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Transnationalizing the Public Sphere

On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World

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It is commonplace nowadays to speak of 'transnational public spheres', 'diasporic public spheres', 'Islamic public spheres' and even an emerging 'global public sphere'. And such talk has a clear point. A growing body of media studies literature is documenting the existence of discursive arenas that overflow the bounds of both nations and states. Numerous scholars in cultural studies are ingeniously mapping the contours of such arenas and the flows of images and signs in and through them.[1] The idea of a 'transnational public sphere' is intuitively plausible, then, and seems to have purchase on social reality.

Nevertheless, this idea raises a problem. The concept of the public sphere was developed not simply to understand communication flows but to contribute a normative political theory of democracy. In that theory, a public sphere is conceived as a space for the communicative generation of public opinion. Insofar as the process is inclusive and fair, publicity is supposed to discredit views that cannot withstand critical scrutiny and to assure the legitimacy of

those that do. Thus, it matters who participates and on what terms. In addition, a public sphere is conceived as a vehicle for marshaling public opinion as a political force. Mobilizing the considered sense of civil society, publicity is supposed to hold officials accountable and to assure that the actions of the state express the will of the citizenry. Thus, a public sphere should correlate with a sovereign power. Together, these two ideas – the *normative legitimacy* and *political efficacy* of public opinion – are essential to the concept of the public sphere in democratic theory. [2] Without them, the concept loses its critical force and its political point.

Yet these two features are not easily associated with the discursive arenas that we today call 'transnational public spheres'. It is difficult to associate the notion of legitimate public opinion with communicative arenas in which the interlocutors are not fellow members of a political community, with equal rights to participate in political life. And it is hard to associate the notion of efficacious communicative power with discursive spaces that do not correlate with sovereign states. Thus, it is by no means clear what it means today to speak of 'transnational public spheres'. From the perspective of democratic theory, at least, the phrase sounds a bit like an oxymoron.

Nevertheless, we should not rush to jettison the notion of a 'transnational public sphere'. Such a notion is indispensable, I think, to those who aim to reconstruct democratic theory in the current 'postnational constellation'. But it will not be sufficient merely to refer to such public spheres in a relatively casual commonsense way, as if we already knew what they were. Rather, it will be necessary to return to square one, to problematize public sphere theory – and ultimately to reconstruct its conceptions of the normative legitimacy and political efficacy of communicative power.

The trick will be to walk a narrow line between two equally unsatisfactory approaches. On the one hand, one should avoid an empiricist approach that simply adapts the theory to the existing realities, as that approach risks sacrificing its normative force. On the other hand, one should also avoid an externalist approach that invokes ideal theory to condemn social reality, as that approach risks forfeiting critical traction. The alternative, rather, is a critical-theoretical approach that seeks to locate normative standards and emancipatory political possibilities precisely within the historically unfolding constellation.

This project faces a major difficulty, however. At least since its 1962 adumbration by Jürgen Habermas, public sphere theory has been implicitly informed by a Westphalian political imaginary: it has tacitly assumed the frame of a bounded political community with its own territorial state. The same is true for nearly every subsequent egalitarian critique of public sphere theory, including those of feminists, multiculturalists and antiracists. Only very recently, in fact, have the theory's Westphalian underpinnings been problematized. Only recently, thanks to post-Cold-War geopolitical instabilities, on the one hand, and the increased salience of transnational phenomena associated with 'globalization' on the other, has it become possible – and necessary – to rethink public sphere theory in a transnational frame. Yet these same phenomena force us to face the hard question: is the concept of the public sphere so thoroughly Westphalian in its deep conceptual structure as to be unsalvageable as a critical tool for theorizing the present? Or can the concept be reconstructed to suit a post-Westphalian frame? In the latter case, the task would not simply be to conceptualize transnational public spheres as actually existing institutions. It would rather be to reformulate *the critical theory of*

the public sphere in a way that can illuminate the emancipatory possibilities of the present constellation.

In this article I want to sketch the parameters for such a discussion. I shall be mapping the terrain and posing questions rather than offering definitive answers. But I start with the assumption that public sphere theory is in principle an important critical-conceptual resource that should be reconstructed rather than jettisoned, if possible. My discussion will proceed in three parts. First, I shall explicate the implicit Westphalian presuppositions of Habermas's public sphere theory and show that these have persisted in its major feminist, anti-racist and multicultural critiques. Second, I shall identify several distinct facets of transnationality that problematize both traditional public sphere theory and its critical counter-theorizations. Finally, I shall propose some strategies whereby public sphere theorists might begin to respond to these challenges. My overall aim is to repoliticize public sphere theory, which is currently in danger of being depoliticized.

Classical Public Sphere Theory and Its Radical Critique: Thematizing the Westphalian Frame

Let me begin by recalling some analytic features of public sphere theory, drawn from the *locus classicus* of all discussions, Jürgen Habermas's *Structural Transformation of the Public Sphere* (1989). In this early work, Habermas's inquiry proceeded simultaneously on two levels, one empirical and historical, the other ideological-critical and normative. On both levels, the public sphere was conceptualized as coextensive with a bounded political community and a sovereign territorial state, often a nation-state. To be sure, this was not always fully explicit. Tacitly, however, Habermas's

account of the public sphere rested on at least six social-theoretical presuppositions, all of which took for granted the Westphalian framing of political space.

(1) *Structural transformation* correlated the public sphere with a modern state apparatus that exercised sovereign power over a bounded territory. Thus, Habermas assumed that public opinion was addressed to a Westphalian state that was capable in principle of regulating its inhabitants' affairs and solving their problems (Habermas, 1989: 14–26, 79–88, 1998a: 135–8, 141–4, 366–7, 433–6).

