

FROM HABERMAS' CRITICAL THEORY TO DISCOURSE THEORY OF LAW AND DEMOCRACY: OVERCOMING THE "SYSTEM/LIFEWORLD" DICHOTOMY

DE LA TEORÍA CRÍTICA DE HABERMAS A LA TEORÍA DISCURSIVA DEL DERECHO Y LA DEMOCRACIA: SUPERANDO LA DICOTOMÍA "SISTEMA/MUNDO DE LA VIDA"

César ORTEGA-ESQUEMBRE*
Universidad de Valencia

ABSTRACT: The aim of this paper is to analyse the consequences of Habermas' discourse theory of law and democracy [1992] for his model of critical theory as a theory of communicative action [1981]. I defend that such a theory means Habermas' attempt to correct the undue and previously maintained dichotomization between "system" and "lifeworld." To support this interpretation, I first present the meaning of Habermas' critical theory as a theory of communicative action by focusing on the "system/lifeworld" dichotomy, on the thesis of internal colonization and on some problems associated with this scheme. Second, I analyze the key elements of the discourse theory of law and democracy. Lastly, I show that this theory allows Habermas to correct some of the above-mentioned problems.

KEYWORDS: law; deliberative politics; system; lifeworld; Critical Theory; communicative action.

* Cesar.ortega@uv.es Av/Blasco Ibáñez, nº30, Valencia, 46010. Despacho 603 (sexta planta Facultad de Filosofía y Ciencias de la Educación). Esta publicación ha recibido el apoyo del proyecto de Investigación Científica y Desarrollo PID2019-109078RB-C22, financiado por el Ministerio de Ciencia, Innovación y Universidades.

RESUMEN: El objetivo de este artículo es analizar las consecuencias de la teoría habermasiana del derecho y la democracia [1992] para su modelo de teoría crítica como teoría de la acción comunicativa [1981]. Se defiende que semejante teoría significa el intento de Habermas por corregir la dicotomización previamente mantenida entre “sistema” y “mundo de la vida”. Para apoyar esta interpretación, en primer lugar se presenta el significado de la teoría crítica de Habermas como teoría de la acción comunicativa, poniendo el foco en la dicotomía “sistema/mundo de la vida”, en la tesis de la colonización interna y en algunos problemas vinculados a este esquema. En segundo lugar, se analizan los elementos clave de la teoría discursiva del derecho y la democracia. Por último, se muestra que esta teoría permite a Habermas corregir algunos de los problemas mencionados.

KEYWORDS: derecho; política deliberativa; sistema; mundo de la vida; Teoría Crítica; acción comunicativa.

1. Introduction

Over the course of more than 60 years of uninterrupted theoretical production, Jürgen Habermas’ work has become so extended that there is hardly a region of social and human sciences that has not been subjected to his incomparable critical examination. The secondary literature that such work has produced is, of course, equally plentiful, so any of his structural elements –theory of social evolution, universal pragmatics, critical theory, discourse ethics, discourse theory of law or deliberative politics– is today unknown to the specialized literature. Political and moral philosophers, social theorists, historians, theologians and jurists, among others, contribute from an impressive division of labor to clarify the deep meaning of all Habermasian proposals.

Yet despite this task, some intratheoretical relations have still not been sufficiently analyzed. Among them, the relation between critical theory as a theory of communicative action on the one hand, and the discourse theory of law and democracy on the other hand, is of particular interest. More specifically, the implications of such a discourse theory of law and democracy for a theory of

society based on the dichotomy “system/lifeworld” are far from certain¹. The aim of this paper is to contribute to explain this issue by defending the following thesis: developing a legal-political philosophy in discourse theory terms, carried out mainly in *Faktizität und Geltung* [1992], can be understood as an attempt to correct the undue dichotomization between “system” and “lifeworld” maintained in *Theorie des kommunikativen Handelns* [1981]. With this correction, the old disconnection between systemic spheres of action and communicative action is partially suppressed. System contents, just like structural lifeworld elements, now seem to be susceptible to a communicative rationalization. This thesis only makes sense, for its part, if we bear in mind the double role that law plays in Habermas' social theory. Law is at the same time a lifeworld element and a “medium” through which the interchange between system and lifeworld operates.

