agonistic" and "associational" can capture this contrast. According to the "agonistic" view, the public realm represents that space of appearances in which moral and political greatness, heroism and preeminence are revealed, displayed, shared with others. This is a competitive space, in which one competes for recognition, precedence and acclaim; ultimately it is the space in which one seeks a guarantee against the futility and the passage of all things human: "For the polis was for the Greeks, as the res publica was for the Romans, first of all their guarantee against the futility of individual life, the space protected against this futility and reserved for the relative permanence, if not immortality, of mortals." By contrast, the "associational" view of public space suggests that such a space emerges whenever and wherever, in Arendt's words, "men act together in concert." On this model, public space is the space "where freedom can appear." It is not a space in any topographical or institutional sense: a town hall or a city square where people do not "act in concert" is not a public space in this Arendtian sense. But a private dining room in which people gather to hear a Samizdat or in which dissidents meet with foreigners become public spaces; just as a field or a forest can also become public space if they are the object and the location of an "action in concert," of a demonstration to stop the construction of a highway or a military airbase, for example. These diverse topographical locations become public spaces in that they become the "sites" of power, of common action coordinated through speech and persuasion. Violence can occur in private and in public, but its language is essentially private because it is the language of pain. Force, like violence, can be located in both realms. In a way, it has no language, and nature remains its quintessential source. It moves...
without having to persuade or to hurt. Power, however, is the only force that emanates from action, and it comes from the mutual action of a group of human beings: once in action, one can make things happen, thus becoming a source of a different kind of "force."

The distinction between the "agonal" and the "associational" models corresponds to the Greek as opposed to the modern experience of politics. The agonal space of the polis was made possible by a morally homogeneous and politically egalitarian, but exclusive community, in which action could also be a revelation of the self to others. Under conditions of moral and political homogeneity and lack of anonymity, the "agonal" dimension, the vying for excellence among peers, could take place. But for the moderns public space is essentially porous; neither access to it nor its agenda of debate can be predefined by criteria of moral and political homogeneity. With the entry of every new group into the public space of politics after the French and American revolutions, the scope of the public gets extended. The emancipation of workers made property relations into a public-political issue; the emancipation of women has meant that the family and the so-called private sphere become political issues; the attainment of rights by non-white and non-Christian peoples has put cultural questions of collective self- and other-representations on the "public" agenda. Not only is it the "lost treasure" of revolutions that eventually all can partake in them, but equally, when freedom emerges from action in concert, there can be no agenda to predefine the topic of public conversation. The struggle over what gets included in the public agenda is itself a struggle for justice and freedom. The distinction between the "social" and the "political" makes no sense in the modern world, not because all politics has become administration and because the economy has become the quintessential "public," as Hannah Arendt thought, but primarily because the struggle to make something public is a struggle for justice.

Perhaps the episode which best illustrates this blind spot in Hannah Arendt's thought is that of school desegregation in Little Rock, Arkansas. Arendt likened the demands of the black parents, upheld by the US Supreme Court, to have their children admitted into previously all-white schools, to the desire of the social parvenue to gain recognition in a society that did not care to admit her. This time around Arendt failed to make the "fine distinction" and confused an issue of public justice -- equality of educational access -- with an issue of social preference -- who my friends are or whom I invite to dinner. It is to her credit, however, that after the intervention of the black novelist, Ralph Ellison, she had the grace to reverse her position. 15

At the root of Arendt's vacillations on this issue lies a more important problem, namely her phenomenological essentialism. In accordance with essentialist assumptions, "public space" is defined either as that space in which only a certain type of activity, namely action as opposed to work or labor, takes place or it is delimited from other "social" spheres with reference to the substantive content of the public dialogue. Both strategies lead to dead-ends. Let us note that the differentiation of
action types into labor, work and action, and the principle of public space operate on
different levels. Different action-types, like work and labor, can become the locus of
"public space" if they are reflexively challenged and placed into question from the
standpoint of the asymmetrical power relations governing them. To give a few
examples: obviously "productivity quotas" in

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the factory workshop, how many chips per hour a worker should produce, can become
matters of "public concern," if the legitimacy of those setting the quotas, their right to
do so, their reasons for doing so are challenged. Likewise, as recent experience has
shown us, even the most intricate questions of nuclear strategy, like the number of
nuclear warheads on a missile, the time required to diffuse them etc. can be
"reclaimed" by a public under conditions of democratic legitimacy and become part of
what our "res publica" is about. Arendt, by contrast, relegated certain types of activity
like work and labor, and by extension most, if not all, issues of economics and
technology to the "private" realm alone, ignoring that these activities and relations,
insofar as they are based on power relations, could become matters of public dispute
as well.

Likewise, the attempt to define "public space" by specifying the agenda of the public
conversation is futile. Even on Arendtian terms, the effect of collective action in
concert will be to put ever new and unexpected items on the agenda of public debate.
Arendt herself in the "associational" model developed not a substantive but a
procedural concept of public space, which is in fact compatible with this view. What is
important here is not so much what public discourse is about as the way in which this
discourse takes place: force and violence destroy the specificity of public discourse by
introducing the "dumb" language of physical superiority and constraint and by
silencing the voice of persuasion and conviction. Power alone is generated by public
discourse and is sustained by it. From the standpoint of this procedural model, neither
the distinction between the social and the political nor the distinction between work,
labor or action are that relevant. At stake is the reflexive questioning of issues by all
those affected by their foreseeable consequences and the recognition of their right to
do so.

When compared to Hannah Arendt's reflections, the advantage of the liberal concept
of public space is that the link between power, legitimacy and public discourse is
made most explicit by it. Yet this model is also more sterile than the Arendtian one in
that it conceives of politics too closely along the analogy of juridical relations, thereby
losing that emphasis on spontaneity, imagination, participation and empowerment
which Arendt saw to be the mark of authentic politics whenever and wherever it
occurred.

The Liberal Model of Public Space as "Public Dialogue"
With his model of "liberal dialogue," Bruce Ackerman expresses a fundamental tenet of contemporary liberalism: liberalism is a form of political culture in which the question of legitimacy is paramount. 16

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Liberalism is a way of talking about and publicly justifying power, a political culture of public dialogue based on certain kinds of conversational constraints. The most significant conversational constraint in liberalism is neutrality, which rules that no reason advanced within a discourse of legitimation can be a good reason if it requires the power holder to assert two claims: (a) that his conception of the good is better than that asserted by his fellow citizens; or that (b) regardless of his conception of the good, he is intrinsically superior to one or more of his fellow citizens. 17

Bruce Ackerman bases his case for public dialogue "not on some general feature of the moral life, but upon the distinctive way liberalism conceives of the problem of public order." 18 His question is how different primary groups, about whom we only know that they do not share the same conception of the good, can "resolve the problem of coexistence in a reasonable way." 19 Ackerman believes that citizens in a liberal state must be guided by a Supreme Pragmatic Imperative (SPI) which states that they must be willing to participate in an ongoing dialogue about their conception of the good with others who are not members of their primary group.

