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Elemental Challenges: Environmental Troubles beyond the Limits of Democracy

Brad Mapes-Martins

University of Massachusetts Amherst, bmapesma@uwsp.edu

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ELEMENTAL CHALLENGES:
ENVIRONMENTAL TROUBLES BEYOND THE LIMITS OF DEMOCRACY

A Dissertation Presented

by

BRADLEY T. MAPES-MARTINS

Submitted to the Graduate School of the
University of Massachusetts Amherst in partial fulfillment
of the requirements for the degree of

DOCTOR OF PHILOSOPHY

September 2010

Department of Political Science

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Approved as to style and content by:

Nicholas Xenos, Chair

Barbara Cruikshank, Member

John Hird, Member

David Glassberg, Member

John Hird, Department Chair
Department of Political Science

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ABSTRACT

ELEMENTAL CHALLENGES:

ENVIRONMENTAL TROUBLES BEYOND THE LIMITS OF DEMOCRACY

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BRADLEY T. MAPES-MARTINS, B.A., THE EVERGREEN STATE COLLEGE

Ph.D., UNIVERSITY OF MASSACHUSETTS AMHERST

Directed by: Professor Nicholas Xenos

From an examination of how environmental issues reshape politics, this inquiry focuses on the theoretical grounds of deliberative democratic theory to ask whether such a vision offers the best means of resolving environmental problems. Arguing that the very terms in which environmental politics have been defined retain features better suited to previous historical circumstances, the analysis proceeds from features typical of environmental problems to a more context-specific assessment of the role for democratic participation. Engaging the works of Jürgen Habermas, the author details the way in which deliberative democratic theory is indebted to a concept of communicative action that defines complex environmental issues as beyond the scope for successful resolution. Covering theoretical as well as empirical aspects of environmental deliberation, this inquiry includes a comparative framework for evaluating the performance of differing deliberative institutions according to the type of environmental problem addressed. Following this critical assessment of deliberative democratic theory, the analysis turns to the effects of authoritative expertise on democratic involvement in environmental issues. Given that authoritative expertise cannot be dispensed with despite the asymmetry it

introduces into the relationship between experts and lay citizens, it is asserted that the conditions for justifiable deference should be encouraged by cultivating institutions that promote trust between experts and lay citizens. The analysis proceeds to link the way in which decentralized institutions decrease the risks inherent in trust with an assessment of the precautionary principle as a standard against which regulatory decisions can be evaluated. The inquiry concludes by turning to proposals for global democratic governance, arguing that the fragmented landscape of international environmental law offers increased opportunities for resolving environmental disputes due to the proliferation of coordinated but decentralized institutions and codification of the precautionary principle.

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INTRODUCTION

The impetus for this project comes, it goes almost without saying, from personal convictions about the beauty of the many places I have been privileged to reside in. However, a more complicated dynamic operative in political science with its, at times, stifling 'normative/empirical divide' shaped my line of inquiry. From my vantage point as a self-professed environmentalist with all the ambiguities that entails, the work I encountered on the theoretical side of that divide often discounted empirical evidence as merely constructed, as if being the outcome of situated and imperfect judgment made all knowledge claims commensurable. Not that this recommends 'empirical' accounts of environmental politics either. In this case, the treatment of environmental politics as strictly technical problem solving elides significant questions about the relationship between power and authority that are too messy for metrics. Moreover, many 'empirical' accounts remained silent about normative issues from what I can only presume is an unwillingness to appear partial, as though political scientists are capable upholding standards of objectivity and reproducibility that apply to controlled experiments.

The dilemma I felt I faced in articulating a committed but measured account of the landscape of environmental politics was led, however, in unexpected directions by the near unanimity of support for democracy I encountered. Coming to this project with an admiration for the works of Sheldon Wolin made me want to accept what appeared to be a strong foundation and push ahead, opting for theoretical refinement of the existing 'literature.' Wolin's work, however, had also attuned me to ambivalences in democracy that ceased, or so it appeared, to surface in the transplanting of democratic theory into

environmental political theory. The tensions present in Wolin's work that I found so fruitful result from his engagement with a tradition of political theory for which democracy was not an immediate solution but a problem as well. This interplay was lost in the ready acceptance of democracy in recent environmental political theory. As I discuss in greater detail in the first chapter, this appears to be a reaction to the baldly authoritarian visions emerging in the 1970s, themselves responding to perceived failures of the 1960s environmental movement as well as evidence of environmental damage in the postwar years.

I chose, then, to approach a broad evaluation of environmental politics by first suspending the democratic presumption. Doing so makes immediately evident that politics does not end at democracy and even on a day-to-day basis within 'actually existing democracy' much politics is not democratic. Were environmental politics simply awaiting the blockage of democratic potential to be unleashed from its constitutional fetters? Surely when environmentally benign values, much less the stronger values posited by deep ecologists, had been propounded they did not meet an unequivocal embrace by the public. As far as I could tell, decrying environmental destruction when popular support runs in the opposite direction risks being forced to prioritize environmental over democratic attachments. In the end, my suspension of the democratic presumption is warranted as an exploration of a politics that is not already democratic. This comes with the risk of being read as rejecting democratic politics altogether. My point of departure does not, however, automatically trigger an authoritarian response either. Insofar as I take my bearings from the Frankfurt School of critical theory, I seek to understand the limits of democracy, which means admitting to limits.

To pursue this line of inquiry I needed to open up a conceptual space in the nearly complete convergence of critical theory and the philosophy of Jürgen Habermas. The inheritance of critical theory is heavily monopolized by Habermas, especially in his turn to a communicative rationality as a supposed corrective to the critique of ideology and its reliance upon a philosophy of consciousness. Even critical theorists looking to distance their ideas from Habermas such as John Dryzek struggle to escape his orbit as they adopt foundational components of his conceptual apparatus. Concepts such as the public sphere and communicative rationality shaped the landscape of academic political theory in the United States following the decline of Marxism as a viable vocabulary in the 1980s as well as the climax and subsequent receding of post-isms in the 1990s. As I discuss in greater detail in Chapter 2, there is a great deal at stake in following Habermas's lead when attempting to think through environmental politics. In the era during which Habermas would become the last surviving representative of the Frankfurt School his work began to diverge more and more from his predecessors, reflecting instead his embrace of Kant-inspired liberalism. The result was that Habermas grafted a search for universal norms of the sort pursued by John Rawls in his *A Theory of Justice* onto prior analysis of 'system and lifeworld' in *Theory of Communicative Action*. Habermas managed to resolve these strains by assigning each a place within either a discourse of justification or a discourse of application, in essence reinscribing the 'normative-empirical' divide that had taken root in American political science. Habermas backed away from the aspects of critical theory that I find most compelling: the willingness to reflect dialectically on momentous political events with an express disregard for the distinction between 'facts' and 'norms.' Critical theory can be at once richly detailed in its

descriptions of political circumstances (recall Franz Nuemann's *Behemoth: The Structure and Practice of National Socialism, 1933-1944*) as well as engaged in the most mundane measurements of social science (recall Theodor Adorno's F-scale in *The Authoritarian Personality*).

The fundamental premise from which I begin – that changes to the environment over the last century generated an irreducibly political dimension to many human activities that was previously unproblematic – complicates the way in which I draw upon critical theory. Where others working in environmental political theory seek to articulate an 'ecological rationality' to serve as a corrective to instrumental rationality, I see instrumental rationality as valuable for diagnosing and remedying environmental problems.¹ Instead of rejection I opt for selective deployment, which entails a prudential analysis. Thus, where Habermas's distinction between justification and application involves deriving principles for the sake of adjudicating particular cases, my approach entails acknowledging that political engagement in which one takes a position in a finite and concrete set of circumstances involves entering into definite calculations about the world as it is and as it could be, neither of which can avoid empirical assertions. In environmental politics, though, these empirical assertions define the targets of one's substantive commitments and render retreat into procedural politics impossible. Environmental political theories pose the dilemma of having at their core unverifiable empirical evaluations or predictions to which one must commit. And it is for this reason that, without turning to a metaphysical argument for preserving the environment, scientific research offers the best basis for judgment in the face of competing and contradictory claims.

¹ See Baber and Bartlett, 2005; Brulle, 2000; Dryzek, 1987.

This dilemma is prominently on display in discussions of global democratic institutions driven by claims that such alterations are necessary to prevent catastrophic environmental problems such as global warming. In the case of global warming, a few computer models are used to test 'predictions' about past climatic patterns against actual occurrences. This retrocasting serves as proxy verification for identifying the relevant variables in climate models that then forecast likely changes given different levels of greenhouse gas emissions. The judgments that greenhouse gases are accumulating in the stratosphere, are significantly influenced by intentional human activities, and impact temperatures in the lithosphere and biosphere are all based upon reasonable inferences. But the certainty manifest in expressing a need to alter current patterns of energy use to avoid harmful consequences erases all traces of uncertainty built into judgment. And yet, to limit environmental politics strictly to already occurring harm is to define politics as a domain of unrevisable and irrevocable judgment.

I take up the task of circumscribing environmental politics in Chapter 1 where I begin from the political implications of recurring features of environmental problems. To achieve the conceptual space needed to view environmental politics in the ways I have just described, I treat similarities between the concept of legitimacy as it emerges out of theories of a state of nature and environmental critiques of the present. The objective is to establish the groundwork for situated, context-dependent analysis of the intersection between environmental and democratic politics, which I do by articulating the temporal dimensions that divide legitimacy and authority as well as justification and vindication.

The second chapter tackles directly the theoretical account of communicative action developed by Habermas that has steered much of the work on environmental

politics towards deliberative democracy. Beginning with Habermas's diagnosis of modernity, I demonstrate that his theory rests upon a depiction of the lifeworld as deeply fragile. This is accompanied by a promise that communication is the most likely means of repairing lifeworlds that Habermas cannot fulfill on his own terms. I proceed to reconstruct Habermas's rationalist theory of motivation, which is reliant upon coercive state functions for social integration but necessarily disavows this dependency. It is the combination of fragility, unfulfillable commensurability, and disavowed coercion that leads me to conclude that typical environmental problems are beyond the capacity of deliberative democracy to resolve. In doing so, I set the stage for expressly acknowledging the role played by state institutions in identifying, monitoring and resolving environmental problems. In the end, I conclude that without widespread agreement already in place, deliberative democracy is likely to legitimize an environmentally destructive status quo.

Following upon my theoretical analysis of Habermasian deliberation, I turn in Chapter 3 to the task of evaluating the performance of deliberative democratic institutions in response to various types of environmental problems. After recapitulating the lines dividing 'empiricists' and 'theorists' in the study of deliberative democracy, I devise a framework for ensuring that cases of deliberation over environmental issues are comparable. This involves translating assumptions about deliberation into the spatial and temporal terms of environmental problems detailed in Chapter 1. The resulting framework ensures that deliberative institutions are evaluated in relation to specific sets of problems. This is consistent with the premise that environmental problems pose unique difficulties discussed in Chapter 1. While methodological precautions limit the

availability of cases, in turn preventing me from drawing robust conclusions, I use the limited number of cases to generate hypotheses that will become testable as the number of cases increase.

Having therefore cleared the conceptual space needed for a more context-specific analysis of environmental problems, I turn in Chapter 4 to the pressure exerted on democratic politics by the role of authoritative expertise in identifying and monitoring environmental issues. Focusing on the routinized context of environmental regulatory agencies, I analyze the way in which scientific research is both necessary to the assessment of environmental problems while operating in ways different from the sorts of knowledge claims introduced into deliberative democratic institutions. This asymmetry, I argue, arises from the different standards imposed upon conclusions designed to be verifiable and reproducible and those claims which are unable to be challenged on such grounds. The path that I recommend focuses on building and sustaining trust between authoritative experts and citizens as a prerequisite for justifiable deference. Here, deliberative democracy is not rejected outright, but accepted on instrumental grounds as offering a potential avenue for rebuilding trust and enabling deference. This argument is combined with the analysis offered in Chapter 1 on the role of vindication in authority, which leads me to conclude that in order to minimize the risks inherent in trust environmental regulatory institutions should avoid centralization. With this in mind, I go on to discuss how a precautionary principle must be institutionalized as a guide for administrative decisions to ensure a clear baseline against which to judge authoritative expertise while unifying the operations of environmental agencies.

In the final chapter I expand upon the two recommendations I arrive at in Chapter 4, institutional decentralization and a fundamental role for the precautionary principle, turning to an analysis of international environmental politics. As environmental politics has come to be defined in terms of contemporary debates in democratic theory, arguments about the democratic potential of global governance have turned to environmental issues for examples. By tracing the lines of this debate, I expose the way in which articulations of transnational or global democracy presumes state capacities to resolve environmental problems. In the work of David Held, where such capacities are expressly avowed, the vision he offers is of a centralized global state. This overly centralized version, I argue, results from an inability to see the opportunities for environmental politics available in the fragmented landscape of international environmental law. Instead of pinning the prospects of environmental politics to the transcendence of a state-centered international order via a global public sphere, I look to the reasons for engaging at the level of nation-states. The goal, then, is to improve the environmental performance of states so as to render the need to transcend them moot.

CHAPTER I

VINDICATING A POLITICAL ENVIRONMENT

Modern democratic society seems to me, in fact, like a society in which power, law and knowledge are exposed to a radical indetermination, a society that has become the theatre of an uncontrollable adventure, so that what is instituted never becomes established, the known remains undermined by the unknown, the present proves to be undefinable, covering many different social times which are staggered in relation to one another within simultaneity - or definable only in terms of some fictitious future; an adventure such that the quest for identity cannot be separated from the experience of division. This society is *historical society par excellence*.¹

In December 1997, the New York Times framed its coverage of the Convention on Climate Change in Kyoto, Japan, around Vice President Al Gore's attempts to not offend any constituents that could play an important role in his presidential campaign in 2000. During this same period, environmental issues took hold as a topic of political inquiry. Amongst political theorists, the dire predictions of the 1970s have given way to an endless optimism that calls for expanding democratic opportunities while working to apply the insights of ostensibly more sophisticated democratic principles analyzed by John Rawls and Jürgen Habermas. In the past few years, this has taken on a more definite shape as authors such as John Dryzek seek to approach environmental problems through deliberative democratic theory. Following in the footsteps of Dryzek (2000), others such as Baber and Bartlett (2005), Smith (2003), Holden (2002), and Vanderheiden (2008) have taken up the mantle of deliberation, arguing that the benefits accruing from the reasoned exchange of perspectives and arguments are sufficient for dealing with the specific problems under study.

¹ Lefort, 1986: 305.

I suspend the assumption that democratic approaches are sufficient, thus rejecting arguments *from* democracy, as opposed to arguments *to* democracy. That is to say, I am open to acknowledging the importance of democratic participation but only once a case for expecting democracy to successfully resolve environmental problems is made and examples cited demonstrating those claims, not on the basis of a deontological idealization.

Given that the purpose of this inquiry as a whole is to determine what, if any, are the limitations to be expected when approaching environmental problems democratically, specifically deliberative democracy given its relative acceptance, it is necessary to avoid affirming or rejecting democratic participation at the start. This chapter, then, deals with three interrelated issues. First, in order to establish the parameters of my inquiry as well as the political implications that must be theoretically addressed I begin by outlining the relevant features of environmental problems. This set of features should be understood as tentative since it is neither intended to be exhaustive of existing environmental problems nor to have permanently established the grounds for any future environmental analysis. Instead, I hope to provide a conceptual space from which to begin an argument, threaded into the whole of my project, that moves *from* a political conception of the environment *to* maximal participation.

The second task of this chapter is to argue for the rejection of legitimacy as the relevant framework within which to analyze environmental politics. I begin by looking at how the concept of legitimacy as the provision of independent normative grounds emerged out of Immanuel Kant's merging of two philosophical devices in his attempt to understand the political circumstances of the French Revolution. Claiming that the terms

of legitimacy are poorly suited to the features of modern environmental politics, I follow this by looking at how the very notion of an environmental problem was formulated in the 1960s and 1970s in terms that were wholly inadequate to the task and which simply inverted the basic framework underlying the notion of legitimacy.

The final task to be dealt with in this chapter is to establish the theoretical grounds for what follows. This means offering a framework for prudential political analysis that addresses the limitations pointed out in the previous section. Thus, the third section of the chapter provides a skeletal theory that is developed throughout the text. Following a critical ground clearing in Chapters 2 and 3 that focuses on understanding the theoretical and practical limitations of deliberative democracy, Chapters 4 and 5 undertake a reconstructive effort to combine empirical insights with a more nuanced, even if limited, role for democratic participation. However, where limitations to democratic participation are discerned, I will also look at how to reconcile non-democratic political arrangements with the necessity of environmental politics. That is, I aim to recognize the interpenetration of democratic and non-democratic politics that shape the resources available for resolving environmental problems on different scales.

A. Political Implications of Environmental Problems

Approaching political inquiry by way of examining environmental problems requires identifying the relevant features that both inform and constrain the expectations set upon political action.² It is important to note that this is not strictly a classification since the categories are not jointly exhaustive, mutually exclusive, or homogeneously

² I use the terms action and political action interchangeably throughout this dissertation.

classed. Instead, I operate on the basis of conceptual resemblances organized spatially, temporally, and qualitatively as complexity. Thus, the sets of shared traits are fully revisable and amendable. Along with the seeming commonality of these problems, occurring frequently enough to warrant a sustained theoretical treatment, the problems I include are also durable insofar as once they have occurred they are not easily repairable.

Beyond organizing environmental problems spatially, temporally, and qualitatively, it should be added that all of the problems dealt with are understood to be preventable. Many problems, such as the accumulation of carbon dioxide in the atmosphere, are partially inherited from previous generations while others, such as the ubiquity of polypropylene, polystyrene, and polyethylene are of more recent vintage. In all cases, however, it is assumed that the problems are anthropogenic and, thus, resolvable by human action. This also excludes problems such as geological and weather phenomenon, despite claims that climate change will exacerbate the problem by contributing to higher sustained windspeed during hurricanes, for example.

1. Complex Issues

Complex issues exhibit interdependent relationships that, as John Dryzek describes them, cannot be captured by single-variable, non-interactive measurements such that improvement on one variable can hide deterioration on another variable.³ Complexity also covers a secondary trait: varying patterns of recovery and deterioration that occur within a given ecosystem. In studying an ecosystem it is necessary to take into account the non-linear processes that occur. On the one hand, ecosystems vary in their sensitivity to stimuli such that a pollutant may cause gradual changes in one ecosystem

³ Dryzek, 2005: 60-1 and 69.

while the same pollutant in a different ecosystem must accumulate over a longer period of time before a sudden change occurs. On the other hand, decreasing levels or removal of a pollutant does not necessarily return an ecosystem to its previous state, or does so only after it has passed through a series of recovery stages. Thus, environmental issues involve two levels of complexity: complex relationships between objects and complex knowledge about these relationships. Another way to put the matter is that relationships that are analytically distinguishable are not ontologically distinct, which implies that predicting interaction effects is both necessary and uncertain.

a. Sensitivity

The disturbance of an ecosystem refers to the effects of a given stimulus, or perturbation, on the totality of relationships within the ecosystem. Of significance is the degree to which a stimulus affects the dynamics of its surroundings, that is, whether a perturbation involves a quantitative alteration that can be integrated into the relationships of a given equilibrium or involves shifting to a qualitatively new set of ecological relationships. Determining the sensitivity of an ecosystem to perturbation has played a central role in debates about permitting logging roads in protected forests. Disputes about sensitivity have also impacted public perceptions about exploring and drilling for oil in Arctic National Wildlife Refuge (ANWR). At issue in the case of ANWR is not the quantity of land that must be used but the qualitative alterations that will result from use. Sensitivity is also at issue in cases of nitrogen-fed algae blooms exacerbated by agricultural runoff in waterways such as the Sea of Cortez.⁴

A corresponding measurement applies to assessing the risks posed to humans by different chemicals. In order to make such an assessment, the rate of exposure must be determined by analyzing the quantity, duration and type of contact at issue. The problems of concentration mirror the problem of sensitivity in ecosystems.

⁴ Beman, et al., 2005

The political significance of sensitivity lies in the necessity of basing decisions on inconclusive and conditional information. Sensitivity must be evaluated on a case by case basis. While debate about the role of generalization in ecological studies is ongoing, it is clear that increasing the degree of accuracy in assessments of sensitivity depends upon site specific analysis.⁵ The implication is that decisions, whether administrative or deliberative, will not be based on certainties but will involve weighing evidence as well as contestable suppositions to inform expected outcomes.

b. Irreversibility

Irreversibility refers to the transition to a state wherein specific sufficient conditions required for generating the preceding state are no longer available. Irreversibility occurs in cases such as species extinction, the introduction of invasive species or the generation of toxic materials with high-magnitude half-lives. Thus, irreversibility is the epitome of a threshold problem where once a particular set of conditions is surpassed the option to return is eliminated. While not the most common type of environmental problem, irreversibility is one of the more difficult precisely because of the absolute nature of such a condition. Along with the difficulty of predicting irreversible change, the political implication of irreversible environmental issues is that once an irreversible change has occurred it is no longer a political problem since resolution is no longer an option. Instead, irreversibility is a problem that is political only insofar as it is projected and speculated about.

⁵ For a sample of the debate about the role of generalizations in ecology, see Mikkelsen, 2003; Weber, 1999; and White and Jentsch, 2001.

c. Non-linear Resilience

Where the recovery of an ecosystem from a disturbance remains possible, thus differentiating it from irreversibility, this recovery does not always follow a linear path. Non-linear processes of recovery, termed hysteresis, are instances in which removing the cause of a disturbance does not return the ecosystem to its prior condition. To put it differently, hysteresis refers to environmental circumstances where disturbance cannot be corrected by subtraction.⁶ Non-linear recovery occurs in various cases such as decreased biodiversity, desertification, and deforestation. This is simply a way of recognizing the magnitude of variables that interact to generate changes of equilibrium, or 'tipping points.'

In political terms, non-linear recovery differs dramatically from irreversibility in that, because returning to the previous state remains possible, the issue remains open for dispute and resolution. However, the issue of recovery is easily converted into a question of cost. As is the case with many Superfund sites, the ability to accelerate recovery is not at issue. Instead, as can be seen with the Lower Duwamish waterway in Seattle, Washington, which was declared a Superfund site in 2001, it is reliance upon cost-intensive procedures and the presence of numerous polluters over time that creates incentives for parties to engage in long-term disputes over legal responsibility.⁷ In the case of the Duwamish, the cost climbs precipitously at the margins where cleanup approaches zero contamination.⁸

⁶ For a more detailed description of the concept of hysteresis as it applies to ecology, see Lockwood and Lockwood, 1993.

⁷ The Lower Duwamish is an approximately five mile expanse of river that was found to have abnormally high levels of polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), and mercury, among others, as a result of years of industrial processing along the river.

⁸ At the time of writing, the Draft Feasibility Study was recently submitted to the EPA and made publicly available. See LDWG, 2009.