(2) *Structural Transformation* conceived the participants in public sphere discussion as fellow members of a bounded political community. Casting the *telos* of their discussions as the articulated general interest of a *demos*, which should be translated into binding laws, Habermas tacitly identified members of the public with the citizenry of a democratic Westphalian state (1989: 20–4, 51–7, 62–73, 83–8, 141 ff; see also 1998a: 365–6, 381–7).

(3) *Structural Transformation* conceived a principal topos of public sphere discussion as the proper organization of the political community's economic relations. The latter, in turn, is located in a capitalist market economy that was legally constituted and subject in principle to state regulation. In effect, Habermas assumed that a primary focus of the public's concern was a national economy, contained by a Westphalian state (1989: 14–20, esp. p. 17; see also 1998a: 344–51, esp. pp. 349–50).

(4) *Structural transformation* associated the public sphere with modern media that, in enabling communication across distance, could knit spatially dispersed interlocutors into a public. Tacitly, however, Habermas territorialized publicity by focusing on national media, especially the national press and national broadcasting. Thus, he implicitly assumed a national communications infrastructure, contained by a Westphalian state (1989: 58, 60–70; see also 1998a: 373–4, 376–7).

(5) *Structural Transformation* took for granted that public sphere discussion was fully comprehensible and linguistically transparent. Tacitly presupposing a single shared medium of public communication, Habermas effectively assumed that public debate was conducted in a national language (1989: 24–39, esp. pp. 36–7, 55–6, 60–73; see also 1998a: 360–2, 369–70, 375–7).

(6) Finally, *Structural Transformation* traced the cultural origins of the public sphere to the letters and novels of 18th- and 19th-century print capitalism. It credited those bourgeois genres with creating a new subjective stance, through which private individuals envisioned themselves as members of a public (1989: 41–3, 48–51; see also 1998a: 373–4.[3] Thus, Habermas grounded the structure of public sphere subjectivity in the very same vernacular literary forms that also gave rise to the imagined community of the nation (Anderson, 1991).

These six social-theoretical presuppositions tie Habermas's early account of the public sphere to the Westphalian framing of political space. In *Structural Transformation*, publics correlate with modern territorial states and national imaginaries. To be sure, the

national aspect went largely unthematized in this work. But its presence there as an implicit subtext betrays a point that Habermas has since made explicit: historically, the rise of modern publicity coincided with the rise of the nation-state, in which the Westphalian territorial state became fused with the imagined community of the nation (Habermas, 1998b). It may be true, as Habermas (1998b) now claims, that present-day democratic states can dispense with national identity as a basis of social integration. But it remains the case that *Structural Transformation*'s conception of publicity had a national subtext. That work's account of the public sphere presupposed a nationally inflected variant of the Westphalian frame.

But that is not all. Thanks to its (national) Westphalian presuppositions, *Structural Transformation* conceptualized the public sphere from the standpoint of a historically specific political project: the democratization of the modern territorial (nation-) state. Far from putting in question that project's Westphalian frame, Habermas envisioned a deliberative model of democracy that was situated squarely within it. In this model, democracy requires the generation, through territorially bounded processes of public communication, conducted in the national language and relayed through the national media, of a body of national public opinion. This opinion should reflect the general interest of the national citizenry concerning the organization of their territorially bounded common life, especially the national economy. The model also requires the mobilization of public opinion as a political force. Effectively empowering the national citizenry, publicity should influence law-makers and hold state officials accountable. Serving thus to 'rationalize' national political domination, it should ensure that the actions and policies of the Westphalian state reflect the discursively formed political will of the national citizenry. In

Structural Transformation, therefore, the public sphere is a key institutional component of (national) Westphalian democracy.

Empirically, then, *Structural Transformation* highlighted historical processes, however incomplete, of the democratization of the Westphalian nation-state. Normatively, it articulated a model of deliberative democracy for a territorially bounded polity. Accordingly, the public sphere served as a benchmark for identifying, and critiquing, the democratic deficits of actually existing Westphalian states. Thus, Habermas's early theory enabled us to ask: are all citizens really full members of the national political public? Can all participate on equal terms? In other words, is what passes as national public opinion genuinely *legitimate*? Moreover, does that opinion attain sufficient political force to rein in private powers and to subject the actions of state officials to citizen control? Does the communicative power generated in Westphalian civil society effectively translate into legislative and administrative power in the Westphalian state? In other words, is national public opinion politically *efficacious*? By inviting us to explore such questions, *Structural Transformation* constituted a contribution to the critique of actually existing democracy in the modern Westphalian state.

Some readers found the critique insufficiently radical. In the discussion that followed the work's belated translation into English, the objections tended to divide into two distinct streams. One stream interrogated the *legitimacy* of public opinion along lines beyond those pursued by Habermas. Focused on relations within civil society, exponents of what I shall call 'the legitimacy critique' contended that *Structural Transformation* obscured the existence of systemic obstacles that deprive some who are nominally members of the public of the capacity to participate on a par with others, as full partners in public debate. Highlighting class

inequalities and status hierarchies in civil society, these critics analyzed their effects on those whom the Westphalian frame included in principle, but excluded or marginalized in practice: propertyless workers, women, the poor; ethnoracial, religious and national minorities.[4] Thus, this critique questioned the legitimacy of what passes for public opinion in democratic theory and in social reality.