To support this interpretation, I first present the meaning of critical theory as a theory of communicative action by focusing on the dichotomy “system/lifeworld”, on the thesis about internal colonization, and on some problems related to such a scheme. Second, I reconstruct the main elements of the discourse theory of law and deliberative politics. Lastly, I show that such a theory allows Habermas to overcome some problems that derive from his earlier critical theory of society.

2. The thesis of internal colonization and its problems

In the 1970s, Habermas work on two main tasks. First, to develop, in discussion with Marx's historical materialism and Piaget and Kohlberg's evolutionary psychology, a theory of social evolution that leads to the explanation of late-capitalism societies (Habermas, 1976; 1979a). Second, to offer, in collaboration with Karl-Otto Apel, a theory of communicative competence, or “universal pragmatics”, charged with reconstructing the transcendental-pragmatics presuppositions of speech (Habermas, 1979b). Based on these two models, in 1981 Habermas published what is his most important work: *The Theory of Communicative Action*. The aim of this book was to inform about a broad concept of

¹ Some recent studies on this issue can be found at: Fascioli, 2016; García-Granero & Ortega-Esquerre, 2019; Baxter, 2011; Cooke, 2020; Romero-Cuevas, 2011; Killion, 2010.

rationality, namely communicative rationality, which could serve as a normative criterion from which to criticize the pathological process of rationalization. The theory of communicative action is, in this sense, a *critical* theory of society.

By relying on his studies into universal pragmatics, Habermas differentiates between teleological rationality, whose aim is to modify something in the external world, and communicative rationality, which aims to achieve a linguistic understanding between at least two individuals. Both these forms of rationality correspond to forms of social action: strategic action and communicative action. Social actions can be distinguished according to their respective medium for coordination: through either interlinked interests or understandings (*Einverständnis*). Within a communicative action, Habermas distinguishes, in turn, four utterances that speakers can use to coordinate communicatively their actions with listeners: “constative”, “regulative”, “expressive”, and “communicative” utterances. If the validity claims of these utterances have to do with propositional truth (*Wahrheit*), actors refer to the objective world; if they have to do with normative rightness (*Richtigkeit*), actors refer to a social world of norms; if they have to do with sincerity (*Wahrhaftigkeit*), then actors refer to their very subjective world; finally, if they have to do with understandability (*Verständlichkeit*), actors refer to language. Against this background, Habermas defines communicative rationality as the “discursive redemption” (*diskursive Einlösung*) of the validity claims that can be criticized; that is, as an attempt by speakers to argumentatively convince listeners that their utterances are valid.

Based on this definition of the “communicative rationality” concept, Habermas describes the rationalization of mythical worldviews as a process to differentiate among three formal world concepts –objective, social and subjective worlds– and three specific validity claims –truth, rightness and sincerity–. Only from Modernity, theoretical access to the world –nature, society and subjectivity– depends on “common efforts of interpretation”, which begin by raising a certain validity claim. Communicative rationalization thus means the process through which traditions cease to determine the validity of cultural statements –science, law, moral and art–, because now the very own participants of lifeworld *decide* this validity². The universal presuppositions that underline this search for

² Such a communicative rationalization differs from the concept of Marx, Weber, Adorno and Horkheimer – development of productive forces (Marx, 1961), institutionalization of capitalist market and bureaucracy (Weber, 1978), and absolutization of instrumental reason (Adorno & Horkheimer, 1998).

a consensus, as well as the mechanism by which validity claims can be discussed, are the subjects of universal pragmatics.

However, this program of theory of action and theory of rationalization can only be linked to the aims of theory of society by making explicit the relation between the forms of action/rationality and the structural spheres of action which, in Habermas's view, make up society, namely system and lifeworld. On the one hand, communicative action operates within the lifeworld; on the other hand, strategic action operates within the system.