Ackerman is concerned to find a justification of this imperative that will not fall into the three traps which traditionally affect moral philosophies of liberalism. One must find a justification of the SPI that is not based on trumping, that is, already asserting as supreme one moral view over others. Furthermore, one cannot assume, as utilitarians do, that there is a translation manual neutral enough in its language and in terms of which all our various moral commitments can be stated. According to Ackerman, such a translation manual would violate the sense of the good of one of the parties. Finally, one cannot ask the parties to assume a "transcendental perspective" as the precondition for entering into dialogue. Such a transcendental perspective, let us say the point of view of the "original position" or that of the "ideal speech situation," abstracts so radically from the condition of existing differences that it forces the parties to the public dialogue to assent to moral truths which they do not hold.

The way out is the path of "conversational restraint."

When you and I learn that we disagree about one or another dimension of the moral truth, we should not search for some common value that will trump this disagreement; nor should we try to translate our moral disagreement into some putatively neutral framework; nor should we seek to transcend our disagreement by talking about how some hypothetical creature would resolve it. We should simply say nothing at all about this disagreement and try to solve our problem by invoking premises that we do agree upon. In restraining ourselves in this way, we need not lose the chance to talk to one another about our
deepest, moral disagreements in countless other, more private, contexts. Having constrained the conversation in this way, we may instead use dialogue for pragmatically productive purposes: to identify normative premises all political participants find reasonable (or, at least, not unreasonable. 20 (Emphasis added)

The pragmatic justification of "conversational restraint" is not morally neutral; this justification trumps certain conceptions of the good life in that it privatizes them and pushes them out of the agenda of public debate in the liberal state. 21 Not only members of certain religious groups, who may still seek to convert others to their faith, but also all groups working for the radical change of the social structure would then have to withdraw from the public arena of the liberal state into other more "private" contexts. The difference between my defense of a communicative ethic which also "trumps" certain conventional views of morality and Bruce Ackerman's defense of conversational restraints is that on the model of practical discourse following from communicative ethics, no issues of debate and no conceptions of the good life are precluded from being voiced in the public arena of the liberal state. Ackerman and I agree that conventional views of morality are not likely to be impartial and comprehensive enough to allow the public coexistence of differing and competing conceptions of the good life. Thus they cannot serve as the moral foundations of a liberal-democratic state. Yet they should be allowed to exist in such a state as partial conceptions of the good which enjoy an equal public forum with other more comprehensive views. 22

The pragmatic justification not only trumps but also "transcends" for it asks the parties to the conversation to agree to "say nothing at all about" fundamental disagreements. It is unclear why this agreement not to talk about fundamental disagreements in public is any less loaded or controversial an assumption than the idea of a "veil of ignorance" which asks us to feign ignorance about our conception of the good. If I am deeply committed to the belief that prevalent conceptions of sexual division of labor in our societies are morally wrong because they oppress women and hinder their full expression of themselves as human beings, why should I agree not to do the best I can to make this a public issue and to convince others of my point of view? Or suppose I am a member of the Israeli opposition to the occupation of the West Bank and Gaza territories. I consider this occupation wrong not on pragmatic grounds but on moral grounds, because I believe that the occupation is corrupting the ethical values of the Jewish people. I may well be aware that under current conditions, public opinion is so divided that I stand no chance of winning assent; nevertheless is it unreasonable of me to seek the widest possible forum of public discussion and participation to air my views, rather than to agree with you, as Ackerman advocates, not to talk about what is of most concern to me. Either Ackerman's justification of the SPI is based on stronger
moral grounds than he admits to or it cannot claim the supreme status it is supposed to enjoy. 23

But is the path of conversational restraint indeed so arbitrary? Why not regard it as one of those procedural constraints on dialogue that we all have to agree to on reasonable, moral grounds, even if not wholly pragmatic ones? The idea of conversational restraint, as it has been presented so far, presupposes a questionable moral epistemology which implicitly justifies a separation between the public and the private that is oppressive to the concerns of certain groups. On these grounds as well its moral persuasiveness is limited.

By the "moral epistemology" of the conversational restraint model I mean the following. The liberal theorist of conversational restraint presupposes that the primary groups to the conversation already know what their deepest disagreements are even before they have engaged in the conversation. These groups already seem convinced that a particular problem is a moral, religious or aesthetic issue as opposed to an issue of distributive justice or public policy. While we can legitimately discuss the second, says the liberal theorist, let us abstract from the first. Take, however, issues like abortion, pornography and domestic violence. What kinds of issues are they? Are they questions of "justice" or of the "good life"? The moral or political theorist is in possession of no moral dictionary or moral geometry in this matter such as would allow her to classify these issues as being matters of "justice" or of the "good life." In part it is the unconstrained public dialogue that will help us define the nature of the issues we are debating. Certainly, as citizens and as theorists we enter the public fray with a set of more or less articulated, more or less preformed opinions, principles and values. As democratic citizens and theorists we are participants in a debate, but we should not seek to define the agenda of the debate. We may, on the basis of more or less well supported principles and values, wish to maintain that abortion should be considered a matter of individual choice for the women involved; but it is not a (non-existent) consensus about the kind of issue this is that leads us to this position. Rather principles of moral autonomy and moral choice, the right of women to self-realization, and some sensitivity to the often tragic and irreconcilable aspects of our value commitments inform our views. Indeed citizens must feel free to introduce, in Bruce Ackerman's words, "any and all moral arguments into the conversational field." For it is only after the dialogue has

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been opened in this radical fashion that we can be sure that we have come to agree upon a mutually acceptable definition of the problem rather than reaching some compromise consensus.

The issue of pornography illustrates my point well. This question has been so divisive and has created such strange and unholy alliances -- as between Andrea Dworkin and Jerry Falwell for example -- that it is the paradigm example of the kind of moral disagreement that the modus vivendi liberal may urge us to agree not to publicly disagree about. This, however, is precisely what we should not do at this stage of the
debate. Whether pornography is to be defined as a question of the reasonable limitations to be imposed upon the First Amendment right of free speech; whether pornography is to be thought of as a private, moral issue concerning matters of sexual taste and style; whether pornography is to be thought of as a matter of aesthetic-cultural sensibility and as a question of artistic fantasy -- we simply cannot know before the process of unconstrained public dialogue has run its course. I no more want to live in a society which cannot distinguish between Hustler magazine and Salinger's Catcher in the Rye than Ackerman does, or in a society that would place Henry Miller and D. H. Lawrence in the company of Deep Throat. As sensitive as one may be to the traditional liberal fear that unlimited public conversation might erode those few constitutional guarantees we can rely upon, the reprivatization of issues that have become public only generates conceptual confusion, political resentment and moral outrage. I consider limitations upon the content and scope of public dialogue, other than constitutional guarantees of free speech, to be unnecessary. A normative theory of such conversational constraints fails to become a critical model of legitimation.

An additional limitation of the liberal model of public space is that it conceives of political relations all too often narrowly along the model of juridical ones. The chief concern expressed by the idea of "dialogic neutrality" is that of the rightful coexistence of different groups, each subscribing to a different conception of the good, in a pluralistic society. The just in modern societies, it is said, should be neutral vis-a-vis fundamental assumptions concerning the good life. Neutrality is indeed one of the fundamental cornerstones of the modern legal system: modern, promulgated law, unlike ancient and customary law, should not "ethically" mold character but should provide the space within which autonomous individuals can pursue and develop various conceptions of the good life. Even under conditions of a modern, pluralist, democratic society, however, politics is about something other than "neutrality." Democratic politics challenges, redefines and renegotiates the divisions between the good and the just, the moral and the legal, the private and the public. For these distinctions, as they have been established by modern states at the end of social and historical struggles, contain within them the result of historical power compromises.