A second stream of criticism radicalized Habermas's problematization of the *efficacy* of public opinion. Focused on relations between civil society and the state, proponents of 'the efficacy critique' maintained that *Structural Transformation* failed to register the full range of systemic obstacles that deprive discursively generated public opinion of political muscle. Not convinced that these had been adequately captured by Habermas's account of the 'refeudalization' of the public sphere, these critics sought to theorize the structural forces that block the flow of communicative power from civil society to the state. Highlighting the respective roles of private economic power and entrenched bureaucratic interests, their critique served to deepen doubt about the efficacy of public opinion as a political force in capitalist societies.[5]

Notwithstanding the difference in focus, the two streams of criticism shared a deeper assumption. Like *Structural Transformation*, both the legitimacy critics and the efficacy critics took for granted the Westphalian framing of political space. To be sure, some proponents of the legitimacy critique exposed the national subtext of publicity that had largely gone without saying in Habermas's account. Analyzing its exclusionary effects on national minorities, multiculturalist critics sought to purge the public sphere of majority national privilege in hopes of reducing disparities of participation in public debate. The point, however, was not to question the territorial basis of the public sphere. Far

from casting doubt on the Westphalian frame, the critics sought to enhance the legitimacy of public opinion within it. An analogous objective informed the efficacy critique. Taking for granted that public opinion was addressed to a territorial state, proponents of this critique hoped to subject the latter more firmly to the discursively formed will of its *demos*. Like Habermas, then, if arguably more radically, both sets of critics placed their reflections on the public sphere within the Westphalian frame.

My own earlier effort to 'rethink the public sphere' was no exception. In an article originally published in 1991, I directed criticisms of both types against what I called, following Habermas, 'the liberal model of the bourgeois public sphere'. In its legitimacy aspect, my critique focused on the effects on public opinion of inequality within civil society. Rebutting the liberal view that it was possible for interlocutors in a public sphere to bracket status and class differentials and to deliberate 'as if' they were peers, I argued that social equality is a necessary condition for political democracy. Under real world conditions of massive *in*equality, I reckoned, the only way to reduce disparities in political voice was through social movement contestation that challenged some basic features of bourgeois publicity. Complicating the standard liberal picture of a single comprehensive public sphere, I claimed that the proliferation of subaltern counterpublics could enhance the participation of subordinate strata in stratified societies. Exposing, too, the bourgeois masculinist bias in standard liberal views of what counts as a public concern, I endorsed efforts by movements such as feminism to redraw the boundaries between public and private. Yet this critique presupposed the national-territorial understanding of publicity. Far from challenging the Westphalian frame, it aimed to enhance the legitimacy of public opinion within it (Fraser, 1991, see also 1992).

My 1991 article also propounded an efficacy critique, which interrogated the capacity of public opinion to achieve political force. Identifying forces that block the translation of communicative power into administrative power, I questioned the standard liberal view that a functioning public sphere always requires a sharp separation between civil society and the state. Distinguishing the 'weak publics' of civil society, which generate public opinion but not binding laws, from the 'strong publics' within the state, whose deliberations issue in sovereign decisions, I sought to envision institutional arrangements that could enhance the latter's accountability to the former. Aiming, too, to open space for imagining radical-democratic alternatives, I questioned the apparent foreclosure by Habermas of hybrid forms, such as 'quasi-strong' decision-making publics in civil society. Yet here, too, I neglected to challenge the Westphalian frame. The thrust of my argument was, on the contrary, to enhance the efficacy of public opinion visa- vis Westphalian state (Fraser, 1991: esp. 129–32).

Both the legitimacy critique and the efficacy critique still seem right to me as far as they went. But I now believe that neither went far enough. Neither critique interrogated, let alone modified, the social-theoretical underpinnings of *Structural Transformation*, which situated the public sphere in a Westphalian frame. Still oriented to the prospects for deliberative democracy in a bounded political community, both critiques continued to identify the public with the citizenry of a territorial state. Neither abandoned the assumption of a national economy, whose proper steering by the democratic state remained a principal topos of public sphere debate, which was itself still envisioned as being conducted in the national language through the national media. Thus, neither the legitimacy critique nor the efficacy critique challenged the

Westphalian frame. Animated by the same political project as *Structural Transformation*, both sought to further deliberative democracy in the modern territorial state.

The same is true for Habermas's subsequent discussion of publicity in *Between Facts and Norms* (1998a). Among other things, that work revisited the public sphere and incorporated elements of the two critiques. Stressing the 'co-implication of private and public autonomy', Habermas valorized the role of emancipatory social movements, such as second-wave feminism, in promoting democracy by pursuing equality, and vice versa (1998a: 420–3). By thus acknowledging the mutual dependence of social position and political voice, he grappled here with previously neglected aspects of the legitimacy deficits of public opinion in democratic states. In addition, *Between Facts and Norms* was centrally concerned with the problem of efficacy. Theorizing law as the proper vehicle for translating communicative into administrative power, the work distinguished an 'official', democratic circulation of power, in which weak publics influence strong publics, which in turn control administrative state apparatuses, from an 'unofficial', undemocratic one, in which private social powers and entrenched bureaucratic interests control law-makers and manipulate public opinion. Acknowledging that the unofficial circulation usually prevails, Habermas here provided a fuller account of the efficacy deficits of public opinion in democratic states (1998a: 360–3).

One may question, to be sure, whether Habermas fully succeeded in addressing his critics' concerns on either point.[6] But even if we grant him the benefit of that doubt, the fact remains that *Between Facts and Norms* continued to assume the Westphalian frame. Its many departures from *Structural Transformation* notwithstanding, the later work still conceived the addressee of public opinion as a sovereign territorial state, which could steer a

national economy in the general interest of the national citizenry; and it still conceived the formation of public opinion as a process conducted in the national media via a national communications infrastructure. Granted, Habermas did advocate a post-nationalist form of social integration, namely 'constitutional patriotism', with the aim of emancipating the democratic state from its nationalist integument (1998a: 465–6, 500). But in this he effectively endorsed a more purely Westphalian, because more exclusively territorial, conception of publicity.