Habermas had presented different pragmatic relations that any subject, by acting communicatively, may establish with the world: (s)he may relate to an objective world by raising claims of truth, with a social world by raising claims of normative rightness, and with a subjective world by raising claims of sincerity. Communicative action consisted in this sense of a cooperative process of interpretation in which at least two individuals agreed on a problematic situation relating to the objective, social or subjective world. In this cooperation however, subjects implicitly refer to a frame of common interpretations which they cannot get rid of. Such a frame of self-evidences is what Habermas calls, by adopting Husserl's original concept, "lifeworld" (*Lebenswelt*). When a fragment of this frame is thematized by some participants, it loses its unquestioned character to become a fact, a norm or an experience whose validity, that has been temporarily called into question, may only be returned by achieving a new understanding (Habermas, 1987: 605).

Although *cultural* evidences are thematized against the lifeworld background, it itself is not composed of only such cultural evidences. In Habermas's model, lifeworld is composed of three structural elements: culture (science, law, moral and art), society (socially accepted practices, accredited forms of solidarity) and personality (individual skills and competences). From the perspective of the *participant* in the lifeworld, social reproduction is divided into two different processes: the symbolic reproduction of society as a lifeworld and the material reproduction of society as a lifeworld. As regards the first process, given that the lifeworld is composed of three structural elements, its symbolic reproduction is divided into three parallel processes: cultural reproduction or transmission and renewal of cultural knowledge; social integration or establishing the identity of groups through shared norms and institutionalized values; socialization or development of personal identities. During the lifeworld rationalization process, these three processes are disconnected from a traditional consensus and are placed

under the guiding light of communication. Secondly, the material reproduction of society as a lifeworld involves maintaining the “material substratum” of that lifeworld. Such a material substratum, which appears to the participants as objective barriers to carry out their own action plans, must be controlled through the technical appropriation of nature; that is, through social labor.

Lifeworld is nevertheless just one of the *two* structural elements of Habermas’s theory of society. According to Habermas, society should be understood from two different perspectives: from the perspective of a “participant” in the lifeworld, and from the perspective of an “observer” of a system. Research into the structures and rationalization process of lifeworld has been carried out from the point of view of the theory of action, whereas research into the structures and rationalization process of the system has to be done from the point of view of a functionalist system theory. Within this functionalist frame, “system” is defined as «an ordered set of elements that tended to maintain existing structures» (Habermas, 1987: 225). Based on the biological model of the organism and its environment, functionalism argues that the system maintains its own limits and internal organization by reducing the complexity of the environment through functional imperatives.

Although the symbolic reproduction of the three structural lifeworld elements operates through communicative action, the whole lifeworld is subject to the restrictions imposed by both an external nature and other lifeworlds. Unlike the action coordination within the lifeworld, action coordination within the system do not operates by the mechanism of mutual understanding and the harmonization of the action orientations of participants, but through a «functional intermeshing of action consequences that remain latent; that is, they can go beyond participants’ horizon of orientation» (Habermas, 1987: 202). Based on David Lookwood’s well-known differentiation between “social integration” and “system integration” (Lookwood, 1964), Habermas argues that social integration refers to a «co-operative/conflictual relationship between actors», whereas system integration refers to «compatibilities/incompatibilities between the parts» of that system (Mouzelis, 1997: 113).

Within the system, Habermas differentiates between an economic subsystem and an administrative subsystem. Money and power, the two “steering media” thematized by Talcott Parsons in his theory of society, operate respectively in the capitalist market and modern state administration. The typical risks of disagreement of communicative action coordination, which increase with the

rationalization of lifeworld, can then be reduced through such media. As new conflicts emerge, steering media do not appeal to the discursive redemption of validity claims, but they directly «uncouple action coordination from consensus formation in language altogether, and neutralize it with respect to the alternatives of agreement or failed agreement» (Habermas, 1987: 183).

Only by using a concept of society articulated at these two levels, as the system and as lifeworld, can Habermas rightly understand the kind of problems that arise from the interaction between social integration and system integration. That is, only now does his theory of society take the form of a critical theory of society; a society, therefore, charged with diagnosing the pathological processes that derive from rationalization. Such a theory is developed as a new version of Lukacs's theory of reification. The paradoxical Western rationalization, which Adorno and Horkheimer had diagnosed through their dialectic of Enlightenment, is now reformulated in the famous thesis of the colonization of lifeworld by systemic imperatives.