2. Spatial Issues

The group of spatial issues comprises those circumstances in which the harmful environmental consequences of an act performed in one location extend to groups in another location that are then subject to those effects without having significantly contributed to them. Thus, spatial issues cross established political boundaries. Given the centrality of sovereignty in the modern nation-state and the numerous challenges to territorial sovereignty that have come about in the past century, such problems have received a great deal of attention on their own.⁹ What I wish to add is that spatial issues require some common medium, such as air and water, in order to transmit effects between disparate locales. The implication, however, is that this common medium extends across multiple ecosystems, each of which will interact differently with the new stimuli.

a. Diffuse Causes

Diffuseness refers to whether an environmental problem is caused by a site-specific polluter or by stimuli spread over many locations. All cases of nonpoint source pollution constitute diffuse causes, as is the case with runoff from paved surfaces, which carries automotive chemicals into groundwater supplies, or with agricultural runoff, which carries fungicides, pesticides and fertilizers into waterways.¹⁰ Effluent treatment, a highly regulated form of pollution, demonstrates the extensive infrastructure required for

⁹ Eckersley, 2004; Litfin, 1998; Kuehls, 1996.

¹⁰ Some of the most harmful agricultural chemicals are jointly governed under Federal Insecticide, Fungicide and Rodenticide Act (1947) and its later amendment Federal Environmental Pesticide Control Act (1972).

handling spatially diffuse causes. Similar problems occur in terms of the atmosphere as well with particulate matter from combustion engines posing serious health risks to humans. Carbon dioxide emissions appear to pose the most entrenched problem, since as a byproduct of fossil fuels carbon dioxide use occurs on a global scale.

Whether or not an environmental problem is attributable to an identifiable, site-specific polluter or is caused by stimuli spread over many locations fundamentally alters the political attributes that must be considered. Diffusion stands in positive proportion to coordination among actors. The greater the space over which the cause of pollution is spread, the greater number of points that must be monitored and regulated to resolve the problem. The complication lies in the way in which such problems cross not only multiple types of ecosystems but multiple types of political systems with varying degrees of citizen participation, what Robert Paehlke has referred to as "tangled jurisdictions."¹¹

b. Dispersed Effects

Along with the complications introduced by the need to deal with multiple, diffuse causes, the effects of a given stimulus are not easily constrained, accumulating along a path where differing degrees of pollution will occur. Such problems are not always easy to pinpoint since increasing distance further increases the number of contingencies that must be comprehended. The difficulty of locating the precise cause or causes of a problem, and the responsible parties, increases exponentially when all that can be detected is the effect, although in rare instances such as the nontarget effects of controlling an organism, this can be simpler to trace. While it is possible to address particulate matter or ground-level ozone by establishing ambient air quality standards,

¹¹ Paehlke, 1996: 34-35.

other long-range transboundary problems such as acidic precipitation involve greater effort to understand how chemicals act as they cross from air to water, moving from one medium to another. Furthermore, large-scale effects such as climate change are not only dispersed over a large space, but are dispersed unevenly, thus affecting ecosystems differently.

Dispersion generates a number of political difficulties as well. While transboundary issues offer some of the oldest political precedents with a legal framework stretching from the Trail Smelter Arbitration (1941) to the Convention on Long-Range Transboundary Air Pollution (1979), one of the more problematic aspects of dispersion is the difficulties that arise in establishing responsibility.¹² Not only is it more difficult to attribute responsibility to specific agents, the uncertainties that are introduced provide ample opportunity to contest data as inconclusive, which tends to entrench the status quo.

3. Temporal Issues

The defining feature of a temporal issue, much like spatial issues, is that a disjuncture exists between cause and effect. In this case, an act at one point in time leads to a consequence at some later point, which substantially impacts the options available to an uninvolved group. Temporal issues pose particularly difficult political challenges insofar as such issues are intergenerational and, on the surface, contradict the most basic assumptions about legitimacy. The ability of present generations to impose substantial constraints upon future groups of people that are unable to represent themselves -- or to put it more plainly, one group having undisputed influence over another group for

¹² The Trail Smelter arbitration process was overseen by the International Joint Commission as established by the 1909 Boundary Waters Treaty between the United States and Canada. See Trail Smelter Arbitration, 1941.

accidental reasons -- raises complicated normative questions. Beyond the asymmetry between the groups, there is also the difficult matter of how inherently unverifiable claims of future groups can be addressed through available institutions.

a. Accumulation

The most common instance of a delayed effect happens with accumulated substances. This is a problem exhibited across various phenomena, from mercury, which is concentrated in organisms higher up in a food network, and endocrine disruptors such as PCBs to less complicated issues such as municipal solid waste, which contributes to overfull landfills. In other cases, such as hazardous and radioactive waste, accumulation is more easily overlooked because of long-term dormancy.¹³

Delayed effects pose a dual challenge in terms of their political significance. First, accumulation fundamentally changes the options available to future actors, even if use of a previously accumulated pollutant is indispensable to those future actors. That is, using a pollutant to a level approaching unacceptability leaves minimal leeway for others that may find using that pollutant essential. The second challenge is epistemological: even where the eventual effects of accumulation are knowable with a high degree of certainty, lower levels of accumulation may have disproportionate impacts. These challenges combine in such a way that, even where present generations attempt to address the consequences of their actions upon future generations, the foreseeable constraints imposed upon future actors may be too narrowly gauged.

¹³ According to the EPA, the most recent available, 42.6% of all hazardous waste managed in the U.S. was handled via 'Deepwell or Underground Injection.' The next most common specified methods (not 'Other Disposal') were 'Aqueous Organic Treatment' at 6.2% and 'Incineration' at 6.0% of managed hazardous waste. See EPA, 2007.

When added together, these common aspects of environmental problems set a relatively coherent set of parameters for the success of any given political response. First, a problem must be publicly identified. This involves both determining the extent of change already incurred, the scope of the problem in both spatial and temporal terms, and the impact a given stimuli will have within that scope, even where it acts without uniformity. Second, speculation is inherent in the process of arriving at even tentative claims about harm, scope and impact. Stated differently, uncertainty is inherent in projections, whether climate forecasts or cancer risks. Furthermore, the quality of the available evidence determines the type and degree of uncertainty involved. Finally, environmental problems constitute political problems insofar as they display the "logic of consequences."¹⁴ Benjamin Barber describes the logic of consequences as the onset of necessary action, thus initiating a political problem:

Politics encompasses the realm not simply of action but of necessary action. It is enmeshed in events that are part of a train of cause and effect already at work in the world. This engagement guarantees that even the choice not to make some political decision will have public consequences. Recent political science has given the odd name 'nondecision' to this behavior. A nondecision is still a species of decision because as a passive component of ongoing events it has specifiable public consequences: it reinforces a status quo or permits a train of action already in process to gain momentum.¹⁵

I follow Barber in claiming that circumstances arise — without an actor's intending so or even being aware — that change the significance of an act from relatively benign to dramatically important. For instance, to drive a Ford Model T in 1908 had an entirely different significance than driving a Ford Expedition in 2008, despite the near parity in gas mileage. Thus, I understand agency as entangled in a world where the emergence of

¹⁴ Barber, 2003: 121.

¹⁵ Barber, 2003: 124.

new political contexts may involve rejecting or modifying existing terms of political inquiry.

B. The Limits of Legitimacy

Locating the concept of legitimacy within its historical context, in which it emerges as an accompaniment to theories of sovereignty, illuminates the way in which current usages retain a residual sense of the 'naturally ordered' worldview that comes to reshape its meaning when combined with a notion of the state of nature.¹⁶ Thus, the very question as to whether human activity is more or less harmonious with natural order, framed in terms of progress during the era of the French Revolution by Jean-Jacques Rousseau, Immanuel Kant, and Thomas Malthus, is anachronistic following the theory of evolutionary biology.

In order to hold together the components of legitimacy as they are shaped by Kant, without losing critical distance and becoming locked into the very terms that compose the concept, I frame the issue in terms of political imaginary. The notion of a political imaginary parallels that of a discourse, although it lacks the institutional referents covered by the concept of discourse as well as not bracketing off the problem of validity. This slight difference of terminology also allows me to avoid the baggage of debates that are beyond the scope of this inquiry. I focus my attention on understanding the conceptual terrain of legitimacy mapped out by Immanuel Kant and Thomas Hobbes precisely because both of these authors have informed the two most prominent strands of political theory addressing environmental problems: the eco-authoritarianism of the 1970s and the deliberative democracy of the present.

¹⁶ For an exploration of this link see Sim and Walker, 2003.

1. Originary Political Imagination and Legitimacy

Whether referring to a requirement of independent normative grounds that serve as the idealized terms of operation for a political system or prescriptive limits for political power, legitimacy retains overtones of the 'naturally ordered' context out of which it emerged. The word has its source in Roman jurisprudence as the recognition of a lawful birth. However, the strategic maneuvering between supporters of the French Revolution and their Royalist opponents served to reshape the concept. What, prior to the Revolution, served to describe the historically recognized hereditary lineage ascending to the throne became a term of contestation for arguing the rightful rule of a monarch or popular sovereign, Bourbon or Bonaparte. As Stephen Holmes puts it,

Legitimacy, one might say, was a hand-me-down vessel into which was poured twenty-five years of pent up émigré resentment and frustration. It was an intrinsically reactionary concept insofar as it contained an interpretation of and response to the revolutionary experience, from the viewpoint of the expropriated, the exiled and the injured.¹⁷

It was through political conflict that legitimacy became a tool for delimiting the power of a sovereign, even a democratically construed popular sovereign.¹⁸ Thus, at the very instant when lineage was losing its authoritative status, the origin of the ruler took on disproportionate significance and legitimacy emerged as a *retroactive* justification for an already accomplished overthrow of the government, for usurpation. That is, at the

¹⁷ Holmes, 1982: 167.

¹⁸ Richter, 1982.

moment when extralegal action successfully established non-hereditary government, a discursive battle over legal ramifications ensued.

The context within which legitimacy would take on its new role as philosophical measurement of political arrangements was not limited to revolutionary France. Around the time that the Girondists were being executed, on the opposite side of the Rhine, Immanuel Kant was witnessing the violent manifestation of the rights of man. By providing a single answer that combines consent as the source of political obligation with the broader natural law assumptions framing the *status naturalis* Kant serves as the culmination of 150 years of contractarian thought, operating as the second source of content in a reshaped concept of legitimacy.

In part two of his "On the Common Saying: That May Be Correct in Theory, But It Is of No Use in Practice," Kant expressly positions his theory of *Recht* in contrast to Hobbes. However, he does not make a clean break with his English predecessor. Instead, Kant opts to use a similar conception of the state of nature as the basis for his argument, borrowing certain key assumptions. Among these assumptions is the notion that a rational anxiety or fear expressed as antagonism between individuals is the motivation for exiting the state of nature and entering into civil society. Kant, then, turns to an account of origins as a vehicle for articulating the basis of obedience to authoritative rule, the role of consent, and a transcendental political order derived from Reason and bound by natural law. It is the way in which Kant combines the concern with justifying authority based upon its source with a hypothetical origin narrative structured around a notion of collective willing that serves to demonstrate both his indebtedness to Hobbes as well as the degree to which he distanced himself from previous formulations.

Already in his "Idea for a Universal History with a Cosmopolitan Intent" of 1784, Kant was making use of the state of nature as a means of deriving his political philosophy. In the Fourth Proposition, Kant describes human nature as having an "unsocial sociability" that serves as the basis for explaining the emergence of civil society. Much like Hobbes, whose view of individuals in isolation and lacking an impartial judge led him to posit anticipating competition over resources as the source of anxiety and fear that would propel rational beings out of such a state, Kant employs a modified notion of antagonism, which serves as the cause of order. Kant describes this competitive antagonism,

No one is bound to refrain from encroaching on what another possesses if the other gives him no equal assurance that he will observe the same restraint toward him. No one, therefore, need wait until he has learned by bitter experience of the other's contrary disposition; for what should bind him to wait till he has suffered a loss before he becomes prudent, when he can quite well perceive *within himself* the inclination of human beings generally to lord it over others as their master [...]?¹⁹

Furthermore, Hobbes's conception of the state of nature, like Kant's, combines freely consenting individuals bound by natural laws, by which he means rules of Reason.²⁰ The resemblances, however, go only so far as the formal attributes of the state of nature that allow each to generate the political implications of their theory.

For Hobbes, the agreement binding a people together was entered into for definite, measurable gains of security, psychological as well as material. At its most basic level, Kant rejects the idea that Hobbes's conceptual apparatus serves as a description of

¹⁹ Kant, 1996: 452.

²⁰ Gregory Kavka concisely describes Hobbes starting point as addressing "how rational, forwardlooking, roughly equal, and predominantly egoistic parties with conflicting interests and concern for their reputations would interact in the state of nature if they did not form defensive groups and there were a significant minority of dominators among them." Kavka, 1986:171.

empirically verifiable events. Hobbes insists that the motivations and assumptions employed in the state of nature are adequate approximations of pervasive phenomena:

Concerning my method, I thought it not sufficient to use a plain and evident style in what I have to deliver, except I took my beginning from the very matter of civil government, and thence proceeded to its generation and form, and the first beginning of justice. For everything is best understood by its constitutive causes.²¹

So sure is he of his evidence that he directs audiences' attention to the relationships

between sovereigns as an example of the world without a power to over-awe them.

Reiterating his point, Hobbes goes so far as to suggest that the sovereign is but a fragile

barrier between his subjects' inclinations:

It may seem strange, to some man that has not well weighed these things, that nature should thus dissociate, and render men apt to invade and destroy one another. And he may, therefore, not trusting to this inference made from the passions, desire perhaps to have the same confirmed by experience. Let him therefore consider with himself — when taking a journey, he arms himself, and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house, he locks his chests; *and this when he knows there be laws*, and public officers, armed, to revenge all injuries shall be done to him [...] (Ch. XIII, 10).²²

Thus, Hobbes turns to the state of nature less as a source for deriving political implications than as a model for replicating the conficted world of politics within which he found himself. As François Tricaud explains, Hobbes's state of nature encompasses premises insusceptible to formalization.²³ Instead of a formal system, Tricaud claims, Hobbes develops a model or "conceptual artefact" that captures tendencies but never exhausts the world it attempts to simulate, an approach in line with his own scientific aspirations.²⁴

²¹ Hobbes, 1991: 98.

²² Hobbes, 1994: 76-77, emphasis added.

²³ Tricaud, 1991: 123.

²⁴ Tricaud, 1991: 110-111.

Kant, however, transforms this constitutive view of the state of nature into a strictly hypothetical, regulative idea and, in doing so, moves closer to a formal system. At the level of premises, Kant introduces a new conception of human nature that foregoes treating individuals in isolation and, instead, locates conflict both within individuals and between individuals. This Kant achieves with his notion of unsocial sociability. By changing the initial terms of his deduction, however, Kant displaces the very problem that Hobbes sought to address, attributing to human nature what Hobbes must explain: the emergence of society. Kant's conception of the individual as simultaneously torn between isolation and association enables him to bypass the implications of a fearful, preservation-motivated populace. No longer burdened by the need to specify a reason for entering society, Kant is free to turn to the issue of universally administered justice in civil society, which arrives at a state of peace by working out Nature's purpose.

There is a drawback, however, to this approach: without a deeper grounding, it is possible for consent to undermine obligation. Having withdrawn the necessary preservation of the individual and demoted it to a mere "conditional duty," the formality of Kant's method obligates subjects to the status quo, regardless of the sovereign's actions.²⁵

While Kant begins by differentiating between politics and morality, he subordinates the former to the latter. Both politics and morality operate as sources of obligations, but those obligations have different statuses. As Patrick Riley points out, the

²⁵ Kant, 1996: 299, footnote.

difference between the two lies in the "incentive to obedience."²⁶ In the case of morality, an objective end attaches to an unconditional duty, which Kant calls an internal incentive. Politics, however, is instrumental for removing obstacles to moral action but requires external incentives. Kant distinguishes between the two thusly:

All lawgiving can therefore be distinguished with respect to the incentive [parenthetical comment omitted]. That lawgiving which makes an action a duty and also makes this duty the incentive is *ethical*. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is *juridical*.²⁷

The distinction between internal and external motivation allows Kant, following in the footsteps of Hobbes, to posit consent as a basis of obligation to the source of law.

Unlike Hobbes, though, Kant cannot rely solely upon consent as the justification for obedience since he derives the internal incentive (action from duty) from *a priori* principles of Reason, which lies at the center of his notion of natural law. Thus, Kant introduces a subdivision between natural and positive laws, where both may necessitate external motivation:

Obligatory laws for which there can be an external lawgiving are called *external laws* (*leges externae*) in general. Those among them that can be recognized as obligatory a priori by reason even without external lawgiving are indeed external but *natural* laws, whereas those that do not bind without actual external lawgiving (and so without it would not be laws) are called *positive* laws. One can therefore contain only positive laws; **but then a natural law would still have to precede it, which would establish the authority of the lawgiver** (i.e., his authorization to bind others by his mere *choice*).²⁸

By deriving obligation to authority from the logical preconditions of the idea of a lawgiver and granting Nature and Reason metaphysically equivalent statuses, Kant posits *a priori* laws discernible through the faculty of reason as the constitutive elements of his

²⁶ Riley, 1982: 128-9.

²⁷ Kant, 1996: 383.

²⁸ Kant, 1996: 379, italics in original, boldface added.

conception of the state of nature while freedom to consent is relegated to a more confined role as a regulative indicator of legitimacy. Thus, consent becomes a hypothetical question to be derived from Reason: "In general, for Kant those laws are legitimate that **could have been** consented to by a mature, rational people *and* that are congruent with natural law."²⁹

Of course, the conditions that trigger conflict in Hobbes's state of nature, the lack of a power capable of enforcing rule-based judgments, are without grounds in Kant's conception precisely because Kant understands the generally available faculty of reason to be the ultimate arbiter of dispute while Hobbes views reason as yet another source of conflict. Hobbes, treating both reason and sense perception as facts to be accounted for in moral philosophy, writes:

Good and evil are names that signify our appetites and aversions, which in different tempers, customs, and doctrines of men are different; and divers men differ not only in their on the senses (of what is pleasant and unpleasant to the taste, smell, hearing, touch, and sight), but also of what is conformable or disagreeable to reason in the actions of common life. Nay, the same man in divers times differs from himself, and one time praiseth (that is, calleth good) what another time he dispraiseth (and calleth evil); from whence arises disputes, controversies, and at last war [Ch. XV, paragraph 40].³⁰

The role each attributes to reason serves to ensure that no common ground is possible between the vigilance of the Hobbesian sovereign and the transcendent progress of Kantian Reason towards a peaceful equilibrium.

Without a stronger role for consent, Kant's assumptions about the transcendental power of Reason serve as the strongest assurance against the abuse of authority. And yet, the question remains as to whether these assurances are equal, even, to the limitations he ascribes to human nature. In the "Universal History," Kant claims that a civil society

²⁹ Riley, 1982: 132, italics in original, boldface added.

³⁰ Hobbes, 1994: 100.

characterized by universally administered justice is one of the final and most difficult historical tasks confronting humans. In a passage suggestive of Hobbes's psychological evidence, Kant writes:

The difficulty (which the very idea of this problem clearly presents) is this: if he lives among others of his own species, man is *an animal who needs a master*. For he certainly abuses his freedom in relation to others of his own kind. And even although, as a rational creature, he desires a law to impose limits on the freedom of all, he is still misled by his self-seeking animal inclinations into exempting himself from the law where he can. He thus requires a *master* to break his self-will and force him to obey a universally valid will under which everyone can be free. But where is he to find such a master? Nowhere else but in the human species. But this master will also be an animal who needs a master. Thus while man may try as he will, it is hard to see how he can obtain for public justice a supreme authority which would itself be just, whether he seeks this authority in a single person or in a group of many persons selected for this purpose. For each one of them will always misuse his freedom if he does not have anyone above him to apply force to him as the laws should require it. Yet the highest authority has to be just *in itself* and yet also a *man*. This is therefore the most difficult of all tasks, and a perfect solution is impossible. Nothing straight can be constructed from such warped wood as that which man is made of. Nature only requires of us that we should approximate to this idea.³¹

Here, Kant offers a reconstructed version of the very problem to which the mythical figure of Rousseau's lawgiver offers the remedy. Although aware of the path to transcendence, human nature fails to overcome its baser instincts. Given the magnitude of the task confronting humans and the limitations he ascribes to humans, it comes as no surprise that Kant concludes the Sixth Proposition by pinning his hopes for transformation to lessons of failure as much as to Reason.

The near impossibility of transcending the imperfections of human nature, it seems, would incline Kant to locate all possibilities in his political philosophy for resisting abusive authorities. Instead, Kant states that "A change in a (defective) constitution, which may certainly be necessary at times, can therefore be carried out only

³¹ Kant, 1991: 46-47.

through *reform* by the sovereign itself, but not by the people, and therefore not by *revolution*; and when such a change takes place this reform can affect only the *executive authority*, not the legislative."³² Here, Kant limits opportunities for altering even an admittedly deficient constitution to reform of the executive by the legislature. Taken in the context of a republican constitution, he is simply reaffirming the claim that, once constituted, a people may not dissolve itself.

While Kant lends his support to a notion of reform, this takes on a narrower meaning when repositioned in light of his broader political philosophy. Of significance for determining the meaning of legitimate reform is the conditions that justify change, i.e., the reasonable grounds for reform. Having foregone a constitutive use of the state of nature for a regulative one, Kant's inclusion of consent serves as the lone standard for judgment about reform. And yet, Kant removes even these grounds for reform by claiming that to do so would be to return, even if only temporarily, to a condition without public right, a condition that Reason dictates must be exited. He writes,

It is *futile* to inquire into the *historical documentation* of the mechanism of government, that is, one cannot reach back to the time at which civil society began (for savages draw up no record of their submission to law; besides, we can already gather from the nature of uncivilized human beings that they were originally subjected to it by force). But it is *culpable* to undertake this inquiry with a view to possibly changing by force the constitution that now exists. For this transformation would have to take place by the people acting as a mob, not by legislation; but insurrection in a constitution that already exists overthrows all civil rightful relations and therefore all right, that is, it is not change in the civil constitution but dissolution of it. **The transition to a better constitution is not then a metamorphosis but a palingenesis**, which requires a new social contract on which the previous one (now annulled) has no effect.³³

³² Kant, 1994: 465, emphasis in original.

³³ Kant, 1994: 480, italics in original, boldface added

Kant affirms that the historical origin of authority is coercion -- that is, without right -- while simultaneously claiming that progress is the result of a return to origin, a rebirth. One of two conclusions can be drawn from this dual affirmation: either Kant is subtly lending his support to a revolutionary notion of change or he is removing all justification for rightful reform.

His reassertion of obligation to successful revolutionaries only deepens the interpretive dilemma since, as Kant states, "once a revolution has succeeded and a new constitution has been established, the lack of legitimacy with which it began and has been implemented cannot release the subjects from the obligation to comply with the new order of things as good citizens, and they cannot refuse honest obedience to the authority that now has the power."³⁴ On top of that, the solution that Kant provides as to how change occur offers few clues as to the content of legitimate reform, stating only that "the *spirit* of the original contract involves an obligation on the part of the constituting authority to make the *kind of government* suited to the idea of the original contract."³⁵ If, however, we take Kant at his word and allow for a consistent application of his principle of obligation regardless of origin then Kant has clearly succeeded in removing the basis for even reformative measures that are not arrived at legislatively, regardless of whether such a legislature is representative or not.

In allowing for this consistency, however, the hypothetical character of the state of nature takes on a more important role, providing a content to legitimacy without expressly saying as much. In the opening passage of his 'General Remark' on the right of the state, Kant writes:

³⁴ Kant, 1994: 465.

³⁵ Kant, 1994: 480, italics in original, parenthetical remarks omitted.