In general, then, the publicity debate in critical theory contains a major blind spot. From *Structural Transformation* through *Between Facts and Norms*, virtually all the participants, including me, correlated public spheres with territorial states. Despite their other important disagreements, all assumed the Westphalian framing of political space – at precisely the moment when epochal historical developments seemed to be calling that frame into question.

The Postnational Constellation: Problematizing the Westphalian Frame

Today, the Westphalian blind spot of public sphere theory is hard to miss. Whether the issue is global warming or immigration, women's rights or the terms of trade, unemployment or 'the war against terrorism', current mobilizations of public opinion seldom stop at the borders of territorial states. In many cases, the interlocutors do not constitute a *demos* or political citizenry. Often, too, their communications are neither addressed to a Westphalian state nor relayed through national media. Frequently, moreover, the problems debated are inherently trans-territorial and can neither be located within Westphalian space nor resolved by a Westphalian state. In such cases, current formations of public

opinion scarcely respect the parameters of the Westphalian frame. Thus, assumptions that previously went without saying in public sphere theory now cry out for critique and revision.

No wonder, then, that expressions like 'transnational public spheres', 'diasporic public spheres' and 'the global public sphere' figure so prominently in current discussions. Views about these phenomena divide into two camps. One camp treats transnational publicity as a new development, associated with late 20th-century globalization. Claiming that the modern interstate system previously channeled most political debate into statecentered discursive arenas, this camp maintains that the Westphalian frame was appropriate for theorizing public spheres until very recently (Held, 1995; Held et al., 1999; Sassen, 1998, 2006). The second camp insists, in contrast, that publicity has been transnational at least since the origins of the interstate system in the 17th century. Citing Enlightenment visions of the international 'republic of letters' and cross-national movements such as abolitionism and socialism, not to mention world religions and modern imperialism, this camp contends that the Westphalian frame has always been ideological, obscuring the inherently unbounded character of public spheres (Boli and Thomas, 1999; Keck and Sikkink, 1998). Undoubtedly, both interpretations have some merit. Whereas the first accurately captures the hegemonic division of political space, the second rightly reminds us that metropolitan democracy arose in tandem with colonial subjection, which galvanized transnational flows of public opinion. For present purposes, therefore, I propose to split the difference between them. Granting that transnational publicity has a long history, I shall assume that its present configuration is nevertheless new, reflecting yet another 'structural transformation of the public sphere'. On this point, all parties can

surely agree: the current constitution of public opinion bursts open the Westphalian frame.

Yet the full implications remain to be drawn. Focusing largely on cultural aspects of transnational flows, such as 'hybridization' and 'glocalization', many students of transnational publicity neglect to pose the questions of greatest importance for a *critical* theory: if public opinion now overflows the Westphalian frame, what becomes of its *critical* function of checking domination and democratizing governance? More specifically, can we still meaningfully interrogate the *legitimacy* of public opinion when the interlocutors do not constitute a *demos* or political citizenry? And what could legitimacy mean in such a context? Likewise, can we still meaningfully interrogate the *efficacy* of public opinion when it is not addressed to a sovereign state that is capable in principle of regulating its territory and solving its citizens' problems in the public interest? And what could efficacy mean in this situation? Absent satisfactory answers to these questions, we lack a usable *critical* theory of the public sphere.[7]

To clarify the stakes, I propose to revisit the six constitutive presuppositions of public sphere theory. I shall consider, in the case of each presupposition, how matters stand empirically and what follows for the public sphere's status as a *critical* category.

(1) Consider, first, the assumption that the addressee of public opinion is a modern Westphalian state, with exclusive, undivided sovereignty over a bounded territory. Empirically, this view of sovereignty is highly questionable – and not just for poor and weak states. Today, even powerful states share responsibility for many key governance functions with international institutions, intergovernmental networks and nongovernmental organizations. This is the case not only for relatively new functions, such as

environmental regulation, but also for classical ones, such as defense, policing, and the administration of civil and criminal law – witness the International Atomic Energy Agency, the International Criminal Court, and the World Intellectual Property Organization. [8] Certainly, these institutions are dominated by hegemonic states, as was the interstate system before them. But the mode in which hegemony is exercised today is evidently new. Far from invoking the Westphalian model of exclusive, undivided state sovereignty, hegemony increasingly operates through a *post-Westphalian model of disaggregated sovereignty*.[9] Empirically, therefore, the first presupposition of public sphere theory does not stand up.

But what follows for public sphere theory? The effect, I submit, is not simply to falsify the theory's underpinnings, but also to jeopardize the *critical* function of public opinion. If states do not fully control their own territories, if they lack the sole and undivided capacity to wage war, secure order and administer law, then how can their citizenries' public opinion be politically effective? Even granting, for the sake of argument, that national publicity is fairly generated and satisfies criteria of legitimacy; even granting, too, that it influences the will of parliament and the state administration; how, under conditions of disaggregated sovereignty, can it be *implemented*? How, in sum, can public opinion be *efficacious* as a critical force in a post-Westphalian world?