To illustrate. Before the emergence of strong working-class movements and the eventual establishment of social-welfare type measures in European countries and North America, questions relating to the health of workers in the workplace, problems of accidents on the job, and in our days, the harmful side-effects of certain chemicals, were frequently construed by employers as issues of "trade secrets" and "business privacy." As a result of political struggles the definition of these issues were transformed from trade secrets and private business practices to major issues of "public concern." The principle of liberal neutrality is not helpful in guiding our thoughts on such matters. All it says is that once this redefinition and political renegotiation of the right and the good has occurred, then the law should be neutral; that is OSHA (Office of Safety and Health Administration) should be neutral in
applying this legislation to Chinese laundromats, Italian restaurants or the Lockheed corporation. But public dialogue is not about what all the Chinese laundromats, Italian restaurants and the Lockheed corporation know they agree to, even before they have entered the public foray; rather public dialogue means challenging and redefining the collective, good, and one's sense of justice as a result of the public foray. The liberal principle of dialogic neutrality, while it expresses one of the main principles of the modern legal system, is too restrictive and frozen in application to the dynamics of power struggles in actual political processes. A public life, conducted according to the principle of liberal dialogic neutrality, would not only lack the agonistic dimension of politics, in Arendtian terms, but perhaps more severely, it would restrict the scope of the public conversation in a way which would be inimical to the interests of oppressed groups. All struggles against oppression in the modern world begin by redefining what had previously been considered "private", non-public and non-political issues as matters of public concern, as issues of justice, as sites of power which need discursive legitimation. In this respect, the women's movement, the peace movement, the ecology movements, and new ethnic identity movements follow a similar logic. There is little room in the liberal model of neutrality for thinking about the logic of such struggles and social movements. In Arendtian language, liberalism ignores the "agonistic" dimension of public-political life.

Given the historical concerns out of which political liberalism has emerged and to which it has sought an answer, like the limits of absolutist state power and the problems of religious tolerance, this is hardly surprising. The search for a just, stable and tolerant political

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order has been the distinguishing mark of liberal political theory. This search has also led to an excessive focus in contemporary liberalism upon the limits and justification of state power and other public agencies to the neglect of other dimensions of political life, like life in political associations, movements, citizens' groups, town meetings, and public fora. In Benjamin Barber's perspicacious words, among the cognitive requirements of contemporary liberalism appears to be "an antipathy to democracy and its sustaining institutional structures (participation, civic education, political activism) and a preference for 'thin' rather than strong versions of political life in which citizens are spectators and clients while politicians are professionals who do the actual governing..." 24 Certainly, this is no place to settle the old conflict between liberalism and democracy. Benjamin Barber's observation is quite to the point insofar as it might help us see why the concept of "public space," as a space of political deliberation, action and exchange plays such a minimal role in contemporary liberalism. It is as if once the "constitutional assembly" in which we select principles of a just political association is over, the citizens of the liberal state retire into their private abodes and quit the democratic arena of political give and take.

The contrast between democratic deliberation, of the sort envisaged by Arendt and Barber, and the liberal conception of public dialogue can be well captured when
juxtaposed to John Rawls's idea of "free public reason." Rawls specifies this principle as follows:

Just as a political conception of justice needs certain principles of justice for the basic structure to specify its content, it also needs certain guidelines of enquiry and publicly recognized rules of assessing evidence to govern its application. Otherwise, there is no agreed way for determining whether these principles are satisfied, and for settling what they require of particular institutions, or in particular situations.... And given the fact of pluralism, there is, I think, no better practical alternative than to limit ourselves to the shared methods of, and the public knowledge available to common sense, and the procedures and conclusions of science when these are not controversial. 25

Rawls adds the very important observation that "The maxim that justice must not only be done, but be seen to be done, holds good not only in law but in free public reason." 26

The idea that the justice of institutions be "in the public's eye," so to speak, for the public to scrutinize, to examine and reflect upon is fundamental. That it recognizes the legitimation of power or the examination of the justice of institutions to be a public process, open to all citizens to partake in, is one of the central tenets of liberalism and one which has its roots in the political primacy of consent in social contract theories. From the standpoint of a discourse model of legitimacy as well this is crucial. Note, however, that for Rawls "free public reason" does not describe the kind of reasoning used by citizens and their representatives in the polity. Undoubtedly, Rawls would like them to exercise their "free public reason" in this way. But as the idea of free public reason has been formulated it applies less to a process of democratic discussion or parliamentary debate than to the reasoning of a parliamentary investigative body or the kind of investigation a federal agency may conduct when determining whether a hospital which has received public funds has also complied with affirmative action regulations. In Rawls's view, free public reason is the manner in which public associations account for their doings and conduct their affairs in a polity. 27

While there is little doubt that this principle of free public reason expresses a governing normative rule for the public accountability of the major institutions of a liberal-democratic society, consider also what is missing from it. All contestatory, rhetorical, affective, impassioned elements of public discourse, with all their excesses and virtues, are absent from this view. Free public reason is not freely wielded public reasoning, with all the infuriating ideological and rhetorical mess that this may involve. Again in his comment on Ackerman, Benjamin Barber captures this point well. "It is neutrality that destroys dialogue, for the power of political talk lies in its creativity, its variety, its openness and flexibility, its inventiveness, its capacity for discovery, its subtlety and complexity, its potential for empathetic and affective expression -- in other words, in its deeply paradoxical, some would say, dialectical,
character." 28 Certainly, one cannot only focus on the speeches of Abraham Lincoln, Adlai Stevenson and Jesse Jackson to the exclusion of the less ennobling outbursts of a Richard Nixon, Fidel Castro or Nikita Khrushchev. What Barber's observation captures nonetheless is the open-ended, contestatory, affective dimension of the political through which free public reason can assume the character of "shared reasoning."