According to Habermas, the “non pathological” relation between system and lifeworld occurs as a “mediatization” of lifeworld. Habermas conceives this mediatization as being channeled through the societal component of the lifeworld: while the private sphere of this societal component is mediatized by the “employer and consumer” relation, the public sphere does so by the “client of the state and citizens” relation. With the development of capitalist societies, this mediatization, however, becomes a colonization of the lifeworld. The result of this colonization is to substitute understanding for money and power as ways of action coordination *within* the lifeworld:

In the end, systemic mechanisms suppress forms of social integration even in those areas where a consensus-dependent coordination of action cannot be replaced, that is, where the symbolic reproduction of the lifeworld is at stake. In these areas, the mediatization of the lifeworld assumes the form of a colonization (Habermas, 1987: 196).

This colonization of lifeworld is embodied in the phenomena described as “social pathologies” (Kettner & Jacobs, 2016) of bureaucratization, monetarization and juridification of social relationships.

In spite of the vast explanatory power of this thesis, the scheme “system/lifeworld” has posed Habermas significant challenges (McCarthy, 1985). On

the one hand, and as Axel Honneth noted, with the hypostasis of the concepts “system” and “lifeworld”, that theory of communicative action is presented as real social spheres in which only one type of rationality operates, and Habermas incurs in two complementary fictions. First, the fiction which, within economic and administrative subsystems, communicative action coordination cannot exist. Second, fiction in which a symbolic reproduction of lifeworld remains oblivious to strategy and domination (Honneth, 1991: ch. 9). Hugh Baxter analyzed the problems related to the first fiction. According to him, these problems are the consequence of «Habermas’s claim that interchange between system and lifeworld operates through steering media» because, on this basis, Habermas cannot explain how both economic processes or decision within the administrative system «depend upon actors’ commitment to certain values and their disposition toward certain motivations» (Baxter, 1987: 69). Baxter argues that the thesis of one single lifeworld is unnecessary for Habermas’ model, and he prefers to speak about different “lifeworlds” in which markets, bureaucracy, and public and private spheres of civil society, are included (Baxter, 2011). The problematic definition of administrative and economic subsystems as “norm-free subsystems” has led to a way of thinking that is related to not only ethics of economic institutions (Cortina, 1993; Conill, 2013; García-Marzá, 2013), but also to a reconstruction of the normative elements within the various spheres of democratic ethical life (Honneth, 2015).

On the other hand, this shift from a methodological distinction between two perspectives to a substantive or ontological distinction between two independent institutional spheres seems to contradict Habermas’s emancipatory spirit because with his scheme, it would be impossible to introduce communicative action into the system (Honneth, 1991; García-Granero & Ortega-Esqueembre, 2019; Fascioli, 2016). If, on the one hand, communicative action contains a critical potential, and if, on the other hand, the sphere of action of the system cannot be coordinated through communicative action, then the system becomes a part of society that is immune to criticism. By considering economic and administrative subsystems as subsystems being regulated only through delinguistified media of communication, Habermas «ends up reinforcing both subsystems against any in-depth critical analysis» (Romero-Cuevas, 2011).

I will argue that deliberative politics and the discourse theory of law are Habermas’s attempt to (partially) overcome the challenges that arise from such ontological dichotomization. To do so, we first need to understand the profound significance of these new elements of Habermasian thought.

3. Discursive theory of law and deliberative politics

Based on his differentiation of formal world concepts and validity claims, in the 1970s, 1980s and 1990s Habermas embodied his theory of discourse in a consensual theory of truth (Habermas, 1973; 1998b), a discourse ethics (Habermas, 1990a), and a political-legal philosophy or deliberative politics (Habermas, 1996). Now behold the connection between the theory of communicative action based on universal pragmatics and the later models of Habermas' thought: consensual theory of truth, discourse ethics and discourse theory of law and democracy are specific developments at the level of theoretical reflection, of the validity claims called "truth" and "normative rightness". In the latter, Habermas differentiates between the "normative rightness" of moral norms and the "legitimacy" of legal norms.