(2) Consider, next, the assumption that a public coincides with a national citizenry, resident on a national territory, which formulates its common interest as the general will of a bounded political community. This assumption, too, is counterfactual. For one thing, the equation of citizenship, nationality and territorial residence is belied by such phenomena as migrations, diasporas,

dual and triple citizenship arrangements, indigenous community membership and patterns of multiple residency. Every state now has non-citizens on its territory; most are multicultural and/or multinational; and every nationality is territorially dispersed.[10] Equally confounding, however, is the fact that public spheres today are not coextensive with political membership. Often the interlocutors are neither co-nationals nor fellow citizens. The opinion they generate, therefore, represents neither the common interest nor the general will of any *demos*. Far from institutionalizing debate among citizens who share a common status as political equals, post-Westphalian publicity appears in the eyes of many observers to empower transnational elites, who possess the material and symbolic prerequisites for global networking (Calhoun, 2002).

Here, too, the difficulty is not just empirical but also conceptual and political. If the interlocutors do not constitute a *demos*, how can their collective opinion be translated into binding laws and administrative policies? If, moreover, they are not fellow citizens, putatively equal in participation rights, status and voice, then how can the opinion they generate be considered legitimate? How, in sum, can the *critical* criteria of *efficacy* and *legitimacy* be meaningfully applied to transnational public opinion in a post-Westphalian world?

(3) Consider, now, the assumption that a principal topos of public sphere discussion is the proper regulation by a territorial state of a national economy. That assumption, too, is belied by present conditions. We need only mention outsourcing, transnational corporations and offshore business registry to appreciate that territorially based national production is now largely notional. Thanks, moreover, to the dismantling of the Bretton Woods capital controls and the emergence of 24/7 global electronic

financial markets, state control over national currency is presently quite limited. Finally, as those who protest policies of the WTO, the IMF, NAFTA and the World Bank have insisted, the ground rules governing trade, production and finance are set transnationally, by agencies more accountable to global capital than to any public.[11] In these conditions, the presupposition of a national economy is counterfactual.

As before, moreover, the effect is to imperil critical function of public spheres. If states cannot in principle steer economies in line with the articulated general interest of their populations, how can national public opinion be an effective force? Then, too, if economic governance is in the hands of agencies that are not locatable in Westphalian space, how can it be made accountable to public opinion? Moreover, if those agencies are invalidating national labor and environmental laws in the name of free trade, if they are prohibiting domestic social spending in the name of structural adjustment, if they are institutionalizing neoliberal governance rules that would once and for all remove major matters of public concern from any possibility of political regulation, if in sum they are systematically reversing the democratic project, using markets to tame politics instead of politics to tame markets, then how can citizen public opinion have any impact? Lastly, if the world capitalist system operates to the massive detriment of the global poor, how can what passes for transnational public opinion be remotely legitimate, when those affected by current policies cannot possibly debate their merits as peers? In general, then, how can public opinion concerning the economy be either *legitimate* or *efficacious* in a post-Westphalian world?

(4) Consider, as well, the assumption that public opinion is conveyed through a national communications infrastructure, centered on print and broadcasting. This assumption implied that

communicative processes, however decentered, were sufficiently coherent and politically focused to coalesce in 'public opinion'. But it, too, is rendered counterfactual by current conditions. Recall the profusion of niche media, some subnational, some transnational, which do not in any case function as national media, focused on subjecting the exercise of state power to the test of publicity. Granted, one can also note the parallel emergence of global media, but these market-driven, corporately owned outlets are scarcely focused on checking transnational power. In addition, many countries have privatized government- operated media, with decidedly mixed results: on the one hand, the prospect of a more independent press and TV and more inclusive populist programming; on the other hand, the further spread of market logic, advertisers' power, and dubious amalgams like talk radio and 'infotainment'. Finally, we should mention instantaneous electronic, broadband and satellite information technologies, which permit direct transnational communication, bypassing state controls. Together, all these developments signal the de-nationalization of communicative infrastructure.[12]

The effects here too pose threats to the critical functioning of public spheres. Granted, we see some new opportunities for critical public opinion formation. But these go along with the disaggregation and complexification of communicative flows. Given a field divided between corporate global media, restricted niche media and decentered Internet networks, how could critical public opinion possibly be generated on a large scale and mobilized as a political force? Given, too, the absence of even the sort of formal equality associated with common citizenship, how could those who comprise transnational media audiences deliberate together as peers? How, once again, can public opinion be normatively *legitimate* or politically *efficacious* under current conditions?

(5) Consider, too, the presupposition of a single national language, which was supposed to constitute the linguistic medium of public sphere communication. As a result of the population mixing already noted, national languages do not map onto states. The problem is not simply that official state languages were consolidated at the expense of local and regional dialects, although they were. It is also that existing states are de facto multilingual, while language groups are territorially dispersed, and many more speakers are multilingual. Meanwhile, English has been consolidated as the lingua franca of global business, mass entertainment and academia. Yet language remains a political fault line, threatening to explode countries like Belgium, if no longer Canada, while complicating efforts to democratize countries like South Africa and to erect transnational formations like the European Union.[13]

These developments, too, pose threats to the critical function of public opinion. Insofar as public spheres are monolingual, how can they constitute an inclusive communications community of all those affected? Conversely, insofar as public spheres correspond to linguistic communities that straddle political boundaries and do not correspond to any citizenry, how can they mobilize public opinion as a political force? Likewise, insofar as new transnational political communities, such as the EU, are transnational and multilinguistic, how can they constitute public spheres that can encompass the entire *demos*? Finally, insofar as transnational publics conduct their communications in English, which favors global elites and Anglophone postcolonials at the expense of others, how can the opinion they generate be viewed as legitimate? For all these reasons, and in all these ways, language issues complicate both the *legitimacy* and *efficacy* of public opinion in a post-Westphalian world.