To this conception of contestatory public speech 29 or shared reasoning, the liberal theorist will respond that, lofty and ennobling as its vision may be, the agonistic view of the political leaves the flood gates open for the whim of majoritarian decisions. What if less than noble majorities challenge the principles of neutrality and the lines between the right and the good in such ways as to lead to religious fanaticism, persecution of unpopular minorities, intrusion of the state into the domain of private life, or even the political condoning of surveillance by children of parents, by spouses of each other, all in the name of some shared good? In response to such concerns John Rawls suggests that certain matters be taken off the political agenda of the liberal state insofar as "They are part of the public charter of a constitutional regime and not a suitable topic for on-going public debate and legislation, as if they can be changed at any time, one way or the other." 30 The rejection of slavery and serfdom and the guarantee for all religions of equal liberty of conscience are among the topics which should be taken off the political agenda of the liberal state for Rawls. He adds: 'Of course, that certain matters are taken off the political agenda does not mean that a political conception of justice should not explain why this is done. Indeed, as I note above, a political conception should do precisely this." 31

This standard liberal concern about the corrosive effect of unbridled majoritarian politics upon civil and political liberties is, I believe, incontrovertible. Agonistic visions of the political are often inattentive to the institutional preconditions which must be fulfilled for such a politics to unfold. But for complex, democratic societies the contrast between "the agonistic" and "the legalistic" conceptions of public space may be overly simplistic to the extent that a liberal, legal-constitutional framework guaranteeing equal civil, political rights as well as rights of conscience is a precondition for universal citizenship participation. As I shall explore in the next chapter, in her reflections on Kant's concept of judgment Hannah Arendt confronted the question of what the liberal theorist would name fundamental rights and liberties, and what I name the normative foundations of the political. She was unable to offer a satisfactory resolution to this problem and the question of the normative presuppositions of the political runs through her work like a red thread from her melancholy reflections on "the right to have rights" in The Origins of Totalitarianism to her ruminations on constitutions in On Revolution. 32

If both the agonistic and the legalistic models of public space are insufficiently complex to deal with the realities of highly differentiated and pluralistic modern
societies, and must be viewed as complementing rather than excluding one another, then it is plausible to assume that a more adequate conception of the public space should combine both dimensions. Although it has not been often presented in this way, the Habermasian principle of "Öffentlichkeit" can fulfill this requirement. The discursive public space is the essential sociological correlate of the discourse concept of legitimacy. It is in such discursive spaces that such dialogues of legitimacy expire. In the next section, I will explore these features of Habermas's concept of "Öffentlichkeit," but I also would like to show how the contestatory dimension of public discourse gets overridden in this model by Habermas's rigid separations between "justice" and "the good life," "needs" and "interests," "values" and "norms."

The Discursive Model of Public Space

Since the Structural Transformation of the Public Sphere, Habermas has analyzed the development of modern societies in light of the extension of the sphere of public participation. Along with social differentiation and the creation of independent value spheres, modernity brings with it a threefold possibility. In the realm of institutions, the consensual generation of general norms of action through practical discourses moves to the fore. In the realm of personality formation, the development of individual identities becomes increasingly more dependent on the reflexive and critical attitudes of individuals in weaving together a coherent life story beyond conventional role and gender definitions. Self-definitions, who one is, become increasingly autonomous vis-a-vis established social practices and fluid when compared to rigid role understandings. Likewise the appropriation of cultural tradition becomes more dependent upon the creative hermeneutic of contemporary interpreters. Tradition in the modern world loses its legitimacy of simply being valid because it is the way of the past. The legitimacy of tradition rests now with resourceful and creative appropriations of it in view of the problems of meaning in the present. Viewed in this threefold fashion, the principle of participation, far from being antithetical to modernity, is one of its chief prerequisites. In each realm -- society, personality and culture -- in the functioning of institutional life, the formation of stable personalities over time and the continuity of cultural tradition, the reflective effort and contribution of individuals becomes crucial.

Placed in this broader sociological context, the meaning of participation is altered. The exclusive focus on "political" participation is shifted toward a much more inclusively understood concept of "discursive will formation." Participation is not seen as an activity that is only and most truly possible in a narrowly defined political realm, but as an activity that can be realized in the social and cultural spheres as well. Participating in a citizen's initiative to clean up a polluted harbor is no less political than debating in cultural journals the pejorative presentation of certain groups in terms of stereotypical images (combating sexism and racism in the media). This conception of participation, which emphasizes the determination of norms of action through the
practical debate of all affected by them, has the distinctive advantage over the republican or civic

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virtue conception that it articulates a vision of the political true to the realities of complex, modern societies.

This modernist understanding of participation yields a novel conception of public space. Public space is not understood agonistically as a space of competition for acclaim and immortality among a political elite; it is viewed democratically as the creation of procedures whereby those affected by general social norms and by collective political decisions can have a say in their formulation, stipulation and adoption. This conception of the public is also different than the liberal one; for although Habermas and liberal thinkers believe that legitimation in a democratic society can only result from a public dialogue, in the Habermasian model this dialogue does not stand under the constraint of neutrality, but is judged according to the criteria represented by the idea of a "practical discourse." The public sphere comes into existence whenever and wherever all affected by general social and political norms of action engage in a practical discourse, evaluating their validity. In effect, there may be as many publics as there are controversial general debates about the validity of norms. Democratization in contemporary societies can be viewed as the increase and growth of autonomous public spheres among participants. As Jean Cohen has astutely observed:

Both the complexity and the diversity within contemporary civil societies call for the posing of the issue of democratization in terms of a variety of differentiated processes, forms, and loci depending on the axis of division considered. Indeed, there is an elective affinity between the discourse ethic and modern civil society as the terrain on which an institutionalized plurality of democracies can emerge. 35

Now this model of a plurality of public spaces emerging in modern societies around contested issues of general concern transcends the dichotomy of majoritarian politics versus constitutional guarantees of civil liberties discussed in the previous section. As explained previously, the discourse model of legitimacy and the discursive view of public space are radically proceduralist. They present normative dialogue as a conversation of justification taking place under the constraints of an "ideal speech situation." The normative constraints of the ideal speech situation or of practical discourses have been specified as the conditions of universal moral respect and egalitarian reciprocity. The presence of these constraints avoids the dilemmas of simple majoritarian political outcomes. Kenneth Baynes has explained this issue well: "If there are no substantive constraints on what can be introduced into a practical discourse, what is to prevent the outcome from conflicting with some of our most deeply

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held moral convictions? What is to prevent the participants agreeing to anything, or perhaps, more plausibly, never reaching any general agreement at all?" 36 Baynes suggests that the imposition of certain constraints on discourses is the only way to avoid this dilemma. Yet he also stresses, quite in line with a suggestion made above, that the "constraints imposed on discourse are subject to discursive vindication," 37 themselves and he further adds:

At a less fundamental level, many other constraints may well be imposed on discourses in view of the issues or tasks at hand. It is reasonable to assume, for example, that the basic rights and liberties specified in Rawls's first principle and contained in the U. S. Constitution would serve as constraints on most public debates, removing topics from the agenda because of their deeply personal nature or close connection with recognized spheres of privacy. However, discussion about the nature and scope of these rights is always something that can become the subject of public debate. As arguments about rights become more closely tied to specific interpretations of social goods, what counts as a good argument will no doubt depend more heavily on the shared meanings and practices that make up the everyday life-world... 38 (Emphasis added)

As the above quote reveals, there is a tension for most communicative or discourse theorists between the desire for unconstrained dialogue not to be subject to traditional liberal constraints on the one hand and not to have majoritarian decision procedures corrode civil liberties and rights on the other. I concur with Baynes that formulating the "normative constraints of discourses," as constraints whose fairness and appropriateness can themselves become topics of debate, is plausible. The normative constraints of practical discourses would occupy the same place in discourse theories of legitimacy and public space as the Rawlsian basic liberties and rights specified under the first principle of justice occupy in his theory. 39