Although in Habermas's view the institutionalization of legal norms performs the function of compensating the cognitive, organizational and motivational burdens that postconventional moralities place upon individuals, the very legal norms, such is the main thesis, are liable to a discourse justification that operates, unlike legal positivism, by an analogy with discourse ethics. Such a thing can only be defended from the perspective of a normative theory of democracy, which has been referred to as "deliberative democracy". If I understand rightly, there are three topics which, in the 1980s, steered Habermas toward this theory. First, the discussions on the idea of "civil disobedience" reveal a clearly anti-positivist understanding of the constitutional state (Habermas, 1985). Second, the proposal of a model of socialism that moves away from the old utopia of labor to be based on the structures of a communicatively reinforced civil society (Habermas, 1989). Third, the strictly legal discussions that helped Habermas to clarify the role that law should play in his dual model of society (Habermas, 1990b).

The main thesis of Habermas's legal-political philosophy is anticipated in the preface of *Between Facts and Norms*, where Habermas maintains that the constitutional state cannot be maintained without radical democracy. Habermas reconstructs what he calls the «normative self-understanding of modern legal orders», which seeks to clarify the «tension between facticity and validity» operating at different levels. This reconstructive approach offers Habermas the chance to reconstruct the normative substance abandoned by legal positivism (Olson, 2013). The enjoyment of equal subjective freedom by private legal subjects,

which is the core of the liberal understanding of state, can only be guaranteed if those subjects are, at the same time, regarded as citizens who configure, as authors with political autonomy, those legal norms assumed as addressees. Habermas defines this complex relation between private and political autonomy, which sometimes appears as «the internal relation between law and democracy» (Habermas, 1998a), as the «internal tension (within the legal norm) between facticity and validity». As the ambits of facticity and validity in modern lifeworlds can no longer be attached under the power of sanction of a meta-social authority, positive law appears to be the tool that ensures the stabilization of social order. Positive law is, therefore, a «normative regulation of strategic interactions on which participants may agree» (Habermas, 1996: 89).

Positive legal regulations are, at the same time, restrictions to freedom of action of *legal addressees* and promises of legitimacy of *legal actors*. That is why legal norms address availability to obedience based simultaneously on both state coercion and legitimacy, which is guaranteed by a legislative procedure of lawmaking that aims to be rational. It is not hard to see that such a normative understanding of the legal system should be based on a normative understanding of political power because in the constitutional state, such is Habermas's thesis, legitimacy of law depends on the process of shaping political will.

By relying on both liberal and republican traditions, Habermas considers that legitimacy of a legal norm may only depend on a universal consent about all those affected by the norm. An internal link between popular sovereignty and human rights can be understood in this explanation in discourse theory terms as follow: the system of rights guarantees that its contents appear at the same time as the *objects* imposed upon people as legal subjects, and as *products* of people as citizens. Basic individual rights, and the legislative procedure based on the principle of popular sovereignty, are thus “co-original”. Accordingly, Habermas develops a reconstruction of the “system of rights” divided into five categories: 1) «the basic rights that result from the politically autonomous elaboration of the right to the greatest possible measure of equal individual liberties»; 2) «the basic rights that result from the politically autonomous elaboration of the status of a member in a voluntary association of consociates under law»; 3) «the basic rights that result immediately from the actionability of rights and from the politically autonomous elaboration of individual legal protection»; 4) «the basic rights to equal opportunities to participate in processes of opinion- and will-formation in which citizens exercise their political autonomy, and through which they generate legitimate law»; 5) «the basic rights to the provision of living conditions that are

socially, technologically, and ecologically safeguarded, insofar as current circumstances make this necessary if citizens are to have equal opportunities to utilize the civil rights listed in 1 to 4» (Habermas, 1996). As we can see, while the first three types of rights define individuals' private autonomy, which remain within a "liberal" frame, the rights of the fourth type define their political autonomy within a "republican" frame. The fifth type refers to the material conditions that guarantee the enjoyment of the others rights, and are naturally claimed by the "social-democrat" tradition.

The key of this model is a democratic principle for the foundation of legal norms that acts similarly to the principle of discourse ethics. Whereas this principle is a concretization of the principle of discourse for those norms that are justifiable only from the perspective of *all human beings*, the democratic principle is a concretization of the principle of discourse for those norms of action of a certain legal community that cannot be justified based solely on moral reasons, but also on pragmatic and ethical considerations. The democratic principle, which aims to provide a «procedure for legitimate lawmaking», states that «only those laws may claim legitimacy that can meet the assent of all citizens during a discursive process of legislation that, in turn, has been legally constituted» (Habermas, 1996: 110).