(6) Consider, finally, the assumption that a public sphere rests on a national vernacular literature, which supplies the shared social imaginary needed to underpin solidarity. This assumption is also counterfactual today. Consider the increased salience of cultural hybridity and hybridization, including the rise of 'world literature'. Consider also the rise of global mass entertainment, whether straightforwardly American or merely Americanlike or American-izing. Consider, finally, the spectacular rise of visual culture, or better, of the enhanced salience of the visual within culture, and the relative decline of print and the literary.[14] In all these cases, it is difficult to recognize the sort of (national) literary cultural formation seen by Habermas (and by Anderson, 1991) as underpinning the subjective stance of public sphere interlocutors. On the contrary, insofar as public spheres require the cultural support of shared social imaginaries, rooted in national literary cultures, it is hard to see them functioning effectively today.

In general, then, public spheres are increasingly transnational or postnational with respect to each of the constitutive elements of public opinion.[15] The 'who' of communication, previously theorized as aWestphalian-national citizenry, is often now a collection of dispersed interlocutors, who do not constitute a *demos*. The 'what' of communication, previously theorized as a Westphalian-national interest rooted in aWestphalian-national economy, now stretches across vast reaches of the globe, in a transnational community of risk, which is not however reflected in concomitantly expansive solidarities and identities. The 'where' of communication, once theorized as the Westphalian- national territory, is now deterritorialized cyberspace. The 'how' of communication, once theorized as Westphalian-national print media, now encompasses a vast translinguistic nexus of disjoint and overlapping visual cultures. Finally, the addressee of

communication, once theorized as a sovereign territorial state, which should be made answerable to public opinion, is now an amorphous mix of public and private transnational powers that is neither easily identifiable nor rendered accountable.

Rethinking the Public Sphere – Yet Again

These developments raise the question of whether and how public spheres today could conceivably perform the democratic political functions with which they have been associated historically. Could public spheres today conceivably generate *legitimate* public opinion, in the strong sense of considered understandings of the general interest, filtered through fair and inclusive argumentation, open to everyone potentially affected? And if so, how? Likewise, could public spheres today conceivably render public opinion sufficiently *efficacious* to constrain the various powers that determine the conditions of the interlocutors' lives? And if so, how? What sorts of changes (institutional, economic, cultural and communicative) would be required even to imagine a genuinely *critical* and democratizing role for transnational public spheres under current conditions? Where are the sovereign powers that public opinion today should constrain? Which publics are relevant to which powers? Who are the relevant members of a given public? In what language(s) and through what media should they communicate? And via what communicative infrastructure?

These questions well exceed the scope of the present inquiry. And I shall not pretend to try to answer them here. I want to conclude, rather, by suggesting a conceptual strategy that can clarify the issues and point the way to possible resolutions.

My proposal centers on the two features that together constituted the *critical* force of the concept of the public sphere in the Westphalian era: namely, the *normative legitimacy* and *political efficacy* of public opinion. As I see it, these ideas are intrinsic, indispensable elements of *any* conception of publicity that purports to be critical, regardless of the socio-historical conditions in which it obtains. The present constellation is no exception. Unless we can envision conditions under which current flows of transnational publicity could conceivably become legitimate and efficacious, the concept loses it critical edge and its political point. Thus, the only way to salvage the critical function of publicity today is to rethink legitimacy and efficacy. The task is to detach those two ideas from the Westphalian premises that previously underpinned them and to reconstruct them for a post-Westphalian world.

Consider, first, the question of *legitimacy*. In public sphere theory, as we saw, public opinion is considered legitimate if and only if all who are potentially affected are able to participate as peers in deliberations concerning the organization of their common affairs. In effect, then, the theory holds that the legitimacy of public opinion is a function of two analytically distinct characteristics of the communicative process, namely, the extent of its *inclusiveness* and the degree to which its realizes *participatory parity*. In the first case, which I shall call the inclusiveness condition, discussion must in principle be open to all with a stake in the outcome. In the second, which I shall call the parity condition, all interlocutors must, in principle, enjoy roughly equal chances to state their views, place issues on the agenda, question the tacit and explicit assumptions of others, switch levels as needed and generally receive a fair hearing. Whereas the inclusiveness condition concerns the question of *who* is authorized to participate in public discussions,

the parity condition concerns the question of *how*, in the sense of on what terms, the interlocutors engage one another.[16]

In the past, however, these two legitimacy conditions of public opinion were not always clearly distinguished. Seen from the perspective of the Westphalian frame, both the inclusiveness condition and the parity condition were yoked together under the ideal of *shared citizenship in a bounded community*. As we saw, public sphere theorists implicitly assumed that citizenship set the legitimate bounds of inclusion, effectively equating those affected with the members of an established polity. Tacitly, too, theorists appealed to citizenship in order to give flesh to the idea of parity of participation in public deliberations, effectively associating communicative parity with the shared status of political equality in a territorial state. Thus, citizenship supplied the model for both the 'who' and the 'how' of legitimate public opinion in the Westphalian frame.

The effect, however, was to truncate discussions of legitimacy. Although it went unnoticed at the time, the Westphalian frame encouraged debate about the parity condition, while deflecting attention away from the inclusiveness condition. Taking for granted the modern territorial state as the appropriate unit, and its citizens as the pertinent subjects, that frame foregrounded the question of *how* precisely those citizens should relate to one another in the public sphere. The argument focused, in other words, on what should count as a relation of participatory parity among the members of a bounded political community. Engrossed in disputing the 'how' of legitimacy, the contestants apparently felt no necessity to dispute the 'who'. With the Westphalian frame securely in place, it went without saying that the 'who' was the national citizenry.