Whether a state began with an actual contract of submission (*pactum subiectionis civilis*) as a fact, or whether power came first and law arrived only afterwards, or even whether they should have followed in this order: for a people already subject to civil law these subtle reasonings are altogether pointless and, moreover, **threaten a state with danger**. If a subject, having pondered over the ultimate origin of the authority now ruling, wanted to resist this authority, he would be punished, got rid of, or expelled (as an outlaw, *ex lex*) in accordance with the laws of this authority, that is, with every right. – A law that is so holy (inviolable) that it is already a crime even to call it in doubt *in a practical way*, and so to suspend its effect for a moment, is thought **as if** it must have arisen not from human beings but from some highest, **flawless lawgiver**, and that is what the saying "All authority is from God" means. This saying is not an assertion about the *historical basis* of the civil constitution; it instead sets forth an idea as a practical principle of reason: the principle that the presently existing legislative authority ought to be obeyed, whatever its origin.³⁶

The professed inconsequential role of origins, even the "should have" underlying Kant's own regulative notion, returns in the form of a transcendental order, albeit a hypothetical one. While no position is articulated from which to act, thus leaving only the hope for autopoietic change, when Kant's transcendental faith is combined with his obligation to the status quo, what results is a notion of legitimacy as veneration. Here, the threat that must be regulated is not to popular freedom, although such freedom is not precluded. Instead, it is the threat to stability that arises when sovereignty is called into question in a practical way. Obligation to authority without conditions, then, serves to make the stability of the state, its perpetuation *ad infinitum*, the purpose of political right.

The issue of stability figures prominently in another work of the same revolutionary era, *The Federalist Papers*. The experiment in confederated statehood following the successful formation of the United States led to considerable disagreement, not only over specific issues but about whether small insurrections constituted instability. As Jason Frank argues, a particular form of political imagination was called for by proponents of the new Constitution that couched its claims in the language of reason as

³⁶ Kant, 1994: 462, italics in original, boldface added.

well.³⁷ Fittingly, James Madison seeks to limit opportunities for popular changes to the Constitution itself since "every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in great measure, deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability."³⁸ Madison sought to inculcate a structural veneration for the Constitution. Furthermore, the *Federalist Papers* hypothetically employs a transcendental motif as well to justify uniting the states under an invigorated central government: "This country and this people seem to have been made for each other, and it appears as if it was the design of Providence that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties."³⁹ The issue, then, is not that political imagination is to be rejected since, as I discuss further along, it performs a crucial function in relating the necessarily uncertain projections about environmental impacts to political expectations, but how it is to be used.

2. Finitary Political Imagination and Illegitimacy

While Kant's teleological rendering of the Hobbesian state of nature posits a set of standards by which to judge when history arrives at an enlightened republic, Hobbes's state of nature serves as a starting point for a more recent, negatively defined conception of illegitimacy. In the late 1960s, following nearly two decades of changes in the American landscape — from the rise of tract housing and the corresponding commute to

³⁷ Frank, 2009.

³⁸ Hamilton, Madison, and Jay, 2003: 311.

³⁹ Hamilton, Madison and Jay, 2003: 32-33.

work to the manufacturing of plastics and the introduction of the distinction between durable and disposable products — a new set of thinkers went about formulating a more economic political theory. By the end of the 1970s this new formulation of an environmental critique of society would link up with the already established concerns of environmentalists, thus culminating in the finitary political imagination animating the professional environmental policy groups formed in the wake of the environmental movement. Thus, what had once been a push by conservationists for resource management or by preservationists for refuges insulated from production demands were followed in the post-war period by anxieties about the consequences of an entire way of life.

A first line of thinking picked up on by the social movements that took shape around issues such as nuclear proliferation and episodes of environmental destruction such as the Cuyahoga River fire of 1969 was a critique of the technological capacities developed in the first half of the twentieth century. A sublime capacity for destruction is already under scrutiny in Karl Jaspers's *The Future of Mankind* (translated from the German *Die Atombombe und die Zukunft des Menschen*) as well as Hannah Arendt's "The Conquest of Space and the Stature of Man," published in 1963, where she seeks critical purchase on the extension of science and technology into realms beyond linguistic communication.⁴⁰ During the same years, Lewis Mumford was in the process of developing his own critical interpretation of technology, published between 1967 and 1970 in the two volume *The Myth of the Machine*, while Arendt's compatriot Herbert Marcuse was developing the analysis begun in *One-Dimensional Man* (1964) into a theoretical account necessitating the liberation of man by ending the domination of nature.⁴¹

⁴⁰ Jaspers, 1961; Arendt, 1977a. See also Worster, 1977.

⁴¹ Mumford, 1967 and 1970; Marcuse, 1964; Marcuse, 1972.

The critique proffered throughout the 1960s was digested within the environmental movement alongside other, more specifically ecological works. The publication of Rachel Carson's *Silent Spring* (1962) provided readers with a brief glimpse of the dangers of bioaccumulation, suggesting that such dangers were not only devastating for bird populations but, by analogy, could easily affect human populations as well. This was followed up in 1966 by a more extensive exposition of the environmental impacts of modern production in Barry Commoners's *Science and Survival*. The following year, Roderick Nash's *Wilderness and the American Mind* would situate the newly emerging concerns about toxicity within a broader lineage of concerns about nature.⁴²

It was, however, Garrett Hardin's combination of an egoistic rationality modeled on Hobbes's state of nature with Thomas Malthus's assertion that all creatures display a "constant" tendency to increase in population beyond the nourishment prepared for them that offered a bold, quasi-scientific vision for an environmental movement in the midst of establishing a professional base of operations following the legislative successes of the early 1970s.⁴³ Although written in 1968, Hardin's work gained in prominence during the 1970s as concerns about population came to the fore during the legislative session that produced the National Environmental Policy Act (NEPA) and significant amendments to prior legislation in the forms of the Clean Air Act and Clean Water Act.⁴⁴ Also published in 1968, Paul Ehrlich's *The Population Bomb* was one of many books that would appear documenting the purported confluence of scarcity and intensive resource use. Thus, in the

⁴² See Gottlieb, 1993: 81-114.

⁴³ Hardin, 1968; Malthus, 1992: 14. For historical accounts of the professionalization of the environmental movement see Gottlieb, 1993, as well as Hays, 1987: 207-245.

⁴⁴ The United States Congress approved the "President's Commission on Population Growth and the American Future," which was signed by President Nixon in 1970.

1970s environmental problems came to be couched primarily in terms of 'natural' laws that would assert themselves through intentional or unintentional human activity, a conclusion no doubt reaffirmed by the OPEC led oil embargo in 1974.

The focus on population and scarcity coincided with a strong role prescribed for experts. This was later mirrored in structural changes within environmental advocacy groups as many, such as National Resources Defense Council, Environmental Defense Fund, and Sierra Club Legal Defense Fund, found the ability to compete in courtrooms a necessary adaptation to the ever-changing legislative landscape of the late the 1970s and the passage of the Comprehensive Emergency Response, Compensation, and Liability Act (Superfund) in 1980. Furthermore, the professionalization of the environmental movement was shaped, in part, by legal battles brought about by the Reagan administration's attempts to nullify environmental legislation through inaction at the Environmental Protection Agency, as can be seen following the appointment of Anne Gorsuch as Director of the EPA. The routinized legal tactics employed by professional environmental institutions have seen their role expand in the past decade and a half as legislation has been less forthcoming and new policies more commonly result from judicial and executive decisions.⁴⁵

The transformed legal and institutional context of the 1970s correlates with the rise of the need to assure an unfamiliar public of the scientific basis of environmental policy as well as the ability of agencies like the Environmental Protection Agency (EPA) to render accurate data. New informational mechanisms such as environmental impact statements were introduced at the federal level under NEPA that would later develop into

⁴⁵ See Klyza and Sousa, 2008, and Andrews, 2005.

risk assessments.⁴⁶ The notion of risk, while not officially endorsed at the EPA until William Ruckelshaus's reinstatement in 1984, played a central role in the probabilistic projections of harm by the Neo-Malthusians of the 1970s.

The convergence, then, of a critique of technologically-driven society, a conception of nature as vulnerable to the disorders of that society, and computer-aided thought experiments that calculate polluting behavior to its devastating terminus serves as a finitary political imagination that is expressed in various ways during the formative years of the modern environmental movement. In the 1980s, as the environmental movement took on a more professionalized, interest-group approach to politics, this imagination came to operate as both the discourse against which more 'practical' and 'pragmatic' groups would define themselves while also relying on some version of this imaginary as the justification for their own activities. Thus, the finitary imagination acquires its critical purchase by constructing a delegitimizing narrative that attempts to erase its own imaginative role, thus inverting the state of nature and, as with Hobbes and Malthus, asserting the scientific validity of doing so. To put the issue differently, the finitary political imagination is a projection into the future that simultaneously seeks to delegitimize some current state of affairs while also aiming to depoliticize its own claims by treating them as determinate.

While this finitary political imagination has not been uniformly invoked within environmental politics over the past few decades, just as the originary political imagination is expressed in different versions of the state of nature, there are a few recurring themes that can be found across variants. To begin with, the most radical departure from the originary imagination employed by Kant is the replacement of a

⁴⁶ The relevant text of NEPA is Title I, Sections 101-102.

teleological conception of history with an evolutionary conception. Signaling the dramatically different contexts within which these imaginaries operate, the finitary imagination structures its projections into the future in terms of evolution. Jared Diamond's *Collapse* and Thomas Homer-Dixon's *Environment, Scarcity, and Violence* stand out as exceptions since both conduct their inquiry on the basis of previously occurring events. This stands in stark contrast to the ideas of Garrett Hardin and William Ophuls, both of whom draw upon the metaphor of a medieval commons to illustrate the inevitable exhaustion of non-exclusive property without analyzing a single case where a medieval commons actually failed in the ways that they suggest are inevitable.⁴⁷ Instead, both authors cite inconclusive examples to illustrate the modeled behavior. However, the central feature in all of these works is an evolutionary account of humans exceeding an acceptable range of physiological constraint that fundamentally undermines some preconditions of modern society, which typically refers to resources that supply electrical or caloric energy.⁴⁸

Although the assumption of evolution is commonly exhibited across instances of finitary political imagination, it takes two distinct forms as authors attempt to assert the precise way in which current conditions lead to negative consequences. The first, and initially the most common, form is the catastrophe. In this version, exceeding limits cause a sudden collapse of conditions necessary for a consumption-based, disposable life of convenience. The second, more recent, form revolves around a notion of degradation, a progressive decline into disorder capable of being averted at most stages along its path by addressing challenges instead of crises, although each challenge has the potential to

⁴⁷ Diamond, 2005; Hardin, 1968; Ophuls, 1977.

⁴⁸ See, for example, Meadows, et al., 1972; Catton, 1982. The catastrophic version has never fully disappeared as can be seen in Postel, 1992, Deffeyes, 2001, and Homer-Dixon, 1999.

blossom into a catastrophe. This version, while much less explicit about the irrevocability of environmental destruction, is associated with authors that seek to align 'natural limits' and ever-increasing economic activity.⁴⁹ The entropic version of limitations, then, has transformed discussions of 'sustainable development' from economic equilibrium to environmentally non-destructive economic growth.⁵⁰

Despite an evolutionary form of projection about limitations, finitary political imagination relies upon a notion of illegitimacy arrived at by inverting the speculative relationship between concepts of Nature and Society and reconfiguring them along evolutionary lines (**Figure 1.1**) Furthermore, both imaginaries rely on antagonism to explain projected changes. In the case of the originary imagination informing the state of nature the speculated agent is an antagonism present *within* both Nature and Society while in the case of the finitary imagination the speculated agent is an antagonism *between* Nature and Society. The key difference, an implication of employing an evolutionary structure, is that where the originary imagination depicts the transfer of the order found in Nature to Society via cognitive faculties of reason or rationality, the finitary imagination allows for this process to recur. Thus, it portrays Society as the cause of disorder in Nature through excessive and irrational appetites only to have Nature transfer this disorder back upon Society.⁵¹

⁴⁹ Hawken, 1993; Hawken, et al., 1999; Hart, 2005; Friedman, 2008; Sachs, 2008.

⁵⁰ Daly, 1973; Daly, 1978.

⁵¹ Recently, there has also been an apocalyptic turn that dissociates Nature and Society entirely without including within its projections any attributable cause to the disappearance of Society. See Weisman, 2007, and television series such as "Life after People" on History Channel and "Aftermath: Population Zero" on National Geographic Channel.

Figure 1.1 Stages of Originary and Finitary Imagination

Originary Imagination

... Society (disorder) → Society (order) → ... Present ... Equilibrium ...
Nature (order) Nature (order)

Finitary Imagination

... Society (order) ... Present → Society (order) → Society (disorder) ... Equilibrium ...
Nature (order) Nature (disorder) Nature (order)

Along with this structural inversion, finitary political imagination posits as a collective choice the consequences of collective behavior. This is problematic for two reasons: first, attributing the status of choice to all behavior overextends the supposed role of cognition to acts undertaken with or without reflection. The assumption of rational intentionality treats as unambiguous the neurological and cognitive processes involved in acting, thus covering over the opaque source and uncertainty surrounding knowledge in behavioral psychology as well as mimicking the originary imagination's need to cover over the opaque sources of authority with the notion of consent. To put it differently, the assumption of rational intentionality reinscribes the problem of the sovereign authority at the level of the sovereign author or subject. Furthermore, assuming that all behavior results from choice implies that the most effective means of dealing with environmental problems is to change the information available prior to cognition, echoing the 'consciousness raising' campaigns to acknowledge agency during the 1960s and 1970s as well as deliberative democrats calls for transformative will-formation endogenous to the process of public reason-giving.

On the other hand, treating as a choice the effects of collective behavior need not assume that action is the outcome of rational cognition. Instead, an action may be understood as both intended and irrational in origin, as it is with the satisfaction of consumers's appetites. However, in terms of environmental politics one must add those interests, or particular interest, that cannot be overridden with rational proclamations about the public interest. The issue is implicitly framed this way in more recent usages of the finitary imagination where a concordant synthesis of 'economy and ecology' are called for and which accompanies the entropic version of environmental destruction. As

with Stuart Hart's reliance upon Joseph Schumpeter's notion of creative destruction, the attempt to guide action by aligning 'economic' and 'ecological' interest rests precisely on this notion of intentional irrationality.⁵³ This, however, could already be seen in the catastrophic imagery of the 1960s and 1970s as equilibrium or a steady-state economy was posited as the solution to the displacing of disorder via overconsumption, which was then transformed in the 1980s following the publication of *Our Common Future* into a call for sustainable development.⁵⁴ Insofar as the finitary political imagination parallels the originary political imaginary by conceptualizing agency in terms of sovereignty, the illegitimacy it describes in the present stands above the very actors and actions it refers to, unable to articulate the closure between abstraction and actuality.

3. Politics of the Present, Politics in the Environment

The political imaginaries just described display a temporality that prevents the corresponding notions of legitimacy from arriving at a particular, definitive claim. This is to say that each takes on a perspective of projecting from the present and, treating that projection as a determinate position from which to judge the present, ignores the speculative nature of this position, and then turns toward the present to legitimize or delegitimize its political arrangements. In the case of Kant's use of the originary imagination, he is only able to confer legitimacy, but not to specify that any given act is illegitimate. Thus, there is an inability to assign the status of legitimate or illegitimate to any ongoing effect of a past action. On the other hand, the finitary imagination is able to designate an entire mode of living as illegitimate, but is itself unable to legitimize any

⁵³ Hart, 2005.

⁵⁴ UN-WCED, 1988.

response to that condition. Thus, it is unable to specify what actions in the present are legitimate and worthy of perpetuation. For the finitary imagination this, in part, results from the difficulty of determining the legitimacy or illegitimacy of the present given its inversion of the terms made available by the originary imagination. That is to say, the terms of analysis made available by the predominant strands of liberal contractarian thought were themselves insufficient for responding to the environmental problems that came about during the middle of the twentieth century, a point brought up by many of the authors that early on contributed to the critical context out of which the finitary imagination emerged.⁵⁵

The unidirectional, linear temporality that is employed in both imaginaries serves as an impediment to political action. Utilizing the state of nature as the structuring narrative to answer the question of the source of authoritative obligation, the originary political imagination leads to the conclusion that this source is an indefinable moment of consent. In the case of Kant, where society is assumed and what must be explained is civility, this formalized notion of consent carries minimal substantive constraints. Instead, legitimacy in its abstract, proceduralist guise refers to the *average* or patterned performance of a political system over a series of iterations, which enables thinkers such as John Rawls to explain how legitimacy persists despite invalid or unjust arrangements, thus infinitely postponing any politically disruptive response.

⁵⁵ See Arendt, 1977a, and Marcuse, 1964. There are, of course, many other thinkers in the United States that offered a critique of political liberalism, in many instances focusing on problems that have come to be known in terms of identity and recognition.

As discussed above, legitimacy becomes difficult to empirically distinguish from veneration given that no specific government decision is illegitimate in any actionable way.⁵⁶ This is, in part, the result of underemphasizing accountability, an issue discussed further along. Relying upon the notion of legitimacy that arises from the originary political imagination leaves one unable to point to examples to justify political action. The result is that justification of action must take place at a level of abstraction that, in seeking to curb political instability by positing action as solely a consequence of reasoning, operates at the level of 'meta'-concepts such as Society, Nature, and Reason. Thus, the problem plaguing the historical contexts out of which the elements of the originary imagination emerged — conflict, strife, and instability — remain as the points of contrast that shape more recent usages of the concept of legitimacy by John Rawls and Jürgen Habermas. To put it another way, the concept of legitimacy, despite the shifts in meaning undergone in Germany in the early part of the twentieth century, sacrifices specifiable terms of political action for regularized governability.⁵⁷ After Kant wedded an abstract source of authority to the narrative structure of an original state, the conception of legitimacy employed in liberal contractarian thought has been unable to avoid the overtones of arbitrary (because unspecified) and, hence, unreasonable reverence.

On my account, the centrality of the concept of legitimacy in both the originary and finitary political imaginations that has come to substantially define the terms by which constitutional democracy is evaluated did not so much succeed in attaching the source of authoritative obligation to popular sovereignty as it did in justifying non-

⁵⁶ For further elaboration see Dworkin, 1986: 191-197.

⁵⁷ See Weber, 1978, and Schmitt, 2004. Both authors turn to the existence of bureaucracy as the terrain upon which to redefine legitimacy, thus combining the historical erection of administrative government with an indeterminate source of consent. Habermas's own emphasis on legitimacy is, in many ways, a direct response to the challenges posed by Weber and Schmitt.

coercive mechanisms for deferring to authority. However, the environmental problems that have emerged over the past century posed altogether unfamiliar challenges.

Attempting to deal with these challenges in terms of legitimacy is to hold on too tightly to an insufficient notion that arose out of an entirely different set of concerns. The question, however, is not whether to jettison the imaginary as a source of political inspiration and motivation, a choice that is not available in any case. The question, instead, is what elements are necessary for responding to the abundant variety of environmental problems and how can these coextensively reside in a more adequate political imaginary.

A first step along the path to an answer is to build upon the limitations detailed above, particularly with regards to the inability to delineate specific terms upon which political actors may base their judgment of events. The failure generated by placing legitimacy at the center of political imagination results from neglect of contextual analysis. The speculative basis of legitimacy is necessarily abstracted from any particular social and historical context, thus enabling the conceptual analysis to condense political legitimacy into a unified moment of agency, whether as contractual consent or as collective behavior. Furthermore, consensual legitimacy must be generalizable without being universal. This is due to the dilemma that a single moment of consent must be binding on some non-participants, citizens in the present that did not provide consent, while not binding other non-participants, those outside of the relevant territorial bounds. However, as we have seen with the originary political imagination, the apparently arbitrary features of history reappear as an ineluctable residual context.

The lack of contextual analysis appears prevalent in the finitary political imaginary as well, a point demonstrated all too clearly by the rapidity with which many predictors of catastrophe such as Paul Ehrlich found their premises under suspicion following the successes of industrial agriculture's 'Green Revolution' in the 1960s and 1970s. Along the same lines, Garrett Hardin's metaphor of the medieval commons is not demonstrated by historical examples, but by contemporaneous examples that occur within a constitutional democracy fostering entirely different economic conditions, despite his acknowledging that "morality is system-sensitive."⁵⁸ Symptomatic of both the originary and finitary imaginations is that when employing the state of nature or the limitations-model neither is able to address specific places and specific peoples with already operating social-behavioral norms governing the use of resources or other environmentally destructive behavior. It is, in fact, around the role of social-behavioral norms that I seek to turn attention away from a political philosophical inquiry into the unreasonableness of convention-governed behavior and towards a more prudential approach to the political weight borne by such conventions.

Social-behavioral norms constitute the world behind Nature and Society and, as such, are not easily dealt with in political philosophical analysis, as Habermas unwittingly demonstrates. The very structure of the state of nature as either fully dissociated (Hobbes) or lacking in distributive justice (Kant) methodologically precludes any reference to social-behavioral norms, as opposed to normative prescriptions. In the terms provided by the state of nature and developed into a theory of authoritative obligation, political institutions are pure artifacts that can be analyzed, designed and manipulated without interacting with the background consensus provided by social-

⁵⁸ Hardin, 1968: 1245.

behavioral norms. However, Kant's ignoring the customs, conventions, and attitudes underlying politics leads to overstating the case for obligation while, for Hardin and Ophuls, it leads to overstating the case for authoritative coercion.

The drawback to focusing upon, and perhaps the reason for ignoring, social-behavioral norms is that doing so leads to a more bounded set of claims. Since consistent, spatially-unlimited behavioral norms are less readily identifiable this obviates political philosophical articulation of universalizable justifications of moral and political prescriptions. Thus, claims such as those made by David Estlund in his argument for an 'epistemic proceduralist' conception of democracy that avoids the thorny issue of consent:

By *authority* I will mean the moral power of one agent (emphasizing especially the state) to morally require or forbid actions by others through commands. (To forbid x is to require not- x , and so I will usually simply speak of the moral power to require.) By *legitimacy* I will mean the moral permissibility of the state's issuing and enforcing its commands owing to the process by which they were produced. If the state's requiring you to pay taxes has no tendency to make you morally required to do so, then the state lacks authority in that case. And if the state puts you in jail for not paying, but it is morally wrong for it to do so, then it acts illegitimately. Even without authority or legitimacy, of course, the state might yet have enormous power. But we are not investigating brute power as such, since brute power is not a moral thing. Like a knife, it can be used rightly or wrongly. The moral questions about the use of knives are not much about the details of what knives are like, and the moral questions about the uses of power are not much about the exact nature of actual power.⁵⁹

There are two points that I wish to make with regards to Estlund's argument. First, at the same moment that Estlund appears to offer terms for judging a specific act legitimate or illegitimate — being jailed for not paying taxes — he withdraws those terms by subsuming them into a strictly abstract analysis that hinges on the always hypothetical nature of its postulates.

⁵⁹ Estlund, 2008: 2, emphasis in original.