Until now, Habermas has showed that the legitimacy of legal norms rests on discourse processes of lawmaking which are institutionalized as political autonomy. This constitutes the solution to the problem of legitimacy emerging from legality: legitimacy arises from the democratic justification of laws through legal procedures. However, Habermas has not yet explained in which sense an order of *political* domination can vindicate itself as legitimacy. Such a claim can only be guaranteed if the state and its institutions are, in turn, articulated through the code "law". Or to put it in another way, the state power of sanction, which law needs to become effective, must be legally articulated: «the system of state offices, through which political power is exercised, is organized through law» (Baxter, 2002: 263). This self-referential process defines the core of the constitutional state (*Rechtsstaat*).

Within the framework of a discourse theory of constitutional state, the source of the legitimacy of a political domination does not refer to its legal form, but to its connection with certain legal norms that has been previously made legitimately; that is, democratically. Legitimate lawmaking, fulfilled by legislative power, must be differentiated from administrative power. Habermas

distinguishes “political power” between “communicative power” and “administrative power”. Political power, as a way of legitimate lawmaking, refers to the kind of communicative power that Hannah Arendt defined as «the potential of a common will formed in non coercive communication» (Habermas, 1996: 147; Habermas, 1983). The term “communicative power” seems inconsistent with the categories of the theory of communicative action insofar as represents a «mix of the normative resources of communicative action with the impersonal force of power» (Flynn, 2004: 434). Administrative power, however, refers to what Habermas called in *The Theory of Communicative Action* “power as a steering medium” of a self-regulation administrative system. This political “power code” is described in terms of “giving commands”.

From this perspective, it is easy to see the connection between communicative power and the legitimate lawmaking process, a process which, in turn, legitimizes exercising administrative power as political domination. Law is in charge of transforming communicative power into administrative power. On the one hand, citizens’ communicative power is the source of legitimate law and, on the other hand, administrative power should remain “tied” to that lawmaking power. As Hugh Baxter noted, Habermas understands communicative political power as “jurisgenerative”; that is, as a way of «influencing the production of legitimate law». The precondition for this “jurisgenerative” power is the existence of «undeformed public spheres of political discussion that are linked to the formal institutions in which law is made» (Baxter, 2002: 266-267).

But that as it may, what is clear is that the process of discourse political will-formation concludes in resolutions about policies and legal norms that must be formulated “in the language of law”, and that must also be consistent with a given juridical order. Only in this sense may communicative power result in an administrative power with the ability to make binding decisions. If, as we have seen, law is not only the media to organize political domination, but is also the source of legitimacy of such domination at the same time, then administrative power has to remain connected with «discursively generated communicative power» (Habermas, 1996). How such a connection happens in democratic life of societies is something that is not up to legal philosophy, but to the theory of democracy (García-Marzá, 1993).

Habermas locates a new tension between facticity and validity in the relation connecting a procedural conception of legal norms production and “the facticity of politics”, which is usually understood in the realistic terms of a struggle for

political power (Schumpeter, 1962). According to Habermas, the normative content here reconstructed must be found in the social facticity of observable political processes. In this sense, the normative theory of democracy aims to identify the «particles and fragments of an “existing reason” that has already been incorporated into political practices» (Habermas, 1996: 287). Such a reason has to be searched in the very democratic genesis of legal norms. This model, which operates following the methodology of “immanent criticism” that is peculiar to Critical Theory, has been referred to as “deliberative politics” (Bohman & Rehg, 1997; Cortina, 2009; García-Marzá, 2016).

The discourse theory of democracy or “deliberative politics” seeks to dialectically overcome liberal and republican models of democracy through a procedural model based on ideal deliberation. This side of abstract rights in which liberalism insists, but beyond the ethical life of a concrete community in which republicanism insists, can practical rationality be found in the discourse rules and modes of argumentation that take their normative content from the «basis of validity of action oriented to understating» (Habermas, 1996). In line with republicanism, Habermas places the heart of his model in the procedure of public opinion and political will-formation; in line with liberalism, he believes that a Constitution articulated in terms of rule of law is essential, whose principles institutionalize those forms of communication on which public opinion and political will-formation must rest.