Today, however, the question of the 'who' can no longer be swept under the table. Under current conditions of transnationality, the inclusiveness condition of legitimacy cries out for explicit interrogation. We must ask: if political citizenship no longer suffices to demarcate the members of the public, then how should the inclusiveness requirement be understood? By what alternative criterion should we determine who counts as a bona fide interlocutor in a post-Westphalian public sphere?

Public sphere theory already offers a clue. In its classical Habermasian form, the theory associates the idea of inclusiveness with the 'allaffected principle'. Applying that principle to publicity, it holds that all potentially affected by political decisions should have the chance to participate on terms of parity in the informal processes of opinion formation to which the decision-takers should be accountable. Everything depends, accordingly, on how one interprets the all-affected principle. Previously, public sphere theorists assumed, in keeping with the Westphalian frame, that what most affected people's life conditions was the constitutional order of the territorial state of which they were citizens. As a result, it seemed that in correlating publics with political citizenship, one simultaneously captured the force of the all-affected principle. In fact, this was never truly so, as the long history of colonialism and neocolonialism attests. From the perspective of the metropole, however, the conflation of membership with affectedness appeared to have an emancipatory thrust, as it served to justify the progressive incorporation, as active citizens, of the subordinate classes and status groups who were resident on the territory but excluded from full political participation.

Today, however, the idea that citizenship can serve as a proxy for affectedness is no longer plausible. Under current conditions, one's

conditions of living do not depend wholly on the internal constitution of the political community of which one is a citizen. Although the latter remains undeniably relevant, its effects are mediated by other structures, both extraand non-territorial, whose impact is at least as significant (see Pogge, 2002: 112–16, 139–44). In general, globalization is driving a widening wedge between affectedness and political membership. As those two notions increasingly diverge, the effect is to reveal the former as an inadequate surrogate for the latter. And so the question arises: why not apply the allaffected principle directly to the framing of publicity, without going through the detour of citizenship?

Here, I submit, is a promising path for reconstructing a critical conception of inclusive public opinion in a post-Westphalian world. Although I cannot explore this path fully here, let me note the essential point: the all-affected principle holds that what turns a collection of people into fellow members of a public is not shared citizenship, but their co-imbrication in a common set of structures and/or institutions that affect their lives. For any given problem, accordingly, the relevant public should match the reach of those life-conditioning structures whose effects are at issue (Fraser, 2005). Where such structures transgress the borders of states, the corresponding public spheres must be transnational. Failing that, the opinion that they generate cannot be considered legitimate.

With respect to the legitimacy of public opinion, then, the challenge is clear. In order for public sphere theory to retain its critical orientation in a post-Westphalian world, it must reinterpret the meaning of the inclusiveness requirement. Renouncing the automatic identification of the latter with political citizenship, it must redraw publicity's boundaries by applying the all-affected principle directly to the question at hand. In this way, the question of the 'who' emerges from under its Westphalian veil. Along with

the question of the 'how', which remains as pressing as ever, it, too, becomes an explicit focus of concern in the present constellation. In fact, the two questions, that of inclusiveness and that of parity, now go hand in hand. Henceforth, public opinion is legitimate if and only if it results from a communicative process in which all potentially affected can participate as peers, *regardless of political citizenship*. Demanding as it is, this new, post- Westphalian understanding of legitimacy constitutes a genuinely critical standard for evaluating existing forms of publicity in the present era.

Let me turn, now, to the second essential feature of a critical conception of publicity, namely, the political *efficacy* of public opinion. In public sphere theory, as we saw, public opinion is considered efficacious if and only if it is mobilized as a political force to hold public power accountable, ensuring that the latter's exercise reflects the considered will of civil society. In effect, therefore, the theory treats publicity's efficacy as a function of two distinct elements, which I shall call the *translation* condition and the *capacity* condition. According to the translation condition, the communicative power generated in civil society must be translated first into binding laws and then into administrative power. According to the capacity condition, the public power must be able to implement the discursively formed will to which it is responsible. Whereas the translation condition concerns the flow of communicative power from civil society to the public power, the capacity condition concerns the ability of the administrative power to realize the public's designs, both negatively, by reining in private powers, and positively, by solving its problems and organizing common life in accord with its wishes.

In the past, these two efficacy conditions were understood in the light of the Westphalian frame. From that perspective, both the

translation condition and the capacity condition were linked to the idea of the sovereign territorial state. As we saw, public sphere theorists assumed that the addressee of public opinion was the Westphalian state, which should be constituted democratically, so that communication flows unobstructed from weak publics to strong publics, where it can be translated into binding laws. At the same time, these theorists also assumed that the Westphalian state had the necessary administrative capacity to implement those laws so as to realize its citizens' aims and solve their problems. Thus, the Westphalian state was considered the proper vehicle for fulfilling both the translation and capacity conditions of public sphere efficacy.

Here, too, however, the result was to truncate discussions of efficacy. Although the Westphalian frame fostered interest in the translation condition, it tended to obscure the capacity condition. Taking for granted that the sovereign territorial state was the proper addressee of public opinion, that frame foregrounded the question of whether the communicative power generated in the national public sphere was sufficiently strong to influence legislation and constrain state administration. The argument focused, accordingly, on what should count as a democratic circulation of power between civil society and the state. What was not much debated, in contrast, was the state's capacity to regulate the private powers that shaped its citizens' lives. That issue went without saying, as public sphere theorists assumed, for example, that economies were effectively national and could be steered by national states in the interest of national citizens. Engrossed in debating the translation condition, they apparently felt no necessity to dispute the capacity condition. With the Westphalian frame in place, the latter became a non-issue.