Second, and more importantly, Estlund, as we saw previously with Kant, treats politics as an extension of morality. This is a categorical error that can be illustrated by analyzing his knife analogy of power. He begins by acknowledging that "brute power is not a moral thing," a point which I fully agree with. However, the relevant question for political inquiry is whether power is a political thing. For Estlund, the "moral questions about the uses of power" are about whether it is used "rightly or wrongly." Estlund, then, bases his analogy upon this shared characteristic between power and a knife. However, his analogy relies upon a crucial oversight that would firmly distinguish political from moral inquiry: in the case of the knife, it can exhibit an *inert* state while in the case of power it cannot. This is to say, power does not have a neutral state. It is *exertion*. Acknowledging this difference would entail acknowledging that conditions exist in which the necessity of action is judged according to different criteria than right or wrong. It is the possibility of such conditions that demands a separate *political* analysis. By assuming that such conditions are not possible, whether ontologically or logically, Estlund's deontology neglects even the minimal experiential reference provided by Kant.

C. The Bounds of Authoritative Relationships

A more adequate political imaginary will not emerge fully-formed from a political theory but from its instantiation during, and further reflection following, particular environmental struggles. However, the adequacy of a new imaginary can be evaluated by clearly defining the problems it must address, an approach begun above and further developed in the coming chapters. What remains to be articulated for now are the categories of evaluation that provide a more accurate and practical assessment of

environmental politics. Recall that to be sufficient to the problems confronting it an environmental politics must account for the inherent uncertainty of knowledge, a practical orientation that recognizes that circumstances exist that necessitate action (Barber's 'logic of consequences'), and acknowledges the inherence of projection and speculation while providing a strong role for disputation based on evidence. The capacity of citizens to work with speculations about limits while simultaneously accepting the limits of speculation is certainly an open question. However, there are ways to improve the likelihood of success through educating citizens about the principles of rigorous research: narrowly-defined and clearly articulated assumptions, direct statement of questions and hypotheses, researcher analysis of the quality of indicators and available evidence, and stating the conditions for disconfirming cases, among others.

The emphasis on context-sensitive political inquiry does imply a restricted scope for the arguments of political philosophers, albeit in exchange for more specific criteria of judgment.⁶⁰ To accommodate this greater sensitivity, I recommend a more prudential approach to political inquiry that also allows for handling questions that are answerable only through detailed comparison and analogous reasoning while remaining open to disputing claims with contravening evidence. This more explicitly historical analysis of politics is not new, although it hardly forms a coherent tradition. We see prudential political analysis on display in Niccolo Machiavelli's *The Prince* and *Discourses*, Montesquieu's *The Spirit of the Laws*, Karl Marx's *The Eighteenth Brumaire of Louis Bonaparte* and *The Civil War in France*, Max Weber's *The Protestant Ethic and the*

⁶⁰ Context-sensitivity is made easier by relying more extensively upon areas of study such as political ecology, an interdisciplinary combination of geography, anthropology, economics, ecology, politics, sociology. Productive examples include: Vivanco, 2006; Magnusson and Shaw, 2003; Agrawal, 2005; Peluso and Watts, 2001; Tsing, 2005.

Spirit of Capitalism, and Antonio Gramsci's *Prison Notebooks*, along with more recent works such as Pierre Bourdieu's *Distinction*.

My concept of politics rests upon entirely different premises from deontological approaches that position themselves within the Kantian heritage, including via John Rawls or Jürgen Habermas. While these have been stated throughout the course of this chapter, I wish to briefly recapitulate them for the sake of clarity. First, I reject the assumption that politics is an extension or subset of morality that deals with public or collective as opposed to private or individual matters. In its place, I assert that necessity, in the form of the logic of consequences, can and does arise. Not all political circumstances involve necessity, but all conditions of necessity are political. Second, I reject the assumption that justification, understood as reasoning about the rightness or wrongness of a course of action, is a prerequisite for political action. This is simply to say that justification does not exhaust nor monopolize the questions that one may address as the basis of action. Political action also follows from what one has at stake in a matter of justice, equality, freedom, security, power or need but does not require consistent beliefs about those matters prior to action.

The conception of politics that I employ is sympathetic to, but distinct from the 'agonistic' conceptions developed by political theorists such as Chantal Mouffe, Bonnie Honig, William Connolly, and James Tully. I differ from these authors in that the conception of politics I employ is ambivalent about pluralism, acknowledging its potential to arise in any context without denying or affirming its political relevance until after analyzing the specifics of a given situation. This differs dramatically from the

treatment of pluralism as an inherent political value that is to be cultivated.⁶¹ I also differ from the agonistic conceptions outlined by these authors in that I do not understand politics to be primarily about conflict or contestation, instead looking at conflict as connected to other, more fluid conventional relationships that are negotiated by actors in both reflective and unreflective ways. While the influence of Michel Foucault on, especially, Mouffe and Connolly prevents them from neglecting the role of social-behavioral norms, I take a more nuanced approach to norms that does not celebrate the transgression of norms so much as look to constructively apprehend their operation as a source of motivation, albeit at times without rational cognition. The result of these differences leads me to diverge with these authors about the role of spatial boundaries for democratic publics and, thus, the ability to resolve large-scale problems democratically.

⁶¹ Mouffe, 2000; Connolly, 1995; Connolly, 2005; Honig, 2001; Tully, 1995; Young, 2000, also makes a strong case for treating difference as a resource.

1. The Arch of Vindication

Seeking to redirect attention from legitimacy to vindication, I aim to incorporate into political inquiry a more practical notion of justification along with a strong sense of the political work done by social-behavioral norms that ensure stability, even where that stability is destructive. By embracing a conception of politics capable of giving sustained emphasis to the conceptual dilemmas attending the notion of *demos* as well as those arising from *kratos*, I focus on the contexts and particular uses of constituent power and the social-behavioral bases from which commonality is constructed.⁶² In order to make good on this plan, however, we must first provide the theoretical grounding of vindication as a necessary complement to the justification that initiates an authoritative instance of a political relationship.

What this means is authoritative relationships, that subset of political relationships referring to a formal, collective assignment of duty to members or their representatives, operate between two poles. At the one end, an authoritative relationship is initiated by deferral. This deferral can be evaluated as more or less thoughtful, more or less participatory, fair, equal, or inclusive. Thus, inquiry framed in these terms does not preclude the work of deliberative democratic theorists. The focus on initiating an authoritative relationship must be accompanied by consideration of the consequences of that decision. Only by incorporating consequences can the terms justifying deferral offered at the outset be evaluated as substantively good or bad, fair or unfair, just or unjust, successful or unsuccessful.⁶³ Even where only implicit, responsibility is assigned

⁶² Ober, 2008: 3-9.

⁶³ The position I take on the necessity of knowing consequences merely extends the arguments made by deliberative democrats that argue for substantive principles, as opposed to a procedural version, of deliberation. However, unlike Gutmann and Thompson, 2003, who argue for substantive principles on

for consequences and the deferral is vindicated or not. While attributing responsibility is a less formalized process than decision-making institutions, often vaguely imputable as a reason for an incumbent losing an election or an agency's diminished funding, it is fundamental to a notion of accountability as more than losing election.⁶⁴ Thus, the two poles, justification and vindication, and their accompanying devices of deferral and assigning responsibility, serve as the arch linking the initiation and conclusion of a political episode. As I intend to show, at work in this way of framing democratic politics is a non-linear conception of time that more accurately captures the open-ended, malleable interpretations of the past that are capable of establishing new grounds for judgment retroactively.

2. Justification and Deferral

Deferral as a category of political inquiry provides a stronger conceptual link to the role of consequences in evaluating the acceptability of a political arrangement. Deferral carries two meanings, each contributing to a more robust conception of political decision-making. The first meaning of defer, combining the Latin *de-* with *ferre*, is to submit or permit, to allow another to carry away one's burden.⁶⁵ The second meaning of defer has a slightly different etymology, combining the Latin *dis-* with the same root *ferre*, that suggests a postponement or a temporary putting aside. Framing the initiation of

the grounds that they protect democratic procedures from their own excesses, I do so on the grounds that substantive principles are inherently projected into the future as the grounds for accountability in the very process of democratic decision-making.

⁶⁴ As Ober, 2008, points out, evaluating democracy based upon whether the 'will of the majority' is able to express itself in the election of officeholders is a decidedly modern device. To take Ober's point a step farther, the notion of accountability as electoral loss is less meaningful when placed in an Athenian context in which some offices were distributed by rotation or lot. For an elaboration of the types of accountability available under direct democracy see Elster, 1999.

⁶⁵ "defer 1 and 2: verb." *OED*, Rev. Ed., 2005.

an authoritative relationship in terms of deferral foregrounds the sense of agency and transfer of power alluded to by permission while retaining the sense of waiting and incompleteness suggested by postponement. Thus, deferral proclaims an expectation, that which is awaited, at the same moment that it expresses the demand for fulfilling that expectation. That is to say, the act of deferring already contains an assumption about the need to hold responsible, to carry again one's burden.

In terms of the politics surrounding environmental problems, deferral serves as a useful category of analysis precisely because it enables comparison between democratic and non-democratic decision-making, capturing the varying degrees of participation as well as leaving open the possibility that an authoritative relationship may be established with no participation. To put it another way, deferral on similar issues can be compared whether the relevant categories are democratic representation, participation or deliberation or non-democratic categories such as convention-governed acceptance of expertise. This comparability is important since it is a common feature of environmental problems that participatory mechanisms such as citizen advisory panels may influence an agency decision about the release of an untested compound in one instance and go unmentioned in another.⁶⁶ Framing inquiry in terms of deference allows for comparison across cases on topics such as the role of extra-institutional social-behavioral norms, the expectations that are generated in the process of deferral that serve as approximate limits on an authority's action, and the how judgments about responsibility inform accountability.

⁶⁶ Relevant here is Jasanoff's discussion of the series of advisory committees informing the British Government preceding the first commercial production of a genetically modified organism. See Jasanoff, 2005: 55-58.

Mark Warren poses the issue similarly for deliberative democrats and arrives at a similar conclusion. He writes that "a vast increase in the number and complexity of decisions" as well as the limiting of "participation owing to their specialized discourses" means that "if most decisions must be made outside deliberative mechanisms, then authoritative decisions are relatively desirable" since "their terms of authorization may also serve as standards of accountability."⁶⁷ Furthermore, Warren highlights the link between regulative decisions undertaken by unelected officials serving in an authoritative capacity and the broader context of social-behavioral norms that shape how deferral provides terms for a later judgment. He writes that, "Procedural authority cannot be neutral: It depends upon beliefs within a political culture that support and define specific procedures and upon which a commitment to *these* procedures, and not others, ultimately rests."⁶⁸ Similarly, Warren argues for a necessary link between deferral as a "limited suspension of judgment" and a corresponding moment of accountability.⁶⁹

Deferral is a process of arriving at what Henry Richardson refers to as "contextually specific solutions."⁷⁰ Thus, deferral does not preclude justification, it simply allows analyzing how justification can occur at a different time and place from the exercise of governmental authority, thus acknowledging that it is necessary to act upon more issues than a democratically organized collective is able to participate in as a single unit. Justification, however, plays a relatively undetermined role in processes of deferral. As has been seen during debates in the United States around regulating carbon dioxide emissions, calls for justification are susceptible to being used as a way to continue

⁶⁷ Warren, 1996: 46-47. Warren uses the term 'deferential' differently in his description than I am using it here.

⁶⁸ Warren, 1996: 54.

⁶⁹ Warren, 1996: 47. I address Warren's argument in more detail in Chapter 4.

⁷⁰ Richardson, 2002: 239.

inaction or delay action. However, it is equally important to recognize that justification assists in extending the horizon of concerns addressed, and thus contributes to long-term planning. The open-ended nature of justification is crucial for understanding its role in deferral.

3. Vindication and Accountability

Deferral heralds a future moment of judgment, tallying responsibility, and deserts. This is to say that deferral prefigures accountability as a necessary correlate during which a judgment is made as to whether an action undertaken in the meantime satisfies the implicit and explicit terms of deference. Accountability, then, is the closure of a particular authoritative relationship.

The concept of accountability as reckoning of responsibility, emphasizing the calculative sense of the word, distinguishes the prudential approach to politics that I recommend from that employed by more strictly deontological approaches that emphasize reason-giving. The notion of accountability deriving from Kant is central to deliberative democratic theories as contributing to the development of public reason and, thus, providing substance to a theory of legitimacy that cannot be grounded in the consent of individuals. As Carpini, et al., put it:

Accountability replaces consent as the conceptual core of legitimacy. A legitimate political order is one that could be *justified* to all those living under its laws. Thus, accountability is primarily understood in terms of 'giving an account' of something; that is, publicly articulating, explaining, and most importantly justifying public policy.⁷¹

Reasonable justification comes to replace consent as a result of a changed emphasis. No longer is a collective will the philosophical foundation of legitimacy but the process by

⁷¹ Delli Carpini, et al., 2004: 317.

which that will is formed, a point made most forcefully by Bernard Manin.⁷² This line of thinking is representative of a broader trend of which the formulations of Joshua Cohen and Seyla Benhabib are prominent examples.⁷³

Replacing consent with reasonable justification as a central tenet of democratic theory coincides with a more narrow focus on maximizing the reasonableness of justification at the expense of describing how collectives may hold themselves, or their representatives, responsible. The deliberative democratic ideas of Amy Gutmann and Dennis Thompson exhibit this conflation of accountability with justification that, even where the authors claim to be advancing substantive principles for deliberation that supersede a strictly procedural approach, reduces the totality of politics to the exchange of reasons.⁷⁴ Gutmann and Thompson begin from a notion of accountability as owing an account, of representatives justifying their decisions. Thus, the fundamental question for Gutmann and Thompson is whether justifying a decision is desirable or if it is sufficient for a representative to "stand for election."⁷⁵ In posing this choice, Gutmann and Thompson erect a moral constituency in competition with the electoral constituency to influence a representative's decision.

When constructing their answer Gutmann and Thompson slip between two meanings of accountability — as offering a justification and as holding responsible — that privileges one over the other. In fact, the authors limit their notion of responsibility to the onset of the next election cycle, stating that, "Electoral accountability is an important instrument with which democracies try to ensure that public officials look after

⁷² Manin, 1987: 351-352.

⁷³ Cohen, 1997; Benhabib, 1996.

⁷⁴ Bohman, 1996, while differing on many points with Gutmann and Thompson, 1996, also uses accountability to refer to justification. See Bohman, 1996: 53-57.

⁷⁵ Gutmann and Thompson, 1996: 130.

the interests of all citizens."⁷⁶ What is worrisome in this presentation is that the authors are unable to conceive of a role for responsibility beyond interest-management. That the exercise of collective power does not proceed predictably or as intended finds no place in this sense of responsibility.

In attempting to contextualize environmental problems it is crucial to place equal emphasis on the circumstances out of which political action is initiated as well as the moment of responsibility that returns to and reinterprets those circumstances. The concept of vindication involves a unique temporal displacement that is capable of transforming an initially unjustified decision into a justified one retroactively or vice versa. Jon Elster points out that the *graphe paranomon* allowed for this sort of retroactive positing since "[e]ven if the Assembly had passed a decree, its proposer could be punished later for having put it to a vote."⁷⁷ This retroactive process constitutes a non-linear concept of vindication capable of covering linguistic claims as well as the relationship of expectations to outcomes, a point that is crucial for evaluating whether or not a given set of environmental policies is effective. As Ivan Zwart has shown in his analysis of local deliberations, for many respondents, the outcomes were as important in evaluating the process as a whole while for some the outcomes played an important role in evaluating the deliberative procedure itself.⁷⁸

By incorporating consequences as a component of judging action, the justificatory projections and specific terms offered at the initial moment of deference return as a basis of judgment supplemented by the force of actuality. Such a possibility is anathema to a deontological approach insofar as it rests on the penetration of circumstances into

⁷⁶ Gutmann and Thompson, 1996: 146.

⁷⁷ Elster, 1999: 261.

⁷⁸ Zwart, 2003: 40.

evaluations, thus breaking down their idealized status. The need to modify the notion of accountability as holding responsible follows from the conception of political action as entangled agency outlined above since it is not possible to "anchor responsibility, either analytically or ontologically, in advance to the scene of power in which encounters with others occur."⁷⁹

Hannah Arendt's critique of the historical shift from a Roman conception of freedom to a Christian conception of freedom as free will provides insight into what accountability and responsibility mean in a world of uncertainty and irreversibility. Arendt describes the loss of virtuosity as a component of freedom. What is borne of this shift is a new tallying of responsibility that poses its question in either/or terms. Arendt turns to Machiavelli precisely because he rejects this method of accounting. The result of understanding freedom in terms of an interior decision of the will is that the actor was reshaped in the image of the sovereign individual, an assumption central to deliberative democratic claims to transformative and transcendent possibilities during will-formation.⁸⁰

This new mode of attributing responsibility is problematic for two reasons. First, as Arendt is quick to point out, "it leads either to a denial of human freedom [...] or to the insight that the freedom of one man, or a group, or a body politic can be purchased only at the price of the freedom, i.e., the sovereignty, of all others."⁸¹ The establishment of this zero-sum scenario is, according to Arendt, an illusion that "can be maintained only by the instruments of violence."⁸² The second problem is that the calculation of

⁷⁹ Vasquez-Arroyo, 2008: 101.

⁸⁰ Arendt, 1977b: 163.

⁸¹ Arendt, 1977b: 164.

⁸² Arendt, 1977b: 164.

responsibility that the sovereign (or autonomous) self engenders is much more limited in that one can only be responsible for the direct results of one's acts prior to other factors intervening. Another way to say this is that once the transition from virtuosity to will is completed, the potential for excess responsibility is nullified. It is this second issue that is most illuminating for my purposes.

Arendt describes this excess responsibility as central to the notion of politics.

Allow me to quote at some length:

That deeds possess such an enormous capacity for endurance, superior to every other man-made product, could be a matter of pride if men were able to bear its burden, the burden of *irreversibility* and *unpredictability*, from which the action process draws its very strength. That this is impossible, men have always known. They have known that he who acts never quite knows what he is doing, that he always becomes 'guilty' of *consequences he never intended or even foresaw*, that no matter how disastrous and unexpected the consequences of his deed he can never undo it, that the process he starts is *never consummated unequivocally* in one single deed or event, and that its very meaning never discloses itself to the actor but only to the backward glance of the historian who himself does not act. All this is reason enough to turn away with despair from the realm of human affairs and to hold in contempt the human capacity for freedom, which, by producing the web of human relationships, seems to entangle its producer to such an extent that he appears much more the victim and the sufferer than the author and doer of what he has done.⁸³

The notion of responsibility beyond an act cannot be fit into a moral calculus that must assume an exhaustive connection between the intention and the outcome. What Arendt reminds us of is another, political world in which uncertainty and irreversibility govern action. It is this set of dynamics that is most important for penetrating to the core of political action since it is this amalgamation of agency and necessity that makes actors both more and less guilty. As Arendt puts it, the impossible accounting of responsibility is not only the result of a non-nonsensical marriage of opposites, but is also a threat to the very notion of action altogether:

⁸³ Arendt, 1958: 233-4, emphasis added.

[...] to accuse freedom of luring man into necessity, to condemn action, the spontaneous beginning of something new, because its results fall into a predetermined net of relationships, invariably dragging the agent with them, who seems to forfeit his freedom the very moment he makes use of it. The only salvation from this kind of freedom seems to lie in non-acting, in abstention from the whole realm of human affairs as the only means to safeguard one's sovereignty and integrity as a person.⁸⁴

While Arendt grasps the significance of freedom and the paralyzing effect it can have, she emphasizes only the initiation of the political act. For her, beginning is the quintessential act.

Though she grasps the dynamics of prudential politics, Arendt truncates the process in order to downplay the importance of accountability as a corresponding political act. Iris Marion Young offers a corrective that focuses on responsibility in highly complicated circumstances. Young critiques what she calls a "liability model" of responsibility, focusing instead on the role of institutions as mediating relationships across spatial boundaries. Young's shift of emphasis, which I deal with further in Chapter 5, enables us to analyze the operation of institutions in their social-behavioral context while also providing a framework for understanding how justification preceding deferral can mitigate but not eliminate responsibility.

There are two primary areas of ambiguity that remain to be theorized. First, by equalizing the emphasis on deferral and accountability, I offer a more flexible conception of political time than that seen in the case of deontological theories of legitimacy. However, there remains the problem of how deferral and accountability can capture differences in population as occur with long-term intergenerational problems. Must authoritative relationships involve the same population for both the moments of deferral and accountability? If so, how can an authoritative relationship be analyzed on the basis

⁸⁴ Arendt, 1958: 234.

of long-term planning? Second, attending to consequences raises an epistemological problem that is avoided by deontological accounts: if any particular policy successfully eliminates an environmental threat there is not necessarily any evidence available to vindicate the initial projections. While taking the uncertainty of projections seriously, it is still necessary to answer what conditions distinguish an authoritative relationship constructed on the basis of an accurate prediction from that premised upon an inaccurate prediction?

The claims of deliberative democracy, framed in terms of communicative rationality or of public reason, suggest that environmental political theorists are requiring that democracy become a rational plan for approximately predictable behavior, a task that I claim is beyond its capacity.⁸⁵ The assertion that the reasonable exchange of arguments and perspectives consistently transforms the will of political actors carries a great deal of the conceptual burden for deliberative democrats, generally, and Habermasian deliberationists, especially. However, the substantive preconditions for democratic participation to forge commonality exist in the background and remain available to participants through the operation of social-behavioral norms. The attempt by deliberative democrats to make all norms explicit undermines the very background that it presupposes, thus transforming an implicit resource capable of assisting democratic participation into an obstacle just as capable of dividing participants. Despite the unpredictable and unreliable nature of social-behavioral norms, a point that leads some to reject relying upon them,⁸⁶ they are an element of environmental politics that are problematic to assume and detrimental to ignore.

⁸⁵ Bowersox, 2002: 85; Holden, 2002: 8.

⁸⁶ Ophuls (1977): 152-156.

CHAPTER II
THEORETICAL LIMITATIONS TO ENVIRONMENTALLY ORIENTED
COMMUNICATIVE ACTION

As discussions regarding the desirability and preconditions of deliberative democracy have been ongoing for two decades, deliberative democracy has achieved a near-certain status - for democratic theorists of a liberal persuasion - as the only acceptable form of political action.¹ In discussions about the prospects for environmentally responsive politics, the desirability and likely viability of deliberative democracy are taken as something of a truism.² While some debate remains around the particulars of implementation and the relative approximation to formal preconditions that are sufficient for effective deliberation, arguments that seek to establish the theoretical limitations imposed by deliberative democracy are less frequent.³ Even where theoretical concerns come to the fore, these are primarily posed in terms of legitimacy, a category that I have argued is constrained in ways that close off important aspects of an authoritative relationship between deferral and accountability, a relationship that demands further exploration in the context of an environmental politics.⁴

The primary purpose of this chapter is to establish the theoretical limits of deliberative democracy before turning to an analysis of the practical limitations of problem domains in the following chapter. I develop this limitation by analyzing the types of problems presupposed by Habermas's theory of deliberative democracy. The

¹ This assessment was noted already in Sanders, 1997.

² Baber and Bartlett, 2005; Dryzek, 2000; a notable exception is Eckersley, 2004.

³ O'Neill, 2002; Rosenberg, 2007; Williams, 1999; Warren, 1996; Young, 2001.