Where I would differ both from Rawls's formulation about keeping certain topics "off limits" and Baynes's desire to remove them from the agenda of discourse is in the matter of procedure. Basic human, civil and political rights, as guaranteed by the Bill of Rights to the US Constitution and as embodied in the constitutions of most democratic governments, are never "off the agenda" of public discussion and debate. They are simply constitutive and regulative institutional norms of debate in democratic societies which cannot be transformed and abrogated by simple majority decisions. The language of keeping these rights off the agenda mischaracterizes the nature of democratic debate in our kinds of societies: although we cannot change these rights without extremely elaborate political and juridical procedures, we are always disputing their meaning, their extent and their jurisdiction. Democratic debate is

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like a ball game where there is no umpire to definitively interpret the rules of the game and their application. Rather in the game of democracy the rules of the game no less than their interpretation and even the position of the umpire are essentially contestable. But contestation means neither the complete abrogation of these rules nor silence
about them. When basic rights and liberties are violated, the game of democracy is suspended and becomes either martial rule, civil war or dictatorship; when democratic politics is in full session the debate about the meaning of these rights, what they do or do not entitle us to, their scope and enforcement is what politics is all about. In communicative ethics and in democratic politics we assume critical and reflexive distance precisely toward those rules and practices which we also cannot avoid but uphold. One cannot challenge the specific interpretation of basic rights and liberties in a democracy without taking these also absolutely seriously; likewise one cannot question the texture and nature of our everyday moral commitments in communicative ethics without permanent and continuous embroilment in them on a day-to-day level.

The discourse theory of legitimacy and public space then transcends the traditional opposition of majoritarian politics versus liberal guarantees of basic rights and liberties to the extent that the normative conditions of discourses are, like basic rights and liberties, rules of the game which can be contested within the game but only insofar as one first accepts to abide by them and play the game at all. This formulation seems to me to correspond to the reality of democratic debate and public speech in real democracies much more than the liberal model of constitutional conventions. In democratic politics nothing is really off the agenda of public debate, but there are fundamental rules of discourse which are both constitutive and regulatory in such a manner that, although what they mean for democratic give and take is itself always contested, the rules themselves cannot be suspended or abrogated by simple majoritarian procedures.

Having argued that the discourse model of legitimacy and the discourse model of public space capture the role of democratic debate more successfully than the Arendtian and the liberal versions, I would now like to turn to an issue which will allow me to explore some of the limitations of the discourse model more specifically.

Feminist Critiques of the Public/Private Distinction

Any theory of publicity, public space and public dialogue must presuppose some distinction between the private and the public. In the tradition of western political thought and down to our own

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days, the way in which the distinction between the public and the private spheres has been drawn has served to confine women and typically female spheres of activity like housework, reproduction, nurturance and care for the young, the sick and the elderly to the "private" domain, and to keep them off the public agenda in the liberal state. These issues have often been considered matters of the good life, of values, of non-generalizable interests. Along with their relegation, in Arendt's terms, to the "shadowy interior of the household," they have been treated, until recently, as "natural" and "immutable" aspects of human relations. They have remained pre-reflexive and inaccessible to discursive analysis. Much of our tradition, when it considers the autonomous individual or the moral point of view, implicitly defines this as the
standpoint of the homo politicus or the homo economicus but hardly ever as the female self. 40 Challenging the distinction of contemporary moral and political discourse, to the extent that they privatize these issues, is central to women's struggles which intend to make these issues "public."

"Privacy," "privacy rights" and the "private sphere," as invoked by the modern tradition of political thought, have included at least three distinct dimensions: first and foremost, privacy has been understood as the sphere of moral and religious conscience. As a result of the historical separation of church and state in Western European and North American countries, and as a consequence of developments in modern philosophy and science, matters of ultimate faith concerning the meaning of life, of the highest good, of the most binding principles in accordance with which we should conduct our lives, come to be viewed as rationally "irresolvable" and as issues about which individuals themselves should decide according to the dictates of their own consciences and world-views.

In the emergence of western modernity, a second set of privacy rights accompany the eventual establishment of the liberal separation of the church and state. These are privacy rights pertaining to economic liberties. The development of commodity relations in the market-place and of capitalism does not only mean "the rise of the social," in Arendtian terms. Along with the socialization of the economy, that is along with the decline of subsistence-type household economies and the eventual emergence of national markets, a parallel development establishing the "privacy" of economic markets takes place. In this context, "privacy" means first and foremost non-interference by the political state in the free flow of commodity relations, and in particular non-intervention in the free market of labor-power.

The final meaning of "privacy" and "privacy rights" is that of the "intimate sphere." This is the domain of the household, of meeting the daily needs of life, of sexuality and reproduction, of care for the

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young, the sick and the elderly. As Lawrence Stone's pathbreaking study on the origins and transformations of the early bourgeois family shows, 41 from the beginning there were tensions between the continuing patriarchal authority of the father in the bourgeois family and developing conceptions of equality and consent in the political world. As the male bourgeois citizen was battling for his rights to autonomy in the religious and economic spheres against the absolutist state, his relations in the household were defined by non-consensual, non-egalitarian assumptions. Questions of justice were from the beginning restricted to the "public sphere," whereas the private sphere was considered outside the realm of justice.

To be sure, with the emergence of autonomous women's movements in the nineteenth and twentieth centuries, with women's massive entry into the labor force in this century, and their gain of the right to vote, this picture has been transformed. Contemporary moral and political theory, however, continues to neglect these issues,
and ignores the transformations of the private sphere resulting from massive changes in women's and men's lives. While conceptually matters of justice and those of the good life are distinct from the sociological distinction between the public and private spheres, the frequent conflation of religious and economic freedoms with the freedom of intimacy, under the one title of "privacy" or of "private questions of the good life," has had two consequences: first, contemporary normative moral and political theory, Habermas's discourse ethics not excluded, has been "gender blind," that is, these theories have ignored the issue of "difference," the difference in the experiences of male versus female subjects in all domains of life. Second, power relations in the "intimate sphere" have been treated as though they did not even exist. The idealizing lens of concepts like "intimacy" does not allow one to see that women's work in the private sphere, like care for the young and the running of the household, has been unrenumerated. Consequently, the rules governing the sexual division of labor in the family have been placed beyond the scope of justice. As with any modern liberation movement, the contemporary women's movement is making what were hitherto considered "private" matters of the good life into "public" issues of justice by thematizing the asymmetrical power relations on which the sexual division of labor between the genders has rested. In this process, the line between the private and the public, between issues of justice and matters of the good life is being renegotiated.