Today, however, these assumptions no longer hold. Under current conditions of transnationality, the capacity condition demands interrogation in its own right. We must ask: if the modern territorial state no longer possesses the administrative ability to steer 'its' economy, ensure the integrity of 'its' national environment, and provide for the security and wellbeing of its citizens, then how should we understand the capacity component of efficacy today? By what means can the requisite administrative capacity be constituted and where precisely should it be lodged? If not to the sovereign territorial state, then to what or whom should public opinion on transnational problems be addressed?

With respect to these questions, existing public sphere theory affords few clues. But it does suggest that the problem of publicity's efficacy in a post-Westphalian world is doubly complicated. A critical conception can no longer restrict its attention to the direction of communicative flows in established polities, where publicity should constrain an already known and constituted addressee. In addition, it must consider the need to construct new addressees for public opinion, in the sense of new, transnational public powers that possess the administrative capacity to solve transnational problems. The challenge, accordingly, is twofold: on the one, hand, to create new, transnational public powers; on the other, to make them accountable to new, transnational public spheres. Both those elements are necessary; neither alone is sufficient. Only if it thematizes both conditions (capacity as well as translation) will public sphere theory develop a post-Westphalian conception of communicative efficacy that is genuinely critical.

In general, then, the task is clear: if public sphere theory is to function today as a *critical* theory, it must revise its account of the normative legitimacy and political efficacy of public opinion. No

longer content to leave half the picture in the shadows, it must treat each of those notions as comprising two analytically distinct but practically entwined critical requirements. Thus, the legitimacy critique of existing publicity must now interrogate not only the 'how' but also the 'who' of existing publicity. Or rather, it must interrogate parity and inclusiveness together, by asking: *participatory parity among whom*? Likewise, the efficacy critique must now be expanded to encompass both the translation and capacity conditions of existing publicity. Putting those two requirements together, it must envision new transnational public powers, which can be made accountable to new democratic transnational circuits of public opinion.

Granted, the job is not easy. But only if public sphere theory rises to the occasion can it serve as a critical theory in a post-Westphalian world. For that purpose, it is not enough for cultural studies and media studies scholars to map existing communications flows. Rather, critical social and political theorists will need to rethink the theory's core premises concerning the legitimacy and efficacy of public opinion. Only then will the theory recover its critical edge and its political point. Only then will public sphere theory keep faith with its original promise to contribute to struggles for emancipation.

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[1] See, for example, Bowen (2004), Guidry et al. (2000), Mules (1998), Olesen (2005), Stichweh (2003), Tololyan (1996), Volkmer (2003), Werbner (2004).

[2] See, above all, Habermas, *Structural Transformation of the Public Sphere* (1989) especially pp. 51–6, 140 and 222 ff; and *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (1998), especially pp. 359–79.

[3] The phrase 'print capitalism' is not Habermas's, but Benedict Anderson's (1991).

[4] Black Public Sphere Collective (1995), Brooks-Higginbotham (1993), Eley (1995), Gole (1997), Landes (1988), James (1999), Rendall (1999), Ryan (1990, 1995), Soysal (1997),Young (1987), Warner (2002).

[5] An early form of this critique can be found in Luhmann (1970). See also Aronowitz (1993), Garnham (1995), Gerhards and Neidhardt (1990), Warner (1993).

[6] According to William E. Scheuerman (1999a), for example, Habermas oscillates inconsistently between two antithetical stances: on the one hand, a 'realistic', resigned, objectively conservative view that accepts the grave legitimacy and efficacy deficits of public opinion in really existing democratic states; on the other, a radical-democratic view that is still committed to overcoming them. I suspect that Scheuerman may well be right. Nevertheless, for purposes of the present argument, I shall stipulate that Habermas convincingly negotiates the tension 'between fact and norm' in the democratic state.

[7] Some scholars do raise these questions. For genuinely critical treatments, see Bohman (1997, 1998) and Lara (2003).

[8] Held et al. (1999), Rosenau (1997, 1999), Scheuerman (1999b), Schneiderman (2001), Slaughter (2005), Strange (1996), Zacher (1992).

[9] Hardt and Negri (2001), Pangalangan (2001), Sassen (1995), Strange (1996).

[10] Aleynikoff and Klusmeyer (2001), Beiner (1995), Benhabib (2002, 2004), Husband (1996), Linklater (1999), Preuss (1999).

[11] Cerny (1997), Germain (2004), Held et al. (1999), Helleiner (1994), Perraton et al. (1997), Schulze (2000), Stetting et al. (1999), Stiglitz (2003).

[12] Held et al. (1999) Cammaerts and Audenhove (2005), Dahlgren (2005), McChesney (1999, 2001), Papacharissi (2002), Yudice (2004).

[13] Adrey (2005), Alexander (2003), König (1999), Patten (2001), Phillipson (2003), Payrow Shabani (2004), Van Parijs (2000), Wilkinson (2004).

[14] Appadurai (1996), DeLuca and Peeples (2002), Hannerz (1996), Jameson (1998), Marshall (2004), Yudice (2004).

[15] Habermas has himself remarked many of the developments cited above that problematize the Westphalian presuppositions of public sphere theory (see Habermas, 2001).

[16] Certainly, these conditions are highly idealized and never fully met in practice. But it is precisely their idealized character that ensured the *critical* force of public sphere theory. By appealing to the standard of inclusive communication among peers the theory was able to criticize existing, power-skewed processes of publicity. By exposing unjustified exclusions and disparities, the theory was able to motivate its addressees to try to overcome them.