⁴ Manin, 1987; Parkinson, 2003; Dryzek, 2001; Knight and Johnson, 1994; see also the review provided by Hauptmann, 1999.

overarching thesis is that Habermas's deliberative democracy is structured in such a way that it inevitably fails when confronted by 'typical' but cognitively complex environmental problems. Thus, while I approach the topic via the conception of a project of modernity that forms the philosophical backdrop to Habermas's theory of deliberative democracy, I do so with the intent of inquiring into the extent to which deliberative democracy theoretically addresses issues of concern that arise in the context of the environment. This approach is partially a response to what appears to be the assumed plausibility of communicative action as the most appropriate conceptualization and deliberative democracy as the most appropriate forum for addressing environmental conflicts.⁵

Another, secondary purpose of this chapter consists of two challenges to the purported relationship between norms and lifeworld: first, acknowledging the role of behavioral norms as lying, partially, beyond subjective rational position-taking and, second, challenging the assumed principle of motivation⁶ and the characterization of interdependency⁷ that serve as the central step in Habermas's argument regarding the transition from communicative action to collective purposive action. In the case of behavioral norms, I detail the fragility that underlies the background of the shared lifeworld within which norms break down and require communication to repair. I begin from the claim that Habermas's diagnosis of the differentiation of system and lifeworld in modernity leads him to attribute too great a role to the rationality inherently available in norms. I argue that this attribution results from his reliance upon an originary political imagination in which the initiation of a 'project' of modernity located in the historical

⁵ See especially Baber and Bartlett, 2005, as well as Smith, 2003.

⁶ Habermas, 1998a: 223.

⁷ Habermas, 1998a: 221.

emergence of the political public sphere takes on the function of an ‘equiprimordial’ moment that grounds constitutional democracy as the horizon of modernity.⁸ This originary imagination, which Habermas criticizes in its ‘Germanist’ variety, disguises the leap of faith required to make his theory of communicative action appear as a successful response to the diagnosis of a fragmented and persistently challenged lifeworld. That is, Habermas’s understanding of behavioral norms as transformable by rational deliberation fails to redress the very conditions that lead to the fragility of the lifeworld under modernity. More precisely, Habermas’s own arguments regarding the internal relation between subjective experience and lifeworld suggest that norms are more closely tied to unthematized knowledge in the form of experience than to rational procedures. Thus, any ‘remedy’ of the crises that emerge from the contingency of experience will necessitate a fuller description of the relationship between subjective experience, intersubjective norms, and political institutions, a matter that I take up throughout later chapters.

The second aspect of my argument regarding the relationship between norms and lifeworld begins with a challenge to the assumed principle of motivation as well as the assumed context of interdependence. These assumptions supply Habermas with the argumentative resources to link the transition from communicative action in the form of deliberative democracy to collective purposive action. Habermas supposes that the changes in conviction that are the goal of communicative action (citation) are sufficient for motivating behavior consistent with one’s commitment to the anticipated consequences of a course of action. I find this principle of motivation suspect in that it posits behavior as fully determinable by rational decisions. Habermas derives this assumption from a conception of the subject that is:

⁸ Honig, 2001a.

- a. fully aware of his/her own intentions and motivations,
- b. willing to reflect critically upon these fully known motivations, and
- c. capable of transposing seamlessly a rational decision into a set of behaviors consistent with these beliefs.⁹

In challenging this principle of motivation I draw on Habermas's own claims regarding the necessity of morally constrained coercive institutions, which fulfill the conditions of legitimacy, for enforcing the reciprocity of commitments made by deliberative participants. It is the need for a remedy to the Hobbesian anxiety regarding reciprocity that belies the insufficiency of Habermas's theory of motivation.

The core of my argument boils down to the claim that both communicative rationality and discourse ethics involve a projection of consequences to which discourse participants commit themselves in the course of deliberation. However, the projection of consequences that Habermas envisions rests on a presupposed chain of events that can be predicted with near-certainty. The failure of deliberative democracy, then, occurs when probabilistic claims, which are integrally uncertain predictions (e.g., multivariate correlations with broad confidence intervals), serve as the basis for predicting consequences as is the case with many environmental problems. As challenges to validity move from the background of unthematized knowledge (lifeworld) to the foreground, thus requiring positive justification, a new difficulty arises. Going from 'absolute certainty' to newly emergent assumption, background claims must be thematized in order to function as *propositions* whose validity can be assessed.¹⁰ This theoretical move is made possible by treating the "*projection* of a moral world and the *presupposition* of an

⁹ Habermas, drawing on Lawrence Kohlberg's theory of individual moral development, refers to a 'postconventional' subject.

¹⁰ Habermas, 1998a: 243-5.

objective world” as functionally equivalent.¹¹ However, the uncertainty that is subdued in the communicative process is no longer operative when translated into probabilistic prediction as opposed to a propositional claim. As environmental problems necessitate discourses of justification and application, the probabilistic character of environmental projection introduces difficulties that are best met by prudential, as opposed to principled, political action. My burden, then, is not to provide an exhaustive analysis of the complete array of environmental problems and the limitations of deliberative democracy in relation to each. Instead, it is to establish that some relevant issues cannot be addressed effectively within the framework of deliberative democracy. Determining which issues will be the aim of the following chapter.

A. Modernity as Historical Diagnosis and as Unfinished Project

Modernity plays a crucial role as the diagnostic background against which Habermas constructs his theory of deliberative democracy. While following Weber in many ways, Habermas is at great pains to circumvent the conclusion that instrumental rationality forms an ‘iron cage.’ The bases for achieving this balance are located in the initiation of the ‘project’ of modernity, specifically in the translation of reflexive reason into procedures of (political) argumentation. Famously characterizing modernity as an ‘unfinished project’, Habermas spurred a series of responses to his conception of modernity, both extending and criticizing his arguments.¹² Given the depth and breadth of the responses available I intend to focus on (a) summarizing those features relevant to my argument and (b) explaining how they rest problematically on a set of temporal displacements that replicate the problems with originary and entropic political

¹¹ Habermas, 2003: 266.

¹² Bernstein, 1994; d’Entréves and Benhabib, 1997; Honneth, et al., 1992a; Honneth, et al., 1992b.

imaginings outlined in Chapter 1. Thus, I do not seek a comprehensive account of Habermas's conception of modernity nor do I intend to develop all of its implications. Instead, I emphasize Habermas's description of modernity in order to allow discussion of its connections to his theory of communicative action generally and to deliberative democracy specifically.

Summarizing the notion of communicative action that Habermas employs below, I begin with the historical narrative of the fragmenting of a pre-modern social order that fused communicative and strategic action through institutions possessing a non-rational component of sacred power. In my view, it is not coincidental that the very historical moment that Habermas posits as the emergence of constitutional democracy — the most obviously political dimension of modernity — is viewed by Max Weber as retaining a strongly religious and unavoidably coercive component that upholds solidarity. On the basis of this account it is possible to see the immensity of the problems Habermas poses for his reconstructive theory and the leap of faith he must take in order to claim that legal norms are sufficient for minimizing the risk of dissension. Viewed as a tale of authority transformed, Habermas attempts to purge authority of its historically religious residue. However, this residue is still discernable in conventions and norms, although not necessarily justified by religious doctrines, as well as in the 'authority' that Habermas claims underlies them.

Adapting a diagnosis of modernity from Weber and the Frankfurt School, Habermas views modernity as the encroachment of instrumental rationality into more and more domains of social and political life. However, Habermas eschews the conclusion of 'inescapability' drawn most poignantly by Adorno in his *Negative Dialectics*. For

Habermas, the conditions that characterize modernity are the “explosion” of a unified realm of meaning. As he puts it, the ‘pluralizing of universes of discourses is a specifically modern experience’.¹³ This diagnosis informs two of the premises from which Habermas’s historical account of modernity departs: first, the increasing differentiation of system and lifeworld and, second, the fragmentation of the lifeworld into analytically distinct, constitutive domains. In order to arrive at a different conclusion from Horkheimer and Adorno, Habermas must find the means of theoretically encapsulating the domains of art, morality, and science within the lifeworld in such a way that the lines that demarcate them no longer serve as a permanent obstacle to the employment of reason *across* domains. This employment of reason across domains within a differentiated lifeworld and between subjects at risk of being unable or unwilling to engage in communication aimed at rationally motivated agreement constitutes the promise of commensurability. This attempt is also confronted with the problem of establishing a response that does not minimize or neglect the effects of divergence of system and lifeworld.

From the outset, summarizing this conception of modernity poses a serious difficulty insofar as Habermas employs the term modernity as both a historical diagnosis and a project to be continued. This can be remedied to some extent by recognizing the internal relationship between the two approaches. To begin with, Habermas in his “Modernity: An Unfinished Project” works to disconnect the time-consciousness that lies at the core of modernity from being ascribed solely to nineteenth century literary-aesthetic developments. Pushing the origin of modernity back a half-century, Habermas locates a reflexive orientation to the present in Kant’s critiques and, more precisely, in

¹³ Habermas, 1994: 192.

Hegel's interpretation of those critiques. To put this in terms of Habermas's own philosophy, he shifts the terrain of modernity from the aesthetic to the cognitive dimension proffered by the Enlightenment.

This, however, is only part of the tale. While Kant and Hegel mark the origins of the project of modernity and the aesthetic characterization marks the cultural basis of modernity, there remains a social dimension to modernity that encapsulates crucial changes that define Habermas's historical diagnosis.

The historical diagnosis of modernity comprises five basic changes in the social-material life of European society. The first, and most basic, change is the developmental differentiation between lifeworld and system. The split between 'traditional' modes of social organization and action coordination through intimately corresponding structures of authority serves as the key political transformation that designates the beginning of modernity. Habermas, here, sees the new constitutional democracies, specifically the American and French Revolutions, and subsequent development of an administrative state as exemplary. This can be seen in a summary statement by Habermas:

“It is true, of course, that in the *Conflict of the Faculties*, Kant went beyond the systematic boundaries of this philosophy and raised the French Revolution to the level of a ‘historical sign’ for the possibility of a moral progress of humanity. But in the theory itself we find no trace of the constitutional assemblies of Philadelphia and Paris — at least not the reasonable trace of a great, dual historical event that we can now see in retrospect as an entirely new beginning. *With this event began a project that holds together a rational constitutional discourse across the centuries.*”¹⁴

Furthermore, this is accompanied by dramatic transformations in the relationship of lifeworld activities to market incentives and the consolidation of a capitalist mode of action-coordination that has instrumental rationality as its central principle of operation.

¹⁴ Habermas, 2001a: 768, emphasis added, footnote omitted.

The functional split between lifeworld and system can hardly be described as completed at its moment of inception, but is nonetheless taken as a practical marker for the beginning of modernity. However, a second process of differentiation becomes visible *within* the lifeworld as the cultural, social, and personality-structuring domains come to produce pressures of their own that individuals are left to navigate without authoritative guidance. This second feature of the historical diagnosis of modernity is characterized as much by the fragmentation of domains as by the pluralization of potential attitude orientations within these domains. Habermas describes the effects of these changes: “Individuals, groups, and nations have drifted far apart in their backgrounds of biographical and social-cultural experience. This pluralization of diverging universes of discourse belongs to specifically modern experience; the shattering of naïve consensus is the impetus for what Hegel calls ‘the experience of reflection’.”¹⁵ Thus, differentiation within the lifeworld introduces the potential for incommensurability.

The broad-scale differentiation of a once coherently unified lifeworld enables not only the increased expansion of instrumental rationality but, as Habermas argues, new forms of rationality tied to the onset of a time-conscious and other-induced reflexivity. In particular, Habermas finds in this reflexivity the resources for a reconstructed communicative rationality, which is inherently directed toward mutual understanding. The increasing rationalization of the various domains of the lifeworld — cultural, social, and personality-structuring — transforms the pre-modern fusion of facticity and validity into a tension. According to Habermas’s historical narrative, normativity and facticity were “fused” in pre-modern times in such a way that this fusion reduced the risk of

¹⁵ Habermas, 1994: 192.

dissension arising from ‘disappointing experiences’ and historical contingency by providing a coherent and internally-referential worldview. Habermas describes the relationship between experience and risk of dissension:

For the risk of disagreement receives ever new sustenance from experiences. Experiences disrupt the routinized and taken-for-granted aspects of life and constitute a wellspring of contingency. Experiences frustrate expectations, run counter to habitual modes of perception, trigger surprises, make us conscious of new things.¹⁶

The fusion of facticity and validity in pre-modern social order erects relatively stable boundaries around dissension by comprehensively referring experience to an authoritative framework:

The three attributes of immediacy, totalizing power, and holistic constitution belonging to this unthematically presupposed [background] knowledge may perhaps explain the lifeworld’s paradoxical function as ‘ground’ (*Boden*): how it keeps contingency in check through proximity to experience.¹⁷

To put the matter more precisely, experience and contingency were constrained by the referential relationship between facticity and normative validity in that the justification of ‘what ought to be’ always found corresponding support in ‘what is.’

The fourth feature of Habermas’s historical diagnosis is closely related to the third—rationalization. The onset of modernity is simultaneously the erosion of Christianity as the fundamental point of reference for philosophical thought, a point to which Kant retained a strong attachment in his speculations on the origins of humankind, as well as the more general loss of an authoritative ground of reference. This process of secularization, as Habermas would have it, is crucial for explaining not only the openness that would come to characterize encounters between pluralized lifeworlds, but also for justifying Habermas’s claim that modernity is beset by the need to supply authority on its

¹⁶ Habermas, 1998a: 236.

¹⁷ Habermas, 1998a: 245.

own terms—that is, immanently. Here Habermas diverges most obviously from Weber’s diagnosis insofar as he is reluctant to acknowledge a residual sacred authority underlying the shift to plural, but overlapping, lifeworlds that are capable of sustaining a sufficient degree of solidarity to enable communicative rationality to function. I will elaborate on this issue later.

As the loss of an authoritative center became expressed in the independent operation of aesthetic, moral, and cognitive domains, modernity came to be experienced as an epoch endowed with a greater degree of complexity. This fifth characteristic, increasing complexity, takes on the form of specialization and accumulated knowledge within each domain. Thus, on this account, the world of art develops its own vocabulary and, in the nineteenth century, new ‘movements’ take shape that situate themselves in relation to the more narrowly defined terrain of the artist. Habermas invokes Baudelaire as, if not the initiator, the exemplar of the self-referentiality of aesthetic discourse.

Such specialization is not limited to the aesthetic dimension of the lifeworld, as Habermas points out. While morality comes to have a stronger, more formalized focus, following upon Kant’s claim to the priority of autonomy, it also solidifies around a rather narrowly defined set of issues that mirror the loss of authoritative grounds. This, for instance, is Habermas’s means of understanding the role of Kant’s categorical imperative and the attendant need to establish grounds for obligation in a moral world whose modality is practical reason.

In terms of the cognitive dimension of the lifeworld, science takes on the most visible form of specialization in its attempt to deal with the complexity opened up by the loss of a singular authoritative ground. Here, Descartes’ concurrent attempts to locate the

foundations of the autonomous subject and to establish verifiable knowledge of optics are illuminating. The erection of object-bound disciplines and the quest for a generalizable method of experimentation capable of persuading others on universally agreeable terms, then, makes science in many ways the discourse par excellence of Habermas's modernity.

As I have suggested, though, this historical diagnosis finds its philosophical counterpart in the claim to an 'unfinished' project of modernity, initiated by Kant's critical approach to reason and in Hegel's refashioning of the critical project into a temporally situated reflexivity. Habermas recounts:

Kant had conceived of reason as the faculty of ideas which expand the manifold of an endless multiplicity into a totality. On the one hand, ideas project the totality of possible appearances in space and time connected under causal laws. On the other hand, ideas also constitute a kingdom of ends, defined as the totality of intelligible beings subject only to self-legislated laws. With Hegel's critique of Kant, ideas also received the additional power of a self-reflective self-recuperation of their own objectifications, and thus the power to consciously reintegrate an increasingly higher-level differentiation. Reason with a capital 'R' now gave the world process as a whole the structure of a totality of totalities.¹⁸

Thus, the ambivalence of modernity derives from the centrality and priority of critical and reflexive reason itself. On the one hand is the potential to generate the normative validity underlying social order itself through processes of collective, public reasoning embodying popular sovereignty. On the other hand is the notion of an immanent normativity, a groundless self-grounding, which transforms the plurality of autonomous subjects and varied lifeworlds into a matter of incommensurable arenas of communication. Combined with the issue of incommensurability, popular sovereignty takes on the tone of coercive imposition upon autonomous subjects with no recourse but to fend for themselves.

¹⁸ Habermas, 2001b: 143-4.

The project of modernity displays, according to Habermas, an ambivalence that can easily transform into the pessimism of a negative dialectics or a “new conservatism” that attacks reason itself.¹⁹ Claiming not to lose sight of this ambivalence, Habermas seeks to retain a productive tension without allowing reason to devolve into persistent aporia. As Thomas McCarthy puts it, “Habermas argues that the discontents of modernity are rooted not in rationalization as such but in the failure to develop and institutionalize in a balanced way all the different dimensions of reason opened up by the modern understanding of the world.”²⁰ Posing this project within a philosophical context circumscribed by metaphysics on one side and a strong form of contextualism on the other side, Habermas claims that the “metaphysical priority of unity above plurality and the contextualistic priority of plurality above unity are secret accomplices.”²¹ Habermas purports to ‘balance’ them by demonstrating “the unity of reason only remains perceptible in the plurality of its voices — as the possibility in principle of passing from one language into another.”²² Thus, Habermas’s conception of the project of modernity is fundamentally a promise of commensurability through mutual understanding.

The project of modernity can be understood more precisely by identifying the three problems that are overcome in the transition from metaphysical to postmetaphysical thinking. Habermas characterizes this project as “the humanism of those who continue the Kantian tradition by seeking to use the philosophy of language to save a concept of reason that is skeptical and postmetaphysical, yet not defeatist.”²³ While the obstacles attributed to metaphysics are interrelated, they are not resolved in a single step. Instead, it

¹⁹ Habermas, 1997.

²⁰ McCarthy, 1994: 176.

²¹ Habermas, 1992: 116-7.

²² Habermas, 1992: 117.

²³ Habermas, 1992: 116.

is the grafting of Kantian critique onto a sociological conception of the individual, one mediated by a universal pragmatics of language, that leads Habermas to his supposed resolution.

The first two problems, then, are posed at the outset of modernity in a reinvigorated reflection on metaphysical speculation and rational skepticism. In this instance, Kant is viewed as initiating a mode of thought capable of overcoming the problem of the identity of the One and the Many (Problem 1) and the problem of matter as non-being (Problem 2).²⁴ The problems of identity passed on from Platonic metaphysics led Kant to confront a ‘metaphysical paradox’: because metaphysics poses its problem ontologically, “it vainly tries to subsume the one itself under objectifying categories; but as the origin, ground, and totality of all beings, the one is what first constitutes the perspective that allows the many to be objectivated [*sic*] as the plurality of beings.”²⁵ At the core of the two problems that Habermas identifies is the “transcendental illusion that the one and the whole must correspond to *objects*.”²⁶ It is precisely in “the turn away from a rational unity derived from the objective order of the world and toward a concept of reason as the subjective faculty of idealizing synthesis” that Habermas is able to attribute to Kant the resolution of the metaphysical paradox.²⁷ The positing of ontological status in terms of reflexive epistemological relationships enables Kant to claim to have demonstrated that synthetic knowledge upholds unity (the One) in difference (the Many).

By taking the totality of beings and making it dependent upon the synthetic accomplishments of the subject, Kant downgrades the cosmos into the object domain of the nomological natural sciences. The world of appearances is no longer

²⁴ According to Habermas, “Through this doubling of the transcendently redirected concept of the world, Kant solves two of the three problems.” Habermas, 1992: 126.

²⁵ Habermas, 1992: 121.

²⁶ Habermas, 1992: 126, emphasis added.

²⁷ Habermas, 1992: 117.

a ‘whole organized according to ends.’ Thus, although the transcendental concept of the world traces everything back to one, it differs from the old metaphysical concept of the world in that *it can no longer also satisfy the need for establishing a meaningful organization*, an organization that would absorb contingencies, neutralize what is negative, and calm the fear of death, of isolation, and of what is simply new.²⁸

Here we find repeated a primary component of Habermas’s project, the unraveling of a teleological metaphysics. In order to account for Kant’s retention of a teleological account of history as natural laws, such as those that propel humankind through war to a state of peace, Habermas interprets Kant as ‘downgrading’ the role of *telos* into a matter of scientific verifiability. This interpretation is more reflective of Habermas’s own insistence on the revision and accumulation of claims to cognitive validity than any definitive statement on the part of Kant to frame universal history as *still* in need of revision. In fact, Kant must presuppose that such knowledge is, at least, near completion in order to justify his political positions. It would remain for Hegel, who Habermas seems to be reading back into Kant here, to articulate the conclusive nature of this *telos*.

However, the division of the world into noumenal and phenomenal realms places the transcendental unity out of philosophic reach.

In exchange, Kant now offers the compensation of another world, namely the intelligible. True, the latter remains closed off to theoretical knowledge, but its rational core, the moral world, is nonetheless attested to by the fact of the ‘ought.’ That is, unlike the cosmological idea, the idea of freedom finds support in the moral law; it not only regulates but determines moral action [...]. It is only the affiliated concept of a ‘world of rational beings’ that is regulative, a world in which each acts as if, through his maxims, he were at all times a legislating member in the universal kingdom of ends. In this way like theoretical reason, practical reason also projects an unconditioned unity of all conditions in general — but this time the whole to which it is directed is that of an ‘ethical-civic’ commonwealth.²⁹

²⁸ Habermas, 1992: 126, emphasis added.

²⁹ Habermas, 1992: 126.

Kant finds this unity manifested in the realm of practical reason as the identity in difference of a categorical imperative rescaled and made concrete in the form of consensual political association; that is, through a socially contracted legislative procedure that universally binds each in their equal status as citizen. Thus, the relationship between public and private reason takes on a special role as the only expression of transcendental unity available. As I discuss below, the theoretical grounding of unity in diversity is central to communicative reason as a promise of commensurability, which retains a Kantian residue that needs to project a universal community in order to justify the agreement made amongst subjects in an actual association.

The third obstacle posed by metaphysics for a postmetaphysical project of modernity was left unresolved by Kant. The “inherited problem of the ineffability of the individual” is, according to Habermas, poorly answered by the philosophy of consciousness from which Kant and Hegel start out.³⁰ In order to overcome this obstacle while accounting for the possibility of communicative action in the context of plural, differentiated lifeworlds, Habermas turns to G.H. Mead’s arguments for a more situated conception of the individual. By linking the subjective (1st person) perspective to an intersubjective perspective (2nd person) via processes of socialized individuation, Habermas reclaims the linguistic preconditions necessary for communicative action.³¹ Where the philosophy of consciousness upheld a strong subject in order to warrant the unified synthetic judgment necessary to overcome the problems of difference in identity and of the non-being of matter, it was insufficient for explaining how the individual

³⁰ Habermas, 1992: 127.

³¹ Habermas, 1992: 144.

comes about. Thus, the philosophy of consciousness introduces the individual subject only to threaten to delimit the subjective perspective in such a way that individuals interact only from an objective, third person perspective that leads to the incommensurability of subjective perspectives. The subtext, then, is that for Habermas to place communicative action as the answer to incommensurability he must find a means of justifying the claim that the subjective, first person attitude is capable of being transformed into an intersubjective, second person attitude without immediately passing into an objective attitude. Mead provides this justification with his notion of socialized individuation. Habermas develops this into a full-blown theory of communicative rationality by articulating a universal pragmatics of language.