Certainly, a normative theory, and in particular a critical social theory, cannot take the aspirations of any social actors at face value and fit its critical criteria to meet the demands of a particular social movement. Commitment to social transformation, and yet a certain critical distance, even from the demands of those with whom one identifies, are essential to the vocation of the theorist as social critic. For this reason, the purpose of these final considerations is not to criticize the critical theory of Habermas simply by confronting it with the demands of the women's movement. Rather, my goal is to point to an area of conceptual unclarity as well as political contestation in contemporary debates. Any theory of the public, public sphere, and publicity presupposes a distinction between the public and the private. These are the terms of a binary opposition. What the women's movement and feminist theorists in the last two decades have shown is that traditional modes of drawing this distinction have been part of a discourse of domination which legitimizes women's oppression and exploitation in the private realm. But the discourse model, precisely because it proceeds from a fundamental norm of egalitarian reciprocity and precisely because it projects the democratization of all social norms, cannot preclude the democratization of familial norms and of norms governing the gender division of labor in the family as well. 42 If in discourses the agenda of the conversation is radically open, if participants can bring any and all matters under critical scrutiny and questioning, then there is no way to predefine the nature of the issues discussed as being public ones of justice versus private ones of the good life. Distinctions such as between justice and the good life, norms and values, interests and needs are "subsequent" and not prior to the process of discursive will formation. As long as these distinctions are renegotiated, reinterpreted and rearticulated as a result of a radically open and procedurally fair
discourse, they can be drawn in any of a number of ways. Thus there is both an "elective affinity" and a certain tension between the demands of social movements like the women's movement and the discourse ethic. Let me explain:

The elective affinity, to use Max Weber's felicitous phrase, between discourse ethics and social movements like the women's movement derives from the fact that both project the extension of a postconventional and egalitarian morality into spheres of life which were hitherto controlled by tradition, custom, rigid role expectations and outright inegalitarian exploitation of women and their work. Discourse ethics, like the women's movement, has argued that only relations of egalitarian reciprocity, based upon the mutual respect and sharing of the parties involved, can be fair from a moral point of view. Conventional relations and role expectations as between the "wife" and the "husband," the "parents" and the "children" are thus opened to questioning, renegotiation and redefinition. As I shall argue in chapter 6 below, there is also an elective affinity between the commitment to an ethics of dialogue and feminist ideals. In many ways, the contemporary women's movement is the culmination of the logic of modernity which projects the discursive

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negotiation of societal norms, the flexible appropriation of tradition and the formation of fluid and reflexive self-identities and life histories.

The tension between discourse ethics and the models of legitimacy and public space deriving from it on the one hand and the claims of the women's movement on the other rests primarily upon the overly rigid boundaries which Habermas has attempted to establish between matters of justice and those of the good life, public interests versus private needs, privately held values and publicly shared norms. But as I suggested above it is only the unconstrained process of discourse and not some moral calculus which will allow us to reestablish these boundaries once their traditional meaning has been contested.

Faced with this claim, Habermas as well as the liberal political theorist might respond that this position invites the corrosion of rights of privacy and the total intrusion of the state into the domain of the individual. The issue, they will argue, is not that these distinctions must be reconceptualized but where the line between the private and the public will be situated as a result of this discursive reconceptualization. Put in more familiar terms, does discourse theory allow for a theory of individual rights guaranteeing privacy, or is it simply a theory of democratic participation which does not respect the legal boundaries of individual liberty? The tension between democratic politics and liberal guarantees of constitutional rights, which I have claimed discourse theory to have solved, returns once more. Let me suggest, and ironically against Habermas himself, why the kind of discourse about the family and the gender division of labor initiated by the women's movement is both an instance of the democratization of the public sphere and why the discourse model can accommodate such challenges to the public/private distinction.
In principle, the discourse model is based upon a strong assumption of individual autonomy and consent; thus even in discourses which renegotiate the boundaries between the private and the public the respect for the individuals' consent and the necessity of their voluntarily gained insight into the validity of general norms guarantees that this distinction cannot be redrawn in ways that jeopardize, damage and restrict this autonomy of choice and insight. I agree with Cohen who writes:

Although in this case, too, processes of discursive will formation decide the boundary between the private and the public, they cannot entirely abolish the private. Indeed, the meta-norms of discourse themselves provide for the autonomy of the individual moral conscience. If all those affected must have an equal chance to assume dialogue roles, if the dialogue must be free and unconstrained, and if each individual can shift the level of the discourse, then practical discourse presupposes autonomous individuals with the capacity to challenge any given consensus from a principled standpoint. The very rules which underlie argument and the cooperative search for consensus predicate the distinction between morality and legality. By articulating the meta-norms of the principle of democratic legitimacy and rights, the discourse ethic provides the justification for the autonomy of morality, grounding, as it were, its own self-limitation. 44

I concur with Cohen that the very logic of discourses permits us to challenge the traditionalist understandings of the public/private split but that the very resources of the discourse model of publicity also prohibit the drawing of these distinction in ways which jeopardize the autonomy and insight of individuals involved. Having argued this far, one has suggested why the discourse model can serve as a norm of democratic legitimacy and public speech in societies like ours where the line between the private and the public is being hotly contested. But it is not only discourse theory which must be confronted with the claims of feminists; feminist theory itself sorely needs a model of public space and public speech which returns it to the politics of empowerment. The feminist critique of Habermas's model of the public sphere must be complemented by the appropriation by feminists of a critical theory of the public sphere.

Undoubtedly, our societies are undergoing tremendous transformations at the present. In western democracies, under the impact of corporatization, the mass media and the growth of business-style political associations, like PAC’s (Political Action Committees) and other lobbying groups, the public sphere of democratic legitimacy has shrunk. In the last US presidential campaign of 1988, the level of public discourse and debate, both in terms of substance and style, had sunk so low that major networks like CBS and ABC felt compelled to run sessions of self-reflexive analysis on their own contributions as the electronic media to the decline of public discourse. The autonomous citizen, whose reasoned judgement and participation was the sine qua non of the public sphere has been transformed into the "citizen consumer" of packaged images and messages, or the "electronic mail target" of large lobbying groups and organizations. 45 This impoverishment of public life has been accompanied by the
growth of the society of surveillance and voyeurism on the one hand (Foucault) and the "colonization of the lifeworld" on the other (Habermas). Not only has public life been transformed, private life as well has undergone tremendous changes, only some of which can be welcome for furthering the values of democratic legitimacy and discursive will formation.

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As the sociologist Helga Maria Hernes has remarked, in some ways, welfare state societies are ones in which "reproduction" has gone public. 46 When, however, issues like childrearing, care for the sick, the young and the elderly, reproductive freedoms, domestic violence, child abuse and the constitution of sexual identities go "public" in our societies, more often than not a "patriarchal-capitalist-disciplinary bureaucracy" has resulted. 47 These bureaucracies have frequently disempowered women and have set the agenda for public debate and participation. In reflecting about these issues as feminists we have lacked a critical model of public space and public discourse. Here is where as feminists we should not only criticize Habermas's social theory, but enter into a dialectical alliance with it. A critical model of public space is necessary to enable us to draw the line between "juridification," "Verrechtlichung" in Habermas's terms, on the one hand, and making "public," in the sense of making accessible to debate, reflection, action and moral-political transformation on the other. To make issues of common concern public in this second sense means making them increasingly accessible to discursive will formation; it means to democratize them; it means bringing them to the standards of moral reflection compatible with autonomous postconventional identities. As feminists, we have lacked a critical model which could distinguish between the bureaucratic administration of needs and collective democratic empowerment over them. More often than not, debates among feminists have been blocked by the alternatives of a legalistic liberal reformism (the NOW (National Organization for Women) agenda; ACLU (American Civil Liberties Union) positions) and a radical feminism which can hardly conceal its own political and moral authoritarianism. 48

For reasons which I have already explored, some of the models of public space discussed in this essay are severely limited to help us cope with this task. Arendt's agonistic model is at odds with the sociological reality of modernity, as well as with modern political struggles for justice. The liberal model of public space transforms the political dialogue of empowerment far too quickly into a juridical discourse about basic rights and liberties. The discourse model is the only one which is compatible both with the general social trends of our societies and with the emancipatory aspirations of new social movements like the women's movement. The radical proceduralism of this model is a powerful criterion for demystifying discourses of power and their implicit agendas. In a society where "reproduction" is going public, practical discourse will have to be "feminized." Such feminization of practical discourse will mean first and foremost challenging unexamined normative dualisms as between justice and the good life, norms and values, interests and needs, from the standpoint of their gender context and subtext.
Notes

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Note: 8 Arendt, "Preface," in Between Past and Future, p. 5.