However, and this is the core of the Habermasian model, the emphasis of the procedures of public opinion and political will-formation is not placed only on parliamentary deliberative practices, but also on the informal public space of civil society. That is, on what *The Theory of Communicative Action* called “the public sphere of lifeworld”. This is what Flynn calls «a wide reading of the role and scope of communicative power» (Flynn, 2004). The flow of communication between public opinion and political will-formation, on the one hand, and binding legislative decisions, on the other hand, guarantee the correct transformation mediated by the code “law” of communicative power –which operates in both spheres– in administrative power –which operates only in the institutional sphere–. Civil society, as a social basis of public opinion, is separated from both economic and administrative subsystems. His integration source is neither power nor money, but solidarity. However, despite political power providing society with feedback of democratic will, Habermas is very cautious about clarifying that only administrative power has the authority to “act”: communicative power

«influences the premises of judgment and decision making in the political system without intending to conquer the system itself» (Habermas, 1996: 486).

Whereas within parliamentary procedures, a will-formation process appears that aims to solve practical issues by including negotiation of commitments, the communicative procedures of civil society are about thematizing those issues that are of concern to citizens. Through independent public spaces, whose dissemination must be guaranteed by ethically articulated mass media (Conill & Gozávez, 2004), the civil society gets the necessary strength to transfer peripheral trouble to the political subsystem³. Habermas clearly defines the political public sphere as a «warning system with sensors that, albeit unspecialized, are sensitive throughout society» (Habermas, 1996: 359).

This model of political philosophy, articulated as a “two-track” model of deliberative democracy, has had an incomparable influence on theory of democracy studies. It is not clear, however, in which sense such a model can be compatible with the critical theory of society defended by Habermas himself a decade earlier in theory of communicative action terms.

4. Law as the dissolution of dichotomy between system and lifeworld

Based on a deep understanding of Habermas’s Critical Theory and legal-political philosophy, we are now able to analyze the difficult relation between both models. Unlike other critical interpretations, which consider Habermas’s discourse theory of law and democracy to be a project that is wholly inconsistent with the theses defended in *The Theory of Communicative Action*, in my view such a project constitutes the successful attempt to solve some problems that derive from the ontological dichotomy between “system” and “lifeworld”. This solution means *dissolution*, through the media “law”, of such a dichotomy; that

³ Habermas’s diagnoses must be updated today in light of the evolution of social media. A relatively recent study on this issue was carried out by Habermas himself (Habermas, 2009). I have tried to show, together with Miguel Ortega, that the current politicization of civil society operates as a process of sentimentalization of politics (Ortega & Ortega-Esquebre, 2021).

is, opening up the administrative system to the communicative action which was previously assigned to lifeworld.

Hugh Baxter formulated an interesting criticism to the intratheoretical relations between both elements of Habermas' thought. In his view, Habermas's system-theoretical concepts are incompatible with a normative theory of democracy: «the concepts of “systems” and “steering media” developed in *Theory of Communicative Action* were part of a more general model of modern societies in which genuine democracy, as Habermas understands it, was literally inconceivable». Based on the dichotomization between “system” and “lifeworld” on the one hand, and between “steering media” and “communicative understanding” on the other hand, lifeworld's contributions to the administrative subsystem are reduced to “mass loyalty” of citizens and taxes payment. Baxter rightly notes the difference with *Between Facts and Norms*, where the lifeworld's contribution to the administrative subsystem is the «communicative power of a normative consensus among citizens». Baxter concludes, consequently, that «the social-theoretical model Habermas develops toward the end of *Between Facts and Norms* is inconsistent with the system/lifeworld model» (Baxter, 2002: 271). In this second model, the administrative subsystem cannot be “self-steering” because its “power code” is the product of legitimate law which, in turn, is the product of democratic lawmaking.