B. The Promise of Commensurability

At the basis of Habermas's argument for the unfinished project of modernity lies a claim to avoid the Scylla and Charybdis of metaphysics and a strong version of contextualism. Claiming to have resolved the problems posed by metaphysics through a universal pragmatic reconstruction of Kant, Habermas must confront the threat posed by a strong contextualism, which risks positing subjective experience in such a way as to render any possibility of communicative action moot. If subjective experience ceases to fulfill the basic communicative prerequisites that Habermas claims are inherent in speech acts then a project that takes reason as translatable across differentiated domains fails. As Habermas describes this demand, "From the possibility of reaching understanding linguistically, we can read off a concept of situated reason that is given voice in validity

claims that are both context-dependent and transcendent.”³² Thus, Habermas must demonstrate that communicative rationality is not merely an assumption by establishing the commensurability of subjective experience such that it is capable of sustaining intersubjective action coordination.

The initial resolution to this problem lies in the notion of socialized individuation. Beginning with a situated conception of the subject that admits of both the effects of being ‘embedded’ within an already existing social order and the inherent prospect of fulfilling a unique life-plan, Habermas’s notion of subjectivity remains consistent with his diagnosis of modernity. However, the problem is not entirely resolved. While this conception of the subject posits the preconditions of commensurability, the theoretical burden is born by the linguistic capacities with which the subject is outfitted. Habermas’s account of language establishes the remaining conditions for his argument regarding commensurability by locating within language an inherent *reference* to a shared lifeworld background as well as subject *orientation* to that world and others encountered in it.

The account of a shared lifeworld derives from Habermas’s account of language in that the precondition for understanding is membership within a linguistic community, which itself rests on the potential for reference to commonly recognizable features of the world. Habermas describes this as the “*supposition* of a common objective world [...] built in to the pragmatics of every single linguistic usage.”³³ While this common objective world is limited to membership within a linguistic community, this feature is a universal characteristic of language that necessarily applies to *all* linguistic communities as a transcendental possibility. By positing a formal pragmatics of language as the key

³² Habermas, 1992: 139.

³³ Habermas, 1992: 138, emphasis in original.

enabling him to work out of the purported ‘defeatist’ impasse that his Frankfurt School predecessors ran into, Habermas provides the philosophical underpinnings for his argument regarding commensurability. As he puts it:

[C]ommunicatively acting subjects are freed from the work of world-constituting syntheses. They already find themselves within the context of a lifeworld that makes their communicative actions possible, just as it is in turn maintained through the medium of these processes of reaching understanding.³⁴

Habermas, then, establishes the referential precondition of commensurability, which is itself the precondition for an immanent transcendence, on the basis of universal attributes of language that stand in a relationship of mutual presupposition with the lifeworld background.

The final condition of commensurability is the *orientation* of communicative actors. Drawing on Searle’s account of speech acts, Habermas posits a weak form of transcendence inherent in the act of understanding. Distinguishing the first, second, and third person perspectives taken up by actors in the use of language, Habermas develops a theory of meaning on the basis of the orientation expressed in each perspective: first person subjective, second person intersubjective (social), and third person objective. On the basis of this categorization Habermas explains how subjects enter into varied relationships with society and the objective world. Even in light of his revised notion of understanding of speech acts as knowledge of the conditions for illocutionary or perlocutionary success, Habermas upholds the centrality of intersubjective orientation.

It is important to note that reference and orientation are preconditions, but not necessarily in the sense of a subject’s choosing to adopt an orientation. Instead, these features are built into language, incorporating a transcendental possibility into

³⁴ Habermas, 1992: 142.

communication. Thus, even where subjects explicitly differ, Habermas finds the preconditions for commensurability:

Convictions can contradict one other only when those who are concerned with problems define them in a similar way, believe them to need resolution, and want to decide issues on the basis of good reasons. / To be sure, it is also a characteristic of modernity that we have grown accustomed to living with dissent in the realm of questions that admit of ‘truth’; we simply put controversial validity claims to one side ‘for the time being.’ Nonetheless, we perceive *this* pluralism of contradictory convictions as an incentive for learning processes; we live in the expectation of *future* resolutions.³⁵

Of relevance, then, is the shared background built into disagreement *through* the linguistic necessity of a common reference point, about which participants disagree, and *as* the impetus for upholding a (contradictory) position in the first place.

The way in which future expectations come to assuage contradictions in the present is not an accidental feature of Habermasian communication. By enclosing participants’ contradictory positions within a unified lifeworld Habermas is able to assert that communicative reason is simultaneously unified and differentiated, thus arriving at the penultimate step in the project of modernity. He summarizes this:

My reflections point toward the thesis that the unity of reason only remains perceptible in the plurality of its voices — as the possibility in principle of passing from one language into another — a passage that, no matter how occasional, is still comprehensible. This possibility of mutual understanding, which is now *guaranteed only procedurally and is realized only transitorily*, forms the background for the existing diversity of those who encounter one another — even when they fail to understand each other.³⁶

Given that Habermas’s conclusion for a fulfilled promise of commensurability under the complex conditions of modernity includes important qualifications, the question remains: Under such circumstances are procedural guarantees and transitory realization of mutual

³⁵ Habermas, 1994: 194, emphasis in original.

³⁶ Habermas, 1992: 117, emphasis added.

understanding sufficient for sustaining a lifeworld background diminished not only by the intrusion of instrumental reason into forms of social interaction but also by problems arising from within the procedures of deliberative democracy itself, e.g., abstention and risks of dissension? When placed in the context of the fragility of the lifeworld in modernity and the complications besetting the ability to rationally motivate actors, these qualifications take the tone of serving as a last line of defense as opposed to a program for furthering social integration. It is in the gap between the imperatives of a fragile lifeworld and a suspect principle of motivation that I claim Habermas takes a ‘leap of faith’ with regards to the success of communicative action as a foundation for politics. In order to remedy this leap of faith, Habermas is forced to rely on the threat of sanction present in positive law in place of a sufficient principle of motivation.

C. Communicative Motivation and Legally Enforced Reciprocity

In the opening chapter of *Between Facts and Norms* Habermas restates the link between communicative action and legal norms in terms of stabilizing normative order: “how the validity and acceptance of a social order can be stabilized once communicative actions become autonomous and clearly begin to differ, in the view of the actors themselves, from strategic interactions.”³⁷ Posing the question of his political theory in terms of stability relies on his specific historical narrative of the emergence of modernity. In Habermas’s recounting of modernization, the differentiation of lifeworld and system are accompanied by the dislocation of the tension between facticity and validity. Habermas here views pre-modern (European) society as characterized by the fusion of facticity and validity in a relationship stabilized by ‘archaic institutions’. The resulting

³⁷ Habermas, 1996: 25.

image of modernity, particularly as it is presented in the first chapter of *Between Facts and Norms*, is of a fundamentally fragile social order that must establish and sustain normative validity without ‘metasocial’ or metaphysical guarantees. That is to say, modernity must generate immanently its own conditions of normative validity. However, the fragility characteristic of Habermas’s conception of commensurability is not adequately resolved based on the terms he provides. The conclusion I draw from this is that, despite the claim that legal norms effectively stabilize social orders by supplementing processes of validation for normative claims, what is effectively of greatest importance is the coercion supplied by the facticity of law, despite the minimal role that Habermas allows for coercion. Furthermore, coercion leads to “average norm compliance” taking on a more important role than legitimacy in reducing the risk of dissension and producing the social integration that is so crucial to deliberative democracy.³⁸

The different historical contexts that characterize pre-modernity from modernity introduce an element of fragility in the form of increased risk of dissension. As the lifeworld loses its unified character during modernization, two sources of dissension are set loose from their previous certainties. Both disappointing experiences and contingencies,³⁹ meaning unexpected changes to a state of affairs, serve as the sources for dissension once they lose the ready answers provided by a metaphysically endowed lifeworld, which necessarily unifies facticity and validity. Under conditions of modernity, however, such available answers are treated as uncertain assumptions. With the onset of modern constitutional democracy opportunities for dissension increase. This is explained

³⁸ Habermas, 1996: 31.

³⁹ Habermas, 1996: 22. See also Habermas, 1998: 236.

within Habermas's theory by the increase in opportunities for actors to take a yes or no position on matters that have lost their consensus as unthematized background knowledge. Specifically, the lifeworld background that was held together in pre-modern times by transcendental grounds of judgment is transformed into "permanently endangered counterfactual presuppositions" during modernity.⁴⁰

1. The Fragility of the Lifeworld

Habermas's description of the tension between facticity and validity as "explosive" is only partly suggestive of the fragility of the lifeworld. More telling are the "normal options" he sees available for communicative action where "the ever-present risk of disagreement" is "built into the mechanism of reaching understanding."⁴¹ He cites five such options:

- a. "carrying out straightforward 'repair work'," which seeks to reconstruct the shared orientation to reaching understanding.
- b. "putting aside the controversial claims, with the result that the ground of shared assumptions shrinks"
- c. "moving into costly discourses of uncertain outcome and open to unsettling questions"
- d. "breaking off communication and withdrawing"
- e. "shifting over to strategic action."⁴²

The single factor that Habermas identifies preventing these risks from overwhelming communicative action as the most likely candidate for social integration is communicative action's relation to the lifeworld. Habermas writes: "*If* communicative

⁴⁰ Habermas, 1996: 21.

⁴¹ Habermas, 1996: 21.

⁴² Habermas, 1996: 21.

action were *not* embedded in lifeworld contexts that provide the backing of a *massive* background consensus, such risks would make the use of language oriented to mutual understanding an unlikely route to social integration.”⁴³ The problem, however, is that on the basis of his historical account of modernization Habermas is in no position to describe the lifeworld as providing a “massive background consensus.” Such a characterization fits more accurately with Habermas’s account of pre-modernity rather than the ‘pluralized’ version of the lifeworld that characterizes modernity. In order to illuminate the differences allow me to begin by quoting at length:

As we engage in communicative action, the lifeworld embraces us as an unmediated certainty, out of whose immediate proximity we live and speak. This all-penetrating, yet latent and unnoticed presence of the background of communicative action can be described as a more intense yet deficient form of knowledge and ability. To begin with, we make use of this knowledge involuntarily without reflectively knowing that we possess it at all. What enables background knowledge to acquire absolute certainty in this way, and even augments its epistemic quality from a subjective standpoint, is precisely the property that robs it of a constitutive feature of knowledge: we make use of such knowledge without the awareness that it could be false. Insofar as all knowledge is fallible and is known to be such, background knowledge does not represent knowledge at all, in a strict sense. As background knowledge, it lacks the possibility of being challenged, that is, of being raised to the level of criticizable validity claims. One can do this only by converting it from a resource into a topic of discussion, at which point – just when it is thematized—it no longer functions as a lifeworld background but rather disintegrates in its background modality. Background knowledge cannot be falsified as such; no sooner has it been thematized, and thereby cast into the whirlpool of possible questions, than it decomposes. What lends it its peculiar stability and first immunizes it against the pressure of contingency-generating experiences is its unique leveling out of the tension between facticity and validity: the counterfactual moment of idealization, which always overshoots the given and first makes a disappointing confrontation with reality possible, is extinguished in the dimension of validity itself. At the same time, the validity dimension, from which implicit knowledge acquires the intuitive force of conviction, remains intact as such.⁴⁴

⁴³ Habermas, 1996: 22, emphasis added.

⁴⁴ Habermas, 1996: 22-3.

Beginning from the assumption that social orders “exist through the recognition of normative validity claims,” this account of modernization describes the disintegration of validity and facticity, which were reconciled in the pre-modern lifeworld.⁴⁵ It is important to note that the lifeworld, even in its modern, differentiated form, continues to operate as ‘unmediated certainty’. The lifeworld, then, stabilizes a set of customs, conventions, and beliefs that establish the parameters of normative expectations. However, this background remains unthematized by definition. Any attempt to transpose questions of validity into issues of rational motivation, that is, any attempt to thematize the quasi-knowledge inherent in this background, falls short. Although Habermas claims a communicative basis for such unthematized knowledge, this is suspect, especially if we take communicative action in its more precisely defined form as an orientation to reach understanding with others through rational argumentation. To attribute a rational basis to all pre-modern or ‘archaic’ institutions — institutions characterized precisely by their ability to preclude rational thematization — not only exhumes contingency and power from the development of institutions, it also inscribes the solution into origins so that all that remains is to recover them.

Habermas’s historical narrative cannot admit of such a recovery precisely because of the enormity of transformation that differentiates pre-modernity from modernity in terms of the disruption of normative validity. As he puts it, “positive law and postconventional morality emerge co-originally from the crumbling edifice of substantial ethical life.”⁴⁶ Instead, the problem of rationally stabilizing social order carries over into modernity with important differences about the availability of the lifeworld as

⁴⁵ Habermas, 1996: 17.

⁴⁶ Habermas, 1996: 84.

sufficiently stable and unified. This is made more intelligible by analyzing the stability of behavioral expectations that occurs with thematized knowledge made available through “archaic institutions”⁴⁷ since the continued influence of these institutions can only be accounted for by a non-rational (even sacred) attachment that exists beyond the bounds of Habermas’s project of modernity.⁴⁸

2. Dissension and Diminished Lifeworld Background

The lifeworld, then, exhibits a high degree of fragility that leads to an increased reliance on the procedural guarantees of communicative action and a substantive, if transitory, realization of communicative agreement. It is at this point that we can begin to see how environmental problems exacerbate the difficulties of generating sufficiently binding agreements. Although I limit my claims to environmental issues, it is possible to generalize to a few other issues that display similar characteristics. In as much as environmental problems *typically* involve complexity, probabilistic and uncertain prediction, and context-dependent claims, attempts at communicative action through deliberative democratic procedures are confronted with (a) challenges to the cognitive competency of participants and (b) increased opportunities for participants to challenge constative claims.⁴⁹ To put the issue more concisely, environmental problems overburden a procedural conception of deliberative democracy due to the increased risk of dissension they introduce.

⁴⁷ Habermas, 1996: 23.

⁴⁸ Weber is able to explain this as a feature *of* modernity.

⁴⁹ These attributes are described in greater detail in Chapter 1. On constative and regulative speech see Habermas, 1996: 325.

In order to articulate this process of overburdening, it is necessary to understand the way in which the principle of universalization operates as a moral principle that serves as a logic of argumentation for discourses of justification while the principle of discourse ethics “stipulates the basic idea of a moral theory” without also serving as part of a logic of argumentation.⁵⁰ The principle of universalization (U) states:

Unless all affected can *freely* accept the consequences and the side effects that the *general* observance of a controversial norm can be expected to have for the satisfaction of the interests of *each individual*.⁵¹

While this specifies conditions that must be met by procedures of argumentation, the principle of discourse ethics (D) provides the criterion for validity:

Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.⁵²

Both principles involve at their very core a set of projections that establish them as principles, as opposed to context bound guidelines. In the case of (D), the projection of “all affected” must presume that the scope of the issue at hand is known *prior* to allotting the status of an entitled participant. Furthermore, the conditions of approval, the “could meet,” are also based on a projection of what subjects would conclude if deliberating based upon communicative reason. Habermas explains that the “projection of a universe of self-legislation on the part of free and equal persons imposes the *constraints of this [We-]perspective* on the justification of moral statements.”⁵³ While I will take up the issues raised by these projections in chapter four when addressing the role of place in democratic responses to environmental problems, for now it is enough to point to the necessity for projection itself as a fundamental component of validity.

⁵⁰ Habermas, 1990: 93.

⁵¹ Habermas, 1990: 93, emphasis in original.

⁵² Habermas, 1990: 93.

⁵³ Habermas, 2003: 261, emphasis in original.

Turning to the principle of universalization (U), the element of projection takes on a specifically temporal tone that is more central to the point at hand. While Habermas draws attention to the relationship between the autonomous decision of the individual and social integration (“freely accepted” and “general observance”), I would like to shift attention to what is being accepted: expected consequences and side effects of general observance. Here, projection is no longer about representational legitimacy, as it is with the principle of discourse ethics. Instead, it combines the ‘as if’ postulate of Kant’s categorical imperative with a set of empirical predictions. It is important to note that projection of consequences serves more than a supplemental function in the principle of universalization. As a moral principle, universalization is here defined in terms of consent. However, for Habermas to claim that consent is a binding force that contributes to social integration, consent must take on a specific substance – it must answer *what* is being consented to. This substance extends beyond regulative claims and into the realm of empirical claims for, although “general observance” is a regulative matter, what is being consented to is the expected *effects* of that regulation. Thus, consent gains its supposed *integrative* force not from the exercise of autonomous, uncoerced reason, but from the *commitment* to consequences, even if those consequences are not initially projected.

Habermas appears to recognize the centrality of this commitment to consequences in that he limits the scope of issues that can be handled via deliberative democracy. Consent as a prospective binding force is limited to instances in which consequences maintain a high degree of certainty, even if they do not attain to complete certainty. Habermas describes the limited scope of issues:

Moral knowledge is obviously affected differently than empirical knowledge by the history and historical constitution of the world. Indeed, this is the reason for the peculiar bilevel nature of the moral justification of actions. I am referring to the familiar point that well-grounded moral norms can claim only validity *prima facie*. For *ex ante*, only the consequences and collateral effects of *typical* cases, which can be anticipated, are considered. Unanticipated constellations of conflict situations that occur subsequently give rise to a further need for interpretation that must be met from within the altered perspective of a discourse of *application*. During the process of application, the norm that is “appropriate” to the situation is selected from the plurality of warranted norms that might be applied in any given case. [...] universal norms can determine future actions only to the extent that typical, probable circumstances can be anticipated — that is, in principle, incompletely.⁵⁴

So while consent is binding at the level of normative validity and, thus, “ideal warranted acceptability” establishes a communicatively arrived at norm, this is *also* a commitment to an open state of affairs in the future. As Habermas puts it, even where unanticipated consequences result from typical cases, consent to claims of normative validity also serves as a commitment to treat such norms as settled regardless of whether the expected circumstances upon which a subject based consent come about. Where dramatically different consequences arise, one remains committed to such an extent that the only actionable path of deliberation is that of *interpreting* circumstances to determine the most appropriate validated norm.

In defining ‘rightness’ or moral validity as “ideal warranted acceptability,” Habermas attempts to rectify the seeming incongruity introduced by his deontological approach in which one can find oneself committed to a principle based on specific expectations that are then not met.

Indeed, the agreement that is reached in two steps through moral discourses of justification and application is subject to a dual fallibilist proviso. *In retrospect*, we can learn that we were mistaken about the presumed presuppositions of argumentation and that we failed to anticipate relevant circumstances.⁵⁵

⁵⁴ Habermas, 2003: 245-6, emphasis in original, footnote omitted.

⁵⁵ Habermas, 2003: 258.

This incongruity appears to be circumvented by underscoring the dependency of acceptability on the potential for future revision and invalidation, or what Habermas terms learning. The potential for learning is a necessary correlate of a moral principle that rests on projection for its content in that it enables Habermas to differentiate the moral and empirical domains such that empirical contingency cannot disrupt the unconditionality of consent.⁵⁶ Habermas sums this up when he states: “Whereas successful learning in the public sphere of empirical problems may *result* in agreement, learning in the moral domain is *assessed* in terms of how inclusive such a consensus reached through reason-giving is.”⁵⁷ It is the lack of guarantee and retrospective nature of learning as well as the insistence on separating moral and empirical problems that I claim is relevant to assessing the likelihood that environmental problems overburden deliberative democracy by increasing the risk of dissension.

Of particular relevance is the fact that revisions are not automatic. The settling of a normative claim to validity allows that norm to return to the status of unmediated certainty within the lifeworld. Thus, a two-fold problem emerges. On the one hand, a validated norm may successfully return to the status of unmediated certainty and become sedimented in such a way that inquiry goes uninitiated. On the other hand, the very notion of learning demands that the boundaries of the moral (intersubjective 2nd person) and scientific (objective 3rd person) domains are capable of being overcome. As Thomas McCarthy points out, Habermas’s theory does not offer an adequate explanation of how moral and empirical-scientific claims, that is claims of rightness versus claims of truth,

⁵⁶ As will become clear, ‘learning’ as a promise of correction at some unspecified point in the future also serves to bolster Habermas’s argument on the supplementary binding force of law insofar as it is ‘changeable.’

⁵⁷ Habermas, 2003: 257, emphasis in original.

are accumulated in a continuous manner or are sufficiently reflexive. McCarthy emphasizes this problem when he writes:

[E]ven if we grant Habermas his developmental-logical account of the formal structures of consciousness in general, and of the formal structures of moral and aesthetic consciousness in particular, there is no clear counterpart to this accumulation of ‘content’ across paradigm shifts. [...] That is, advances at the structural level do not seem to entail an accumulation of knowledge at the content level. This suggests that we cannot put too much weight on the ‘continuous’ and ‘cumulative’ character of the production of knowledge in Habermas’s schema of rationalizable actor-world relations.⁵⁸

To restate this in terms of the increased risk of dissension, the unguaranteed prospect of retrospective revision demands of participants that agreement be made on the basis of a separation of moral and scientific domains at the moment of commitment that in the event of unsuccessful resolution will be reopened on the basis of communication across these separate domains. Since future communication is neither guaranteed nor reopened on the same terms — as a discourse of application in place of a discourse of justification — the stakes of ‘getting it right’ the first time are increased. The implication, then, is that the need to challenge normative and cognitive claims will increase, thus increasing the risk of settling for actor-relative reasons over actor-independent reasons.

Without repeating the discussion of characteristics entailed in environmental problems covered in the previous chapter, it is possible to restate the epistemological aspects of environmental problems relevant to the issue of increased risk of dissension. To reiterate, these features are:

⁵⁸ McCarthy, 1994: 179.

a. Complexity: Refers to interdependent relationships that, as John Dryzek describes them, cannot be captured by single-variable, non-interactive measurements such that improvement on one variable can hide deterioration on another variable.⁵⁹ Thus, environmental problems manifest two forms of complexity: complex relationships between objects and complex knowledge about these relationships.

b. Non-linearity: Refers to the inability to assume linear, readily predictable outcomes in light of the different patterns of recovery and deterioration that occur within a given ecosystem. In studying an ecosystem it is necessary to take into account the non-linear processes of recovery that occur. Ecosystems vary in their sensitivity to stimuli such that a pollutant may cause gradual changes in one ecosystem while the same pollutant in a different ecosystem must accumulate over a long period of time before reaching a sudden 'tipping point.' Furthermore, decreased levels or outright removal of a pollutant does not necessarily return an ecosystem to its previous state, or does so only after it has passed through a series of 'recovery' stages.⁶⁰

c. Uncertainty: Refers to the inherent limitations imposed on correlative or probabilistic claims of the sort used in studying complexity. As the number of variables increases and the relationships between these variables multiply, causal claims give way to correlative claims that are accurate based on strictly defined assumptions and within defined limits of confidence.

When it comes to assessing knowledge of environmental problems, claims are accurate insofar as they are sensitive to context and assumptions about relationships within that context. This context-dependence is not easily reconciled with the imperative to universalize that underlies the justification of normative validity.

Habermas acknowledges that justification does not arise *ex nihilo* but is embedded in an ongoing process of exchange between application and justification, stating that, "the idea of justice *recedes from* the concrete contexts in which it is embedded into forms of an inclusive and impartial judgment formation."⁶¹ The claim that moral norms that merit recognition evolve from specific contexts into abstract principles, echoing Kohlberg's conception of individual moral development, is further clarified:

⁵⁹ Dryzek, 2005: 60-1 and 69.

⁶⁰ See Robbins, 2004, for his discussion of modality and hysteresis.