Note: 9 Cf. Arendt's statement with Note A appended to the English edition of Benjamin's "Theses on the Philosophy of History" (which Arendt edited in English):
"Historicism contents itself with establishing a causal connection between various moments in history. But no fact that is cause is for that very reason historical. It became historical posthumously, as it were, through the events that may be separated from it by thousands of years. A historian who takes this as his point of departure stops telling the sequence of events like the beads of a rosary. Instead, he grasps the constellation which his own era has formed with a definite earlier one. Thus he establishes a conception of the present as the 'time of the now' which is shot through with chips of Messianic time." In Walter Benjamin, Illuminations, ed. and introd. H. Arendt (Schocken, New York, 1969).

Note: 10 Arendt, The Human Condition, pp. 23, 31ff.


Note: 12 Arendt, The Human Condition, p. 56.

Note: 13 Hannah Arendt's persistent denial of the "women's issue," and her inability to link together the exclusion of women from politics and this agonistic and male-dominated conception of public space, is astounding. The "absence" of women as collective political actors in Arendt's theory -- individuals like Rosa Luxemburg are present -- is a difficult question, but to begin thinking about this means first challenging the private-public split in her thought as this corresponds to the traditional separation of spheres between the sexes (men = public life; women = private sphere). I explore this issues more extensively in The Reluctant Modernism of Hannah Arendt (Sage, Beverly Hills, in preparation).


Note: 17 Ibid., p. 11.


Note: 19 Ibid., p. 9.

Note: 20 Ibid., pp. 16-17. Ackerman is unclear if by the principle of "conversational restraint" and "neutrality" he means the version stated in this more recent article, which actually removes controversial moral conceptions from the public agenda of debate in the liberal state or if he means the version advocated in Social Justice in the
Liberal State, which constrains the kinds of grounds one can put forward in justifying one's conception of the good without, however, excluding such conceptions from being aired in public, see Social Justice in the Liberal State, p. 11. I have no difficulties in accepting the latter argument for reasons explained in chapter 2 above and pertaining to the logic of moral argumentations. It is his most recent version which I find indefensible. Ackerman's reply to his critics, "What is Neutral About Neutrality?" does not clarify the matter further either, see Ethics, 93 (Jan. 1983), pp. 372-90.

Note: 21 I have modified this paragraph in this version of this article. My original argument which maintained that Ackerman's position "trumped" the views of those primary groups who did not regard "public peace and order" as the supreme good was not quite to the point. Since all of us, the communicative ethicist no less than the liberal theorist, are concerned with peaceful and civil coexistence in complex, modern societies, the views of groups who reject such principles of coexistence clearly present a limit case in our considerations. Their views, however, can hardly be considered the representative case from which to proceed in deliberating about such matters. The issue of political, cultural and moral marginalization is an extremely difficult one to solve in societies which are increasingly multinational, multiracial and multicultural. My assumption is that the radically open and egalitarian model of public space which I am advocating has more of a chance to give the marginals access to the agenda of the public dialogue, thus eliminating some of the causes of their marginality.

Note: 22 Part of the difficulty in Ackerman's position derives from a lack of precision as to what constitutes the "agenda of the liberal state." Does Ackerman mean by this phrase the constitution and debates at the Supreme Court level, or does he mean the electronic and the printed media, or other public fora like mailings, open meetings, etc.? The same constraints of neutrality may not automatically hold for all public fora in our societies; this is why conflicts between the constitutional right of free speech and the actual practice of associations and citizens are likely to be such a recurrent feature of a liberal-democratic society. For example, should racism in the media be allowed? Does artistic freedom allow us to stage plays some may consider "antisemitic?" I wholeheartedly agree with Ackerman that certain forms of conversational constraints may be wholly appropriate and desirable for the legal system in modern societies. As I have argued in chapter 2, in this context what is meant by the term "neutrality" is that the norms embodied in the legal and public institutions of our societies should be so abstract and general as to permit the flourishing of many different ways of life and many different conceptions of the good. It is plurality, tolerance and diversity in culture, religion, lifestyles, aesthetic taste and personal expression which are to be encouraged. In a situation of conflict among diverse conceptions of the good, appeal must be made to the principles embodied in the constitutions of liberal democracies like basic civil and political rights. The modern legal system mediates among the conflicting claims of various life-forms, lifestyles and visions of the good. In cases of a conflict between the principles of right which make coexistence possible among adherents of divergent conceptions of the good and principles of other more partial conceptions of the good, of which we know that they cannot be generalized beyond their specific adherents, the right trumps over that
particular conception of the good. This seems to me to be the only defensible conception of "neutrality" in the liberal state; but the model of conversational restraints which Ackerman has in view does not only limit the forms of justification to be used by the major public institutions in our societies, like the Supreme Court, the Congress and the like; instead it limits the range of debate in the liberal state which may very well involve divergent, incompatible and even hostile conceptions of the good. As long as this agonistic conversation does not lead to the imposition of one understanding of the good upon all others as the officially sanctioned way of life, there is no reason why these partial conceptions of the good cannot be out there, competing and arguing with each other, in the public space of the liberal state.

Note: 23 It is not inconceivable that there will be situations when restraining public dialogue in a polity may be a morally desirable option. The most frequently cited instances are national security considerations or what the tradition used to describe as "raison d'état." I must admit that I am extremely skeptical even about such prima facie morally plausible cases which would lead to the imposition of "gag rules" in a society. Take the case of the suppression by the State Department and some officials of the media of the news of the extermination of the Jews and the building of concentration camps in Europe during World War II. In order not to exacerbate public pressure for the United States to enter the war, the government temporarily censored this news. Is it so clear, however, which is the better argument in such an instance? Were the national security considerations of the US at that point in time so clearly superior to the moral claims of the European Jews to demand help and an end to their extermination from any source? And may it not have been desirable on moral grounds for the American public to be informed right away and as fully as possible of these circumstances rather than under conditions of a carefully orchestrated war effort? (Cf. David S. Wyman, The Abandonment of the Jews (Pantheon, New York, 1984).