Although I agree with Baxter that the normative theory of law and democracy developed in *Between Facts and Norms* «is normatively ambitious in a way that *Theory of Communicative Action* is not» (Baxter, 2002: 237), I believe that such a project can be understood only on the basis of the former. With the “dissolution” of the dichotomy between system and lifeworld, that is, with the introduction of lifeworld's contribution in the very system through a translation of communicative power into administrative power, Habermas develops a normative theory of democracy that, despite being inconsistent with the former model, is convincing in itself. This theory, however, can only be understood on the basis of the categories of the theory of communicative action and universal pragmatics. Among them, the idea of a discursive redemption of validity claims for the legitimacy of norms—in this case, legal norms—is obviously central. Below I make an attempt to show in which sense the new model, and more specifically the definition of law and its social role, offers the possibility of dissolving the problematic dichotomy between “system” and “lifeworld”.

As we have seen, in *Between Facts and Norms* Habermas includes in the administrative subsystem a form of action coordination that had been previously reserved exclusively to lifeworld: coordination through linguistic understanding. The introduction of this communicative power into the political subsystem occurs through its translation into administrative power; i.e., that kind of power which in *The Theory of Communicative Action* had the monopoly of the political subsystem. This translation operates, in turn, through the code “law”. Unlike moral, science and art, law is not only a form of the lifeworld’s own cultural knowledge. Nor does it exclusively form part of the societal element of lifeworld. Rather law is *also* and *at the same time* the system’s own code: «the language of law, unlike moral communication, limited to lifeworld, can operate as a transformer in the communication circuits between system and lifeworld» (Habermas, 1990c). Such a transformer is a “two-way” street. On the one hand, it renders the message from lifeworld intelligible for the administrative and economic subsystems. On the other hand, it manages to anchor steering media “money” and “power” to the lifeworld, precisely through its legal institutionalization in the form of private and public law. State power of coercion is articulated, as we have seen, by means of this “legal medium”.

From the perspective of this feedback between the code “law” and the steering media “power”, which has shown how law is, at the same time, the code of administrative power and the transformer of communicative power into administrative power, the former dichotomy between system and lifeworld seems to be called into question and, by the way, in favor of a greater democratization of the system. The development of a legal philosophy in discourse theory terms means, in my view, the attempt to extend communicative action and rationality, which were previously reserved only for lifeworld, *also* to the system. With the model of deliberative politics, it looks like not only the lifeworld’s contents, which are relatively harmless, could be subject to discourse criticism, but also that structural element of the political subsystem that is positive law. Now the *political* contents of the system are, in the same way as the structural elements of lifeworld –culture, society and personality–, the subjects of a communicative rationalization. That such a communicative rationalization of the political subsystem is not, however, sufficient for the purpose of a critical theory of society, insofar as Habermas keeps discarding the introduction of communicative action into the *economic* subsystem, is something rightly denounced by the critics of Habermas.

5. Conclusions

Based on an explanation of the concepts “system” and “lifeworld”, we have analyzed the meaning of the thesis of colonization. Despite the strong influence of this thesis, with which Habermas offered the most important model of critical theory of society since Adorno and Horkheimer's *Dialectic of Enlightenment*, we have seen that the ontologization of two dichotomously separated spheres of action caused Habermas some problems. After presenting these problems, and after reconstructing the discourse theory of law and deliberative politics, we have thirdly offered an interpretation of the relation between both stages of Habermas' thought.

Habermas' incursion into the field of legal philosophy and theory of democracy constitutes an attempt to overcome one of the main problems that derived from the dichotomy “system/lifeworld”, namely the disconnection between the political subsystem and lifeworld's communicative contributions. We have argued that such a correction was made by an approach to law in discourse terms as the law manages to connect the two forms of “power” into which political power is now differentiated. If in *The Theory of Communicative Action* “power” was only a steering medium, in *Between Facts and Norms* is *at the same time* a steering medium and a procedure of public opinion and political will-formation.

Although this new definition of power indeed conflicts with the former one, such a thing must not be understood, in my view, as an intratheoretical contradiction in Habermas' thought; rather the transit toward a discourse theory of law and a normative theory of democracy constitutes Habermas' attempt to overcome some problems that appeared early in his career. This solution, however, can only be understood based on the theory of communicative action categories. The fact that the new model reconstructs communicative rationality, i.e., action coordination via the redemption of validity claims, *also* in the administrative subsystem, does not go against that normative intuition which Habermas systematized in the form of a theory of society, but simply moves in its favor.

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