⁶¹ Habermas, 2003: 261.

The function of explicating an increasingly abstract idea of justice accrues to an ‘impartiality’ that is transformed by questions of application and justification only in the course of dealing with increasing societal complexity. The concrete representations of justice that initially make possible an impartial evaluation of individual cases are thus sublimated into a procedural concept of impartial evaluation that then in turn defines justice. The initial relationship between content and form is reversed in the course of this development.⁶²

However, the high degree of context-dependence that characterize knowledge about environmental problems curtails this developmental process since generalization across cases is minimal. To put it another way, the typical environmental problem is atypical, which in Habermas’s model of deliberation returns participants to a discourse of justification with every new problem. Environmental problems return unthematized knowledge into the foreground with the initiation of rational deliberation. Such continuous thematization exacerbates “the ever-present risk of disagreement built into the mechanism of reaching understanding.”⁶³ Opportunities for dissension, then, increase as participants are able to challenge the validity of cognitive claims that cannot admit of certainty while also removing the option of treating previous discourses of justification as settled.

The complex, non-linear, and uncertain character of environmental knowledge increases more than just the opportunity for dissension, it also increases the likelihood of dissension as a result of the need for participants to possess high levels of cognitive competence. Habermas describes the cognitive demands placed on participants in the process of deliberation:

⁶² Habermas, 2003: 262.

⁶³ Habermas, 1996: 21.

[T]he abstractness of these highly generalized norms leads to problems of application as soon as a conflict reaches beyond the routine interactions in familiar contexts. Complex operations are required to reach a decision in cases of this sort. On the one hand, one must uncover and describe the relevant features of the situation in light of competing but somewhat indeterminate norm candidates; on the other hand, one must select, interpret, and apply the norm most appropriate to the present case in light of a description of the situation that is as complete as possible. Thus, problems of justification and application in complex issues often overtax the individual's analytical capacity.⁶⁴

At both the moment of deliberative judgment and the later corroboration of successful judgment, Habermas states that participants possess a less than sufficient ability to effectively process the requisite knowledge. This minimizes the number of environmental problems that can be dealt with deliberatively, further preventing thematized knowledge from returning to the lifeworld background to serve as an unmediated certainty capable of motivating individual moral action. Specific environmental problems that may remain amenable to deliberation cannot serve as a precedent for a 'type' of complex environmental problem that is not also conducive to simple resolution. Even so, environmental problems will tend, given the features described above, toward intractability. With every new environmental problem justification must proceed without a 'typical' standard to draw on, thus signaling a diminished background of agreement to assist in making a problem more tractable. As more problems tend toward intractability, abstention serves as a way of preserving the rational orientation toward mutual understanding without the burden of commitment. The result is a diminished lifeworld background that has limited sources of *rationally agreed upon* norms.

The final point with regards to the diminishing of lifeworld background involves precisely the tendency of environmental problems toward intractability and the option for

⁶⁴ Habermas, 1996: 115. Habermas continues, saying that this "*cognitive indeterminacy* is absorbed by the facticity of the genesis of the law," a point that I will elaborate upon throughout the remainder of the chapter (emphasis in original).

participants to abstain from a ‘yes or no’ position-taking in such instances. Habermas describes this option:

[...] I think that such an abstention is also a rationally motivated position, as much as a ‘yes’ or ‘no,’ and in no way relieves us of the necessity of taking a position. Abstention in this context does not really signify a true declaration of neutrality, but only signals that we are putting off problems for the time being and wish to suspend our interpretative efforts.⁶⁵

The problem that abstention introduces for Habermas’s articulation of the necessary orientation of participants is that without the necessity of taking a position during deliberation he cannot claim that an orientation to reaching is actually present. The difficulty, then, is that abstention contributes to the “shrinking” of a background consensus in the lifeworld without supplying the necessary ‘repair work’ that communicative action enables. Thus, the issue of whether abstention is or is not rationally motivated is less important than the implication it has for future deliberations, which necessitate a ‘massive’ background consensus to remain viable. If we are to assume future communicative encounters, there is an unspecified limit to how often participants can abstain from position-taking with regards to normative validity claims before the necessary background conditions are eroded. Another way of putting this is that abstention, even if rationally motivated, always addresses an issue that is removed from the realm of unmediated certainty and yet does not replenish the realm of unthematized knowledge with new grounds of social integration. Habermas insists, however, that, “[w]e must take moral questions to be questions of knowledge even if the lifeworld’s font of shared ethical background beliefs is depleted.”⁶⁶

⁶⁵ Habermas, 1994: 204.

⁶⁶ Habermas, 2003: 271.

If we take seriously, then, the problems entailed in the epistemological complications of environmental knowledge and the fragility of the lifeworld that Habermas describes, then it is not difficult to see how environmental problems put pressure on the capacity of deliberative procedures to deal with dissension. Along with exacerbating the limitations to the problems that can be resolved within deliberative fora (typical with clearly expected results), complex knowledge of the sort present in environmental disputes erodes the basis for a commitment to consequences that is so central to Habermas's proceduralism. Insofar as deliberative democracy has only a diminished lifeworld background to draw upon and difficulty arriving at agreeable predictions to which participants can commit, the argument hinges on the theory of motivation for actors to cooperate — that is, Habermas's argument must provide a basis for expecting reciprocity.

3. The Principle of Motivation and the Function of Legal Sanctions

The expectation and guarantee of reciprocity based on commitment is central to architectural theories of politics. Borrowing from Habermas's account of the fragmentation of pre-modern social order, we can view Hobbes as first posing this issue explicitly. While reciprocity is obviously a central problem for social contract theories, it is not limited to such theories. In what follows I treat the two guarantors of reciprocity present in Habermas's theory — rational motivation and legal sanction — separately. My reason for doing so is that this separation is built into the structure of his theory through the distinction between communicative action in the political public sphere and legal sanction legitimized in the constitutional democratic domain.

The principle of motivation that Habermas employs can be viewed as an extension of his previous equation of consent and commitment to consequences. Motivation explains the direct link between commitment to consequences and actualization of norm-conforming behavior. The principle can be summarized with the proposition that consent undertaken within non-coercive and fair procedures necessarily entails behavior on the part of the consenting subject that is consistent with the terms of consent. Thus, the principle of motivation states the determinate relationship between consent to obligations and the carrying out of those obligations. Habermas summarizes this principle:

To be sure, speech-act offers can develop an action-coordinating effect only because the binding and bonding force of a speech act that is both understandable and has been accepted by the hearer also extends to the consequences for the sequel of interaction that result from the semantic content of the utterance — whether asymmetrically for the hearer or speaker or symmetrically for both parties. Whoever accepts a command feels herself obliged to carry it out; whoever makes a promise feels himself bound to make it come true if need be; *whoever accepts an assertion believes it and will direct her behavior accordingly.*⁶⁷

The principle of motivation reflects a broader assumption that Habermas makes about communicative action. Assuming that convictions are the seat of agency, Habermas argues that communicative action aims to alter convictions. Based on participants' orientation toward reaching mutual understanding, the very process of deliberation serves to transform convictions through the rational give and take of dialogue. According to a 'classical' conception of practical reason, rationality is a "weak motivational force" for social integration insofar as it is reliant on individual morality.⁶⁸ Habermas does not so much reject this position as modify the terms of its operation in order to link individual morality through the medium of communication oriented toward mutual understanding.⁶⁹

⁶⁷ Habermas, 1998a: 223, emphasis added.

⁶⁸ Habermas, 1996: 6.

⁶⁹ See the opening to Chapter 1 of *Between Facts and Norms* for Habermas's argument for a new

That is to say, the intersection of communicative action and normative validity is viewed as a remedy to this weak motivational force, albeit one that still relies on the centrality of rational motivation and demonstration of commensurability.

Even granting that deliberative democracy changes participants' convictions, equating conviction with behavioral change is problematic. Not only is rationality a weak form of motivation, as Habermas is willing to admit despite his modified notion of practical reason, but it is all the more limited when addressing problems with indeterminate consequences. Here, the same problem of *predicted* consequences as the basis of commitment that limited the problems remediable through communicative action returns to haunt the principle of motivation. The commitment to consequences inherent in the act of procedural consent rests not only on the relatively high degree of certainty underlying a prediction, but also entails a guarantee of reciprocity as an element of those consequences. In the event of atypical problems, though, the uncertainty and indeterminacy of outcomes — whether incalculable or probabilistic — extends to reciprocity as well. While a participant may be able to take for granted that others are motivated to act accordingly so long as the outcomes are highly certain, the reasons for assuming others will act accordingly *if* outcomes are not as predicted are not as obvious. In the end, the retrospective nature of evaluating consequences and the need for participants to actually act according to the principle of motivation as well as assume all others will as well leads to the conclusion that the weakness of rational motivation is insufficient in itself. “In *weak communicative action* actors do not as yet expect each other to be guided by common norms or values and to recognize reciprocal obligations”⁷⁰

conception of practical reason.

⁷⁰ Habermas, 1998b: 327, emphasis in original.

Habermas accepts this insofar as he claims that motivation is *learned* in the process of deliberation and, thus, is able to serve as a strong binding force; that is, Habermas ‘strengthens’ his conception of motivation by shifting from mutual understanding to agreement as the aim of communicative action. He writes, “Since a *discursive* competition for the better argument has, for conceptual reasons, agreement and not compromise as its goal, the discursive vindication of the validity claim is left open until *actor-independent* reasons make the contested truth claim rationally acceptable in principle for all participants”⁷¹ By shifting to agreement, however, Habermas increases the theoretical burden for explaining what motivates participation in the learning process itself.⁷²

The need to reach agreement, then, introduces the need to answer simultaneously for pre-deliberative motivation and reciprocity of commitments. Habermas presumes that a shared lifeworld background is sufficient for resolving this dilemma. He states, “[...] rightness claims, with which illocutionary acts of this sort are connected, rely on something in a social world in a manner analogous to the way in which the truth claims connected with constative speech acts rely on something in the objective world”⁷³ However, Habermas’s distinction between social and moral norms treats as separate the simultaneous function of norms as bearer of social meaning and setter of behavioral expectations. The existence of shared behavioral patterns, the customs and conventions that Habermas categorizes as social norms, do not meet the standard of rationality that Habermas claims for the symbolic role of social meaning. Insofar as social norms are not

⁷¹ Habermas, 1998b: 321, emphasis in original.

⁷² For an exposition of the motivation that must necessarily precede deliberation see David Lay Williams, “Dialogic Theories of Justice”: 118.

⁷³ Habermas, 1998b: 328.

solely a matter of strategic action,⁷⁴ this dual function of norms suggests a mode of social integration that is neither strategic nor communicative that must be accounted for as an integrating force.

Habermas's principle of motivation is not sufficient in itself for generating agreement and guaranteeing reciprocity. At this stage he turns to a discourse theory of law to supplement the motivational shortcomings of communicative action. Insofar as communicative action in the political public sphere leads to actor-independent agreement, thus necessitating a strong form of motivation, where this fails and actor-relative understanding supplies merely a weak communicative action, law enables both to coexist. As Habermas states, "Law can compensate for the weaknesses of a highly demanding morality that [...] provides only cognitively indeterminate and motivationally unreliable results."⁷⁵

Positive legal norms offset the instability generated by increased risk of dissension embedded in the fragmented social order of modernity by establishing a "highly artificial community."⁷⁶ Insofar as an artificial form of freedom and equality is inscribed in legal norms in the form of rights, social integration is formally possible.. Integration, then, results not only from the attribution of formal legal standing but also from (a) the threat of external sanctions and (b) the supposition of rationally motivated agreement.⁷⁷ However, the legal community is never fully artificial, but rests on a residual mode of sovereign authority in the form of "archaic" institutions and "naturally emergent"

⁷⁴ Habermas clarifies the distinction between communicative and strategic action in Habermas, 1998a: 221-2.

⁷⁵ Habermas, 1998c: 257.

⁷⁶ Habermas, 1996: 8.

⁷⁷ Habermas, 1996: 8.

conventions.⁷⁸ The artificial community of law, then, serves to stabilize the communicative preconditions of deliberative democracy only by retaining an element of authority that predates the emergence of constitutional democracy in modernity.

Habermas claims that constitutional democracy reflects the co-originality of post-conventional positive law and the self-authorization of popular sovereignty. In doing so, Habermas seeks to escape the paradox of legitimacy (see Chapter 1) in which the terms of legitimacy themselves must be legitimized in some prior (speculative) moment. As Bonnie Honig has shown, Habermas's argument about the equiprimordial status of positive law and popular sovereignty revolves around a set of temporal displacements that come at the cost of democratic action in the present. She writes that,

when Habermas characterizes his hoped-for future in progressive terms, he turns that future into a ground. Its character as a future is undone by progress' guarantee. The agency of the present generation, on behalf of which Habermas lays out his argument, is now in the service of a set of forces quite beyond itself, which it may only fulfill or betray, speed up or slow down. It may not author or make or inaugurate its future. It may only reposition itself in relation to its past.⁷⁹

This lessening of democratic agency results from Habermas's need to retain both aspects of constitutional democracy without prioritizing one over the other. If popular sovereignty were to take priority over the formal equality provided by law then the artificial community would not be able to stabilize the requisite communicative preconditions. That is, the lifeworld background would have only a fragmented actuality to supply communicative resources. If law takes priority over popular sovereignty then the fount of political legitimacy — self-legislating autonomous subjects — becomes a singular moment of consent that reduces law to a one-sided source of coercion. That is,

⁷⁸ For the contrast between naturally emergent rules and the artificial character of legal norms see Habermas, 1996: 111.

⁷⁹ Honig, 2001a: 797.

the internal relation between coercibility and changeability is broken.⁸⁰ Along with this, continued involvement in the generation and reform of laws is necessary for actors to adopt the proper political attitude as the source of law: “It is only the participation in the practice of *politically autonomous* lawmaking that makes it possible for the addressees of law to have a correct understanding of the legal order as created by themselves.”⁸¹

Habermas posits the co-originality of positive law and popular sovereignty as a way of reconciling this tension. In his discourse theory of law, the strength of positive law lies in its ambivalence about the source of norm-conforming behavior.⁸² Law then operates through a series of abstractions that transform the actor of deliberation into a subject with legal standing:

Law abstracts, first, from the capacity of the addressees to bind their will of their own accord, because it assumes that *free choice* is a sufficient source of law-abiding behavior. Second, the law abstracts from the complexities that action plans owe to their lifeworld contexts; it restricts itself to the *external relation* of interactive influence that typical social actors exert on one another. Third, we have already seen that law abstracts from the *kind of motivation*; it is satisfied with action that outwardly conforms to rules, however such conformity might arise.”⁸³

The implication of the ambivalence regarding motivations is that, along with analytic indistinguishability of norm-conforming intention means that the normatively authorized validity of a law exists in an indeterminate relationship to obedience as either actor-independent motivation (Kantian duty) or actor-relative motivation (strategic calculation of consequences).

Acknowledging the ambivalent nature of legal norms, Habermas is unable to locate a unified source of solidarity in the validity dimension of positive law. Instead, he claims

⁸⁰ Habermas, 1998c: 254.

⁸¹ Habermas, 1996: 121.

⁸² Habermas, 1996: 30-31.

⁸³ Habermas, 1996: 112, emphasis in original.

that positive law takes up the tension between validity and facticity in the form of permitting individuals to choose their motivation for adhering to legal norms. The problem is that Habermas generates a serious lacuna in his theory. Having already established the impossibility of analytically distinguishing the intentions behind norm-conforming behavior, he is forced to fall back upon his principle of motivation, which is acknowledged as weak. The import of the weakness of rational motivation combined with the analytically indiscernible nature of behavioral intentions points towards “average norm compliance” as the single most important function of law.⁸⁴

Given that the principled morality arising from Habermas’s deontological commitments “is meant to orient one’s action but does not thereby *dispose* one to act rightly,” there remains the option of *external* motivation in the form of sanctions.⁸⁵ In fact, law is only capable of addressing such external motivation: “Only matters pertaining to external relations can be legally regulated at all. This is because rule-conformative behavior must, if necessary, be enforced.”⁸⁶ This potential necessity to enforce behavior becomes more important as a fragile and fragmented lifeworld encounters problems, such as those posed by new environmental challenges, that limit the capacity of deliberation to replenish a shared background. This leads to a new interpretation of what constitutes ‘recognition’ in Habermas’s assumption that social orders exist through the recognition of normative validity claims.⁸⁷ On my reading, law achieves stability precisely because it combines the issue of motivation with the establishment of expectations enabled by the threat of sanctions. It is not so much that law stabilizes the tension between facticity and

⁸⁴ Habermas, 1996: 31.

⁸⁵ Habermas, 1996: 113, emphasis in original.

⁸⁶ Habermas, 1996: 112.

⁸⁷ Habermas, 1996: 17.

validity, as Habermas claims, as much as it presides over the risk of dissension in order to ensure facticity during those moments when it is clear that an actor lacks the sufficient deontological motivation provided by validity.

Just how law comes to serve as a substitute for communicatively based social integration can be seen by the “unburdening” of the moral subject that law performs. Habermas describes three domains in which the postconventional subject is confronted by “unprecedented demands.”⁸⁸ According to Habermas, the transformation of the moral subject into a legal subject serves to resolve the problems of (a) cognitive indeterminacy, (b) motivational uncertainty, and (c) imputability of obligations (or what I have termed reciprocity).⁸⁹ Having raised these as significant problems for communicative action above, it is not necessary to go into detail at this stage. Of importance is that at exactly those points where communicative action is unable to operate as described under conditions of modernity, Habermas turns to external motivation as a final arbiter that enforces normative validity where convictions fail: “Valid norms represent reasonable expectations only if they can actually be enforced against deviant behavior.”⁹⁰

By claiming that “[t]hrough a legal system with which it remains internally coupled, however, morality can spread to *all* spheres of action,” Habermas is able to treat the outcome guaranteed by law as a presupposition of law’s legitimacy. In the end, however, his theoretical reliance on law’s sanctioning capacity to resolve the problems of cognitive complexity, motivation, and reciprocity leads Habermas into territory for which his model of a singular, linear conception of procedural legitimacy is insufficient. Insofar as motivation and reciprocity are reliant on legal sanction, we are returned to the question of

⁸⁸ Habermas, 1996: 114.

⁸⁹ Habermas, 1996: 115-6.

⁹⁰ Habermas, 1996: 116.

power and rule, a question that Habermas leaves open in relation to communicative action. Simply assigning communicative action in the political public sphere the role of warning system and pressure amplifier, as well as of system overseer, Habermas fails to establish a bridge between deliberative democracy and collective purposive activity. That is, he does not so much demonstrate the importance of communicative action as its impotence at coordinating social action where democracy demands an emphasis on *kratos*. Insofar as Habermas's framework of legitimacy encounters the authoritative relations with the tools of coercion, such relationships are better captured in terms of deferral and accountability specified in the first chapter.

D. Towards a Prudential Politics of the Environment

In Habermas's account of the emergence of modernity, as opposed to its construction, he emphasizes the future-oriented nature of modernity.⁹¹ This allows Habermas to avoid speculating about the "concealed beginnings of political authority."⁹² As we have seen, this leads him to neglect the important role of 'archaic institutions' that continue from pre-modern times, especially as manifested in the "ritualized recollection of founding" that continues to expunge such institutions in favor of a more rational version of history.⁹³ In order to sustain a concept of linguistically bounded lifeworld backgrounds susceptible to rational processes of adjudicating disputes over normative validity, Habermas inverts the paradoxical establishment of legitimacy that a speculative, originary imagination presents.

The projection at the core of Habermas's reconstructive efforts exposes a sort of 'retroactive legitimacy' that has no place in his theory. His claim that, "[e]ven the decentered society cannot do without the reference point provided by the projected unity of intersubjectively formed common will," must be read alongside the centrality of projection to his principle of universalization and his discourse ethics, both addressed above.⁹⁴ Projection, here, inverts the linearity that ties legitimacy to speculative origins in order to project forward to the present. Habermas attributes this dependence on an originary imagination to a unitary conception of metaphysics: "the unitary thinking of

⁹¹ Habermas, 1992: 126.

⁹² Habermas, 1996: 138.

⁹³ Habermas, 1996: 296.

⁹⁴ Habermas, 1992: 141.

metaphysics, which, in emancipating itself from mythological thinking that focuses on origins, still remains tied to the latter.⁹⁵”

While both the linear logic of legitimacy and Habermas’s reliance upon a procedural assumption that fair procedures result in consequences that must be treated as fair, Habermas’s inversion is instructive for the form of legitimacy it introduces. The *linear* logic of legitimacy can be stated as:

- a. Because of previous agreement X (speculated acceptance of terms), present consequences Y are legitimate (acceptance must be upheld).

Habermas’s logic of legitimacy can be stated as:

- b. Because of future consequences Y (speculated acceptance of terms), present agreement X is legitimate (acceptance as commitment that must be upheld).

In Habermas’s case, projection operates as a temporal displacement that generates a ‘retroactive’ legitimacy. However, this retroactive legitimacy is none other than *deferral* disguised as acceptance that posits *accountability* prior to the terms for judgment such that contingency cannot modify the agreement. In the ordinary, linear logic of legitimacy, contingency has already intervened and simply must be theoretically accounted for.

As I discussed in Chapter 1, the temporal displacement of authority operates between the poles of deferral and accountability. Deferral candidly recognizes the openness of prediction and projection to contingency while accountability registers the relationship between the terms of agreement, contingency, and the weight of actual consequences. A prudential politics that seeks to determine the potential for democratic relationships between deferral and accountability (a) builds upon the centrality of prediction and (b) permits defining the limits that assist in establishing a productive conception of the role of expertise in democratic authority (see Chapter 4). Habermas

⁹⁵ Habermas, 1992: 117.

reads in Aristotle an internal connection between prudential politics and probability but at the cost of foregoing a deontological approach: “For Aristotle connects prudence, which stems from practical judgment, with mere probability, so that the binding nature of moral duties cannot be translated into the categorical validity of moral judgments.”⁹⁶ However, approaching environmental problems that necessitate probabilistic prediction through a prudential lense brings with it the added benefit of not relegating questions of application to a derivative status.

⁹⁶ Habermas, 2003: 238-9.

CHAPTER III
A COMPARATIVE FRAMEWORK FOR ANALYZING ENVIRONMENTAL
DELIBERATION

Discussions about the relationship between deliberative democratic theory, practical policy-making, and specific environmental problems are fraught with difficulties. For one, the structure of academic and policy analysis are built around divisions that do not readily lend themselves to thematic discussion. Although studies have appeared that attempt to discern what deliberative democratic theory has to offer environmental politics, few have attempted to treat environmental problems as a site for examining the viability of deliberative democratic theory by surveying the current empirical landscape.¹

The relatively one-sided nature of approaches is, no doubt, exacerbated by a lack of agreed upon concepts and integrated terms of comparison for researching deliberative democracy generally. Recent attempts to rectify this problem have become entangled in debates over the proper degree of fidelity owed to theoretical arguments when operationalizing concepts for empirical use as well as the methodological difficulties associated with extrapolating from case studies or using large-n studies such as polls and surveys to test the claims of deliberation.² The problem was initially addressed in the mid-1990s by Thomas Webler and Ortwin Renn in their introductory remarks for a volume on evaluating approaches to environmental deliberation.³ At the time, Webler and Renn focused their attention on standardizing criteria for procedural fairness and participant competence as the best means of measuring the quality of decisions.