Ironically, as these lines are being written the military command of the Allied forces in the Persian Gulf and the news media are struggling over the justification for and the extent of the military censorship on coverage of events in the Gulf. No party to this controversy challenges the principle that in a situation of war, in order not to violate the safety of troops or reveal information about logistics, transportation and sensitive equipment certain restraints should be respected. Beyond this self-imposed rules of journalistic restraint, the exercise of military censorship violates the public's right to know and to form an opinion on a matter as crucial as war and peace. The situation in the Persian Gulf shows once more the incompatibility of democracy and "gag rules" in a society. I believe that the moral burden of proof in cases when such restrictions on free speech and the free flow of information are imposed is almost always on the shoulders of the advocates of "gag rules." Nonetheless, every polity in which political discourse is an institution respects certain constraints of the use of free speech; furthermore, individuals and associations may be guided by a certain sense of what is appropriate "public speech." A philosophical and moral theory of public dialogue, which views this as a procedure for moral legitimation, accepts constitutional guarantees to free speech as well as suggesting some norms of public dialogue. But insofar as it is also critical of existing relations such a view may challenge both existing legal practices and cultural codes of speech from the standpoint of a moral norm.


Note: 26 Ibid., p. 21.

Note: 27 This connection between the model of reasoning appropriate for corporate bodies and the idea of free public reason is more clear in John Rawls, "On the Idea of Free Public Reason," lecture delivered at the conference on Liberalism and the Moral Life at the City University of New York in April 1988.

Note: 28 Barber, The Conquest of Politics, p. 151.

Note: 29 I owe this phrase to Nancy Fraser who introduces it in the context of her discussion of discourses in the welfare state, cf. Nancy Fraser, Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory (Polity, Cambridge, 1989), pp. 144ff.


Note: 31 Ibid.


Note: 33 J. Habermas, Structural Transformation of the Public Sphere, trans. Thomas Burger (MIT Press, Boston, 1989); originally appeared as Strukturwandel der Öffentlichkeit (Luchterland, Darmstadt and Neuwied 1962).

Note: 34 The following is a condensed summary of the argument of the second volume of The Theory of Communicative Action, and in particular of the chapter on the "Dialectics of Rationalization" (Beacon, Boston, 1985).


Note: 37 Ibid. See my discussion of this issue above, pp. 32-3.

Note: 38 Ibid., p. 305.

Note: 39 The step leading from the norms of "universal moral respect" and "egalitarian reciprocity" to basic rights and liberties is not a very big one, but one which will not
be undertaken in this essay. Suffice it to say that a discourse theory of basic rights and liberties needs to be developed.

Note: 40 Cf. below, "The Generalized and the Concrete Other: The Kohlberg-Gilligan Controversy and Moral Theory."


Note: 42 Nancy Fraser has raised these considerations pointedly in her, "What's Critical about Critical Theory? The Case of Habermas and Gender," in Feminism as Critique, ed. Seyla Benhabib and Drucilla Cornell (University of Minnesota Press, Minneapolis, 1987), pp. 31-56.

Note: 43 Nancy Fraser has argued that Habermas's model of public space is also incompatible with feminist aspirations insofar as it is unitary as opposed to being multiple, dispersed and plural; is overly rationalistic and privileges rational speech over more evocative and rhetorical modes of public speech; and is prudish in that it minimizes the role of the body and the carnivalesque elements in public self-presentation. I agree with Fraser about the last two criticisms although in my opinion these do not affect the principle of the public sphere itself, that is the necessity of discursive justification of democratic politics; these observations only highlight the need to give a less rationalistic formulation of this principle than Habermas himself has done. As far as the charge of monism versus plurality of public spaces is concerned, I believe that Fraser here misreads Habermas and that in principle there can be as many publics as there are discourses concerning controversial norms. Thus there is today in the USA a "public" on the pornography debate in which lawmakers, the art community, the various religious institutions, the women's movement with its theorists and activists are participants. The "public sphere" of the pornography debate is not necessarily coextensive with the public sphere of the foreign policy debate in which all of us as citizens are more or less involved. I see no evidence, textual or otherwise, that Habermas's concept of the public sphere must be monistic. See Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," in Habermas and the Public Sphere, ed. Calhoun, pp. 109-42; for Habermas's recent formulations on the issue, see the statement: "The idea of people's sovereignty is dematerialized (entsubstantialisier) in this process. Even the suggestion that a network of associations can assume the place of the now displaced body of the people remains too concretistic. Sovereignty which is now completely dispersed does not even embody itself in the minds of the associated members [of the polity -- S. B.], rather -- if we can still use the term embodiment at all -- it is in those subjectless forms of communication that regulate the flow of discursive opinion and will-formation that such sovereignty finds its place. The regulation of opinion and will-formation through such subjectless networks of communication gives rise to fallibilistic conclusions which we can presume to incorporate practical reason. When popular sovereignty becomes subjectless and anonymous and is dissolved into processes of intersubjectivity, it limits itself to democratic procedures and to the ambitious communicative presuppositions of their implementation." J. Habermas, "Ist

Note: 44 Jean Cohen, "Discourse Ethics and Civil Society," p. 321. Cf. also Cohen's suggestion: "In point of fact, however, discourse ethics logically presupposes both classes of rights. By basing rights not on an individualistic ontology, as classical liberals have done, but on the theory of communicative interaction, we have strong reason to emphasize the cluster of rights of communication.... The rights of privacy would be affirmed because of the need to reproduce autonomous personalities without which rational discourse would be impossible.... From this point of view, the rights of communication point us to the legitimate domain for formulating and defending rights. The rights of the personality identify the subjects who have the rights to have rights." Ibid., p. 327. Cf. also Baynes, "The Liberal/Communitarian Controversy and Communicative Ethics," pp. 304ff.

Note: 45 Kiku Adatto has provided an impressive empirical study on the transformations of the television coverage of presidential elections by the three major evening newscasts of ABC, CBS and NBC from 1968 to 1988. Two empirical findings stand out most saliently and indicate why "the democratic public space" is increasingly less a reality in American political life. Adatto reports that: "The average 'sound bite,' or block of uninterrupted speech, fell from 42.3 seconds for presidential candidates in 1968 to only 9.8 seconds in 1988. In 1968, almost half of all sound bites were 40 seconds or more, compared to less than one percent in 1988.... In 1968, most of the time we saw the candidates on the evening news, we also heard them speaking. In 1988 the reverse was true; most of the time we saw the candidates, someone else, usually a reporter, was doing the talking." Adatto observes that in this process "television displaced politics as the focus of coverage... the images that once formed the background of political events -- the setting and the stagecraft -- now occupied the foreground." See Kiku Adatto, "Sound Bite Democracy: Network Evening News Presidential Campaign Coverage," Research Paper R-2, Joan Shorenstein Barone Center on Press, Politics and Public Policy (June 1990), pp. 4-5.


Note: 47 Cf. Nancy Fraser, Unruly Practices: Power, Discourse and Gender in Late-Capitalist Social Theory, ch. 7, "Women, Welfare, and the Politics of Need Interpretation."

Note: 48 For a very good example of the first trend, see Rosemarie Tong, Women, Sex and the Law (Rowman and Littlefield, Totowa, NJ, 1984); for the second trend see Catharine MacKinnon's work, and the amazing "return of the repressed" Marxist orthodoxy of the state and the law in her writings, cf. her early article, "Feminism, Marxism, Method and the State: An Agenda for Theory", Signs 7.3 (Spring 1982), pp. 514ff.; "Feminism, Marxism, Method and the State: Towards a Feminist

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