¹ See Holden, 2002; Baber and Bartlett, 2005; and Vanderheiden, 2008.

² See Dryzek, 2007: 238-240.

³ Renn, Webler, and Wiedemann, 1995.

More recently, an intensive discussion of the issue was staged between Dennis Thompson, a theorist of deliberative democracy, and Diana Mutz, a critical but sympathetic empirical analyst, in the *Annual Review of Political Science*. The exchange between Mutz and Thompson is illustrative of the impasse besetting communications between empirically and theoretically oriented students of politics. A few basic differences manifest themselves in the arguments of Mutz and Thompson and, as such, provide a point of reference for addressing their seemingly intraversable divisions. At issue are differences in orientation towards one's object of study as well as expectations about what analysis is to achieve. The resulting differences can be summed up as a lack of agreement about:

1. Which conception of deliberative democratic theory to test.
2. Whether evidence can disconfirm or falsify the underlying theory.
3. Whether concepts can be standardized.
4. Which concepts are able to be operationalized.
5. What counts as an indicator; that is, what to treat as evidence.

The competing versions of deliberative democratic theory pose a series of choices for empirical research, any of which entails specific gains and losses in the research process. The variety, as well as potential incompatibility, of theoretical assumptions requires foremost that researchers work within a consistently developed approach – for instance, following the work of Joshua Cohen, Amy Gutmann and Dennis Thompson, John Dryzek, or Jürgen Habermas – or focus on precisely defined concepts that can be compared across frameworks. If caution is not exercised then researchers encounter the problem of superficiality described by Thompson when he writes that,

They [empirical researchers] extract from isolated passages in various theoretical writings a simplified statement about one or more benefits of deliberative democracy, compress it into a testable hypothesis, find or (more often) artificially create a site in which people talk about politics, and conclude that deliberation does not produce the benefits the theory promised and may even be counterproductive.⁴

However, even where research is based upon carefully constructed questions with a direct connection to the concepts under investigation, this may not suffice for communicating across disciplinary boundaries. Much hinges upon how the various conceptions of deliberation pose the central question of their theoretical endeavor. For instance, Thompson views deliberative theory as fundamentally asking, "[i]n a state of disagreement, how can citizens reach a collective decision that is legitimate?"⁵ John Dryzek elaborates:

The absence of empirical evidence of any sort in these sorts of treatments [by Rawls, Habermas and Cohen] is not a fatal weakness, for these studies are generally concerned mainly to present an ideal, from which real world practices and possibilities can be expected to diverge to greater or lesser degree. Only if we actually want to think about ways to make the real world more deliberative do the limitations of such ideal theory become apparent.⁶

As I discussed in Chapter 1, relying upon legitimacy as the motivating concern introduces a seemingly irreconcilable division between those who seek to approach environmental politics from a strictly philosophical viewpoint, ignoring and immune to the particular conditions, and more practically oriented inquiries, whether from a strictly empirical or critical theoretical perspective. Thus, while Thompson's question of 'how can' intends a speculative account insulated by the intrinsically valid terms of the concept of legitimacy, Diana Mutz frames her purpose in altogether different terms: "The whole reason deliberative democracy is normatively desirable is because it is thought to produce

⁴ Thompson, 2008: 498-499.

⁵ Thompson, 2008: 502.

⁶ Dryzek, 2007: 238.

tangible benefits for democratic citizens and societies."⁷ The practical impetus behind this line of questioning can be expressed succinctly: "Should citizens be encouraged to deliberate about matters of politics?"⁸ Furthermore, such questions are not posed only by more "practical" empirical researchers. Concern with the environment has led political theorists to express similar desires: "The challenge for normative political theory, then, is to assist in designing institutions and procedures through which fruitful deliberation over sustainable environmental policy can take place."⁹

In attempting to provide a comparative framework capable of facilitating discussion between theory and empirical research, I opt to focus on the deliberative theory of Jürgen Habermas, treating his conception as a minimal test case for deliberation in general because of the thoroughness and sophistication of the theory as well as its influence upon other versions of deliberation. It is most likely, given the peripheral dependence of many other conceptions of deliberation upon Habermas's theory of communicative rationality (Amy Gutmann and Dennis Thompson, James Bohman, and Joshua Cohen), that if his approach is untenable then those borrowing key assumptions and provisos from it will also likely be untenable. While this is no substitute for a more thorough treatment of those theories independently, it does allow for a tentative reply to the question: "Should citizens be encouraged to deliberate about matters of politics?"

Beyond decisions about whose version of deliberation to address, another philosophical conflict awaits as to whether it is even possible, given the use of arguments about intrinsic benefits, to prove a given deliberative theory false and, if so, on what grounds. The answer goes, to a great extent, to the core of one's intent to contribute to a

⁷ Mutz, 2008: 523.

⁸ Mendelberg, 2002.

⁹ Vanderheiden, 2001: 218. On this point see also Smith, 2001.

philosophical discussion on deductive and inductive grounds or to engage in a social scientific pursuit on abductive grounds. Accordingly, Thompson – pursuing the first line of discussion – envisions a limited role for empirical research in which falsification is defined in terms of demonstrating the internal consistency or inconsistency of a framework in practice.

The more penetrating (and ultimately more constructive) empirical challenge to any normative theory seeks to show that the values that it prescribes conflict in practice. The theory falters not because current democracies fail to realize its values but because one of its values cannot be fully realized without sacrificing one of its other values.¹⁰

Thompson points out, correctly, that the theory cannot be tested strictly as stated for the simple reason that such conditions do not presently exist but are the objective to be achieved. Drawing on a rather forced analogy between theory as the 'head' and research as the 'hand' of political science, Thompson retreats from attempting to actualize the potential for a more productive relationship within political science between normative theory and empirical research.

A. From Normative Theory to Working Hypotheses

A key presupposition of empirical research that seeks to 'hypothesize, test, and revise,' is that any assertion has an equivalent hypothetical statement capable of being verified. As Diana Mutz points out:

The key difference is that, in normative political theory, the activity described as deliberation is *assumed* to have certain beneficial outcomes, and in empirical research, it is *hypothesized* to have those same desirable outcomes. Hypotheses often turn out to be wrong, but assumptions, by their very nature, cannot be.¹¹

¹⁰ Thompson, 2008: 512.

¹¹ Mutz, 2008: 524.

This abductive approach, in which a theory is merely a hypothetical explanation or prediction regarding determinate phenomenon, finds a concept valuable only insofar as it contributes to this process. On this account, theorists must accept some form of this presupposition in order for dialogue to occur.

Although he avoids the thornier issues about how empirical and normative accounts of deliberation may communicate more effectively, Jürgen Habermas offers pertinent comments in his response to a special issue devoted to studies of deliberation. His remarks deal with why, when operationalizing his "detranscendental ideal," it is impossible to locate disconfirming evidence. He writes:

For the case of my own theory, the impact on design and method is easily illustrated by the following implication. Whereas the observed behaviour of an actor does or does not fit the paradigm of rational choice, the communicative behaviour of participants in deliberative practices always fits the paradigm to some degree, as long as the actor is participating in a practice of that kind. For the rational presuppositions are attributed to the type of practice, whether it is institutionalized or not. In this case, *the intricate purpose of measurement is to find out the degree in which a given sample of participants live up to rational presuppositions that are constitutive of their practice.*¹²

The role ascribed to empirical research, much as with Dennis Thompson, is to determine the degree to which actuality fits its own rational presuppositions which are themselves drawn from Habermas's counterfactual idealization of communication.¹³

Although it would appear that Habermas does not provide for the possibility of falsifiability through disconfirming evidence, his conception of deliberative democracy is an attempt to rectify the discrepancy between actuality and ideality by supplying a more legitimate practice that invites such treatment. Michael Neblo suggests that the notion of empirical invalidation is implicit in the very theoretical framework that he employs:

¹² Habermas, 2005: 391, emphasis added.

¹³ See Power, 1998.

It is true that one cannot ‘falsify’ a normative theory in the same way one might falsify a theory about fluid dynamics. However, Habermas consciously locates his project in the ‘tension *between* facts and norms;’ he intends that his theory help guide practice. Consequently, it must be able to bear some of the weight of the social world. If many of its implicit empirical premises and causal claims prove false, there is a sense in which it could be rendered practically falsified. That is, if his theory’s ideal content were sufficiently incongruent with realizable political goals, striving to achieve its ideal could lead to perverse consequences.¹⁴

While my own contention that empirical verification is necessary for an adequate political theory of environmental problems follows from my argument for a more situated, prudential form of political inquiry, as described in Chapter 1, I arrive at the same conclusion. Having addressed those aspects of Habermas's argument that could only be dealt with in philosophical terms in Chapter 2, the purpose now is to learn from the available research on deliberative democracy, to understand its implications, and to determine what remains to be learned.

The remaining differences between normative theory and empirical research occur only after the decision to treat the assumptions and implications of deliberative democratic theory as hypotheses capable of being tested. This introduces three related problems: whether relevant concepts can be operationalized, which are the relevant concepts to be studied, and what are the indicators for a given concept. Dennis Thompson divides the study of deliberation into three parts: determining what *counts* as deliberation (conceptual criteria), determining what counts as *good* deliberation (evaluative standards), and determining what is *necessary for producing* good deliberation (empirical conditions).¹⁵ Articulating the conceptual criteria for deliberative democracy, then, is the province of political theorists and necessarily precedes an account of the feasibility of deliberation.

¹⁴ Neblo, 2005: 172.

¹⁵ Thompson, 2008: 501.

Thompson's guarding of disciplinary territory and its subsequent positioning of empirical research as informed by, but never informing, political theory contrasts sharply with Mutz's version of a more muddled process. As she writes, "[t]ransforming deliberative theory into middle-range theory means replacing vaguely defined concepts, and substituting hypotheses about specific relationships between those concepts for grander theoretical frameworks."¹⁶ The prudential approach that I advocate, and which I claim follows in the Frankfurt School tradition of critical, requires translating philosophical claims into concrete terms. Mutz captures the basic thrust of this by seeking to translate "grander theoretical frameworks" into claims about "specific relationships." In the case of environmental politics, this requires attention to the particular type of problem being addressed. Thus, I attempt to grasp deliberative democracy foremost in its ability to handle each type of problem prior to committing to the view that it is effective at resolving certain types of environmental problems.

In contrast to Dennis Thompson's version of deliberative democratic theory as insulated from the burdens of arguing for the feasibility of its assumptions, I view the conversion of implicit empirical premises – the 'conditions of possibility' – into stringently defined conditions as enhancing the accuracy of theoretical claims. In the case of deliberative democracy, Diana Mutz's claim that key premises are "inconsistent with much of what is already known about political discourse in group contexts," has resulted in advocacy for a broad application of deliberatively designed policies without sufficient attention to the most plausible outcomes.¹⁷ Take, for instance, the following claim:

If realized, an ideal speech situation would be the source of habits of mind that would establish the basis for a more enlightened and participatory form of

¹⁶ Mutz, 2008: 522.

¹⁷ Mutz, 2008: 525.

democratic citizenship, one in which the risks associated with faction are less severe than those of interest-group liberalism. That is especially important in the environmental arena, where the general interest so often falls prey to the special. So Habermas's procedural theory of democracy has substantive implications for environmental rationality. [...] And, as these are built into law, organizational norms, and social expectations, they make possible a pragmatically grounded analysis of the potentiality of Habermas's theorizing for constructing deliberative environmental democracy.¹⁸

The authors state that as the 'substantive implications' of Habermas's theory are implemented further analysis will become possible, neglecting to acknowledge the limited grounds for persuading skeptics of increased deliberation in the absence of such analysis. A more accurate method of analysis would differentiate "[t]ests of whether the conditions necessary for deliberation are actually occurring [...] from evaluations of whether benefits accrue when the conditions do occur."¹⁹

In terms of which are the relevant concepts I go in a different direction than Ortwin Renn and Thomas Webler who have devoted much attention to operationalizing Habermas's deliberative principles as measurable standards of fairness and competence. Instead of focusing on fairness and competence internal to deliberation, my interest is in enabling analysis of how a given type of environmental problem affects communication. The first step is to establish terms of comparison that control for problem type in order to begin comparing how the variety of ways in which deliberation can be organized may influence the deliberative process.

Directing emphasis away from fairness and competence results, thus shifting away from procedural arrangements, allows me to take more seriously the claim that the substance and quality of communication within the deliberative process are sensitive to the issue under discussion. In the 1990s and the turn of the century, the majority of work

¹⁸ Baber and Bartlett, 2005: 83.

¹⁹ Mutz, 2008: 529.

on the intersection of environmental politics and deliberative democracy focused on procedural aspects.²⁰ Only in the past few years have political scientists begun to evaluate the discourse employed during deliberation, group dynamics, as well as the trade-offs involved when increasing deliberation.²¹

B. Cross-Case Inference: Controlling for Problem Type

A sign of the maturation of deliberative theory is the generation of a framework for speaking about the specifics of deliberative circumstances. In the case of evaluating the performance of specific procedures, recent work by Michael Neblo attempts to develop a model of the "macro-deliberative cycle."²² By enabling a cross-forum comparison that encompasses formalized institutions as well as informal communication within civil society, Neblo is able to disaggregate the larger set of Habermas's theoretical claims to show how a "deliberative decision at a very high level could warrant completely non-deliberative procedures at lower levels."²³

Such work has contributed to the initial clarification of which procedures or forums are most suitable for certain problems. In this regard, James Meadowcroft looks at seven different deliberative mechanisms: public inquiry, referendum, citizen advisory panel, citizen jury, environmental covenant, negotiated regulation, and mediation.²⁴ Meadowcroft offers suggestions for matching mechanisms to an appropriate context: "Nor are all mechanisms appropriate to every scale. Thus, regulatory negotiation and environmental covenants are more applicable on the national level. In contrast, the

²⁰ Renn, Webler, and Wiedemann, 1995; Smith, 2001; Fiorino, 1990; Dryzek, 2000; Fishkin, 1993.

²¹ Mutz, 2006; Goodin, 2005; Bächtiger, et al., 2010.

²² Neblo, 2005: 178.

²³ Neblo, 2005: 173.

²⁴ Meadowcroft, 2004.

referendum can be adjusted more easily to differently scaled jurisdictions."²⁵ He also incorporates insights from prior research, attempting to show how "opportunities for participation vary at different stages of the policy process – setting an agenda, developing frameworks for policy choice, and making the choices themselves. Again, a mechanism that might be appropriate for defining policy priorities (a citizen advisory panel, for example) might be less suited to channeling public inputs for a final decision."²⁶

While the ability to compare procedure type is important for analyzing and evaluating the operation of deliberative democracy, it tells only part of the story. As empirical studies have found, there is broad variance between one case of, for instance, a citizen jury and another case, even within the same general location. Dennis Thompson suggests that the "main reason for the mixed results is that the success or failure of deliberation depends so much on its context."²⁷ The issue of how sensitive deliberation is to context has been further refined to go beyond declarations of success or failure to the disposition of participants given the gender makeup of the group.²⁸ Where "outcomes appear to be mediated by the nature of the discussion," inferences about procedure type are meaningful only insofar as the comparison controls for problem type.²⁹ This conclusion is consistent with the premise, outlined in Chapter 1, that environmental issues constitute a unique domain of political problems, which demands careful analysis before extending a set of procedures to handle environmental issues wholesale.

²⁵ Meadowcroft, 2004: 199.

²⁶ Meadowcroft, 2004: 199-200.

²⁷ Thompson, 2008: 499.

²⁸ Mendelberg and Karpowitz, 2007.

²⁹ Mendelberg and Karpowitz, 2007: 123.

Controlling for problem, as I propose doing, offers immediate benefits such as explaining what have appeared as perplexing observations to others who emphasize procedure type. In a series of case studies on forest management and hazardous waste siting in the western United States, Daniel Press assesses the desirability among participants for "a decentralized or centralized mode of control."³⁰ The results of his survey lead to a paradoxical conclusion with regard to preference for local, state, or national control:

After asking respondents whether they favored local control, I asked whether people living near the national forest would manage it better than remote agencies, or if the waste problem would have been this bad if respondents had had more input. *Generally, environmental activists, legislators, and legislative staff in the toxics debate assumed that increased local participation and control would result in better environmental outcomes but held the opposite view on forestry.*³¹

The author describes a situation in which the perceived outcomes of "local participation and control" following deliberation are attributed differently depending upon whether the issue is logging or hazardous waste. Since the study is focused strictly on procedures and seeks to test the hypothesis, "People perceive that local control over environmental management results in more desirable environmental outcomes than central control (e.g., state and federal)," this finding appears as an inconsistent preference for decentralized and centralized control by the members of the same groups.³² Press asks: "How can we account for the differences across cases and respondent groups in how local control and environmental outcomes are thought to be linked?"³³ He goes on to explain the variance thusly:

³⁰ Press, 1994: 84.

³¹ Press, 1994: 84, emphasis in original.

³² Press, 1994: 72.

³³ Press, 1994: 89-90.

The tendency of environmentalists to use most means available to achieve physical outcomes may explain why the environmentalists in the toxics cases and those in the forestry cases viewed the effects of local control so differently. People who have never been 'active' on anything but environmental problems may exhibit a single-issue focus; they may pragmatically adjust their strategies in whatever way necessary to achieve their objectives, and if that means appealing to a national constituency on one issue but not another, no ideological or moral commitment will have been breached.³⁴

It is possible to avoid conjecture about the motives of interviewees, both stated and unstated, by beginning from the different characteristics of forest management and hazardous waste as environmental problems. Doing so would lead to treating the observed outcome – holding differing views on 'local' participation in forestry and hazardous waste siting – as expected rather than counterintuitive.

C. Constituting Cases

Although deliberative democratic theory is still dealt with primarily in terms of normative theory and a great deal of work remains to operationalize and test key elements of the theory, there is sufficient basis for formulating a newer sets of hypotheses based upon already concluded studies. The process of abductive reasoning, in which hypotheses are tested, revised and the entire process reiterated, stands in contrast to the large-*n* quantitative analysis more commonly encountered in political science. Whereas quantitative analysis relies upon induction from "a preexisting population of relevant observations, embracing both positive and negative cases," qualitative analysis employing abductive reasoning is more concerned with clearly delimiting the parameters for the cases under consideration, although at the cost of negative cases to serve as a basis

³⁴ Press, 1994: 90.

of comparison.³⁵ Thus, as Charles Ragin notes, "relevant cases must be properly constituted through a careful dialogue of ideas and evidence involving the reciprocal clarification of empirical categories and theoretical concepts."³⁶ While this method does not yield disconfirming cases it does provide a more transparent process of translating theoretical arguments into empirical claims.

This method serves the study of deliberative democratic theory well as it enables each set of cases to serve as a starting point for understanding the next set of cases while keeping the question of relevant similarities firmly in the foreground. As Habermasian deliberative democracy has come to inform an increasing number of institutional models it is necessary to take the available cases into account in order to further refine one's testable hypotheses. It is precisely this stage of generating comparisons and making 'accountable' that I seek to facilitate by articulating criteria of environmental problems relevant to the operation of deliberative democracy.

In large-*n*, quantitative analysis it is necessary to expand the selection criteria for what counts as an instance of deliberation in order to generate enough cases to draw non-trivial conclusions. However, as the disagreement between Dennis Thompson and Diana Mutz makes clear, the stringency of conditions described by deliberative democratic theorists offer only a limited range of variation to work with before the feedback between empirical research and normative theory is broken off. I have opted to retain many of the stringent requirements assumed or implied by Habermasian deliberative democracy precisely for the purpose of granting the larger theoretical framework of communicative action an irreplaceable status in the argument for deliberation. Although this severely

³⁵ Ragin, 2004: 130.

³⁶ Ragin, 2004: 130.

restricts the number of cases that are to be included, I supplement my analysis not by expanding the selection criteria, as may be assumed, but by focusing on carefully developing hypotheses about environmental deliberation based upon the most feasible assumptions available from the larger body of studies on deliberation – that is, by drawing upon the strength of the abductive method of analysis. This is not to say that quantitative analysis is to be neglected, simply that in the case of deliberative democratic theory there is no guarantee at the outset that a sufficient number of cases is available on a given set of criteria to draw conclusions with any leverage.

I begin by outlining the criteria for comparing environmental cases according to their relevance to deliberation. Doing so involves treating the problem type as a function of three variables. Next, I transpose the implications of Habermasian deliberative democratic theory into more specific hypotheses. As stated above, this entails developing indicators based upon the most feasible assumptions suggested by the conclusions of other similar studies. I then develop a means of treating cases in which each observation is located within a three-dimensional concept space (X-Y-Z scatterplot) to look for clustering by problem type. Once clusters have been located, thus controlling for problem type, and their fitness tested, it is possible to compare across procedure type according to stages of deliberation.

1. Assumptions and Implications: The General Set of Deliberative Cases

In order to establish criteria for comparing cases of deliberative democracy it is first necessary to ensure that the cases are drawn from qualitatively commensurable contexts. To that end, I rely upon findings from Australia, England, Germany, and the

United States. These cases all fit the minimum set of political criteria that Habermas identifies.³⁷ Along with being representative democracies, including both parliamentary and congressional legislatures, these countries have central environmental agencies that coordinate a broader effort to increase participation. Furthermore, each country is involved in the Local Agenda 21 program for environmental 'capacity-building' as resolved at the United Nations Conference on Environment and Development in Rio de Janeiro, 1992. Thus, each country has implemented a series of participatory initiatives that, beginning in the mid-1990s, developed into a coordinated effort aimed at implementing deliberation influenced by Jürgen Habermas and translated into specific policies by Ortwin Renn in Germany. In the United States, the general process is organized into 'Analytic-Deliberative Procedures' under the auspices of the National Research Council [Paul Stern and Harvey Fineberg (editors). *Understanding Risk: Informing Decisions in a Democratic Society*. (Washington, D.C.: National Academy Press, 1996).].³⁸ Finally, despite large differences in population size and density, these countries all have similar levels of development as measured by gross domestic product per capita: Australia (\$48,253), England (\$43,544), Germany (\$44,363), United States (\$45,230).³⁹

Before proceeding to looking at tentative hypotheses based upon expectations of deliberation in general, it is necessary to reiterate that I use the term complexity in the very specific sense described in Chapter 1. There I defined complexity as exhibiting

³⁷ I do not comprehensively include all instances of deliberation from the United States. For an alternate account of individual deliberation see Goodin, 2000.

³⁸ The NRC's attempt to combine 'deliberative' and 'analytic' procedures is, I claim, an important corrective to strictly deliberative procedures and illuminates the implicit combination of democratic and non-democratic institutions required in the argument for the deliberative legitimacy.

³⁹ UNDP, 2009. Information is based on 2008 reports and is indicated in U.S. dollars. The data for England is not disaggregated from the United Kingdom of Great Britain and Northern Ireland.

interdependent relationships incapable of being captured by single-variable, non-interactive measurements where improvement on one variable may mask deterioration on another variable.⁴⁰ Of significance is the reference to relationships. By defining complexity in terms of interactive relationships I differentiate between complexity, covering ecosystems and knowledge about them, and complications. Complication designates a large quantity of elements involved in causal relationships that vary as to the degree to which causality can be identified. To restate the difference figuratively, complexity refers to mutually constitutive relationships between even a few elements, or what we may call organic relationships, while complication refers to unidirectional relationships between numerous elements, or what we may call mechanical relationships.

Along with their previous work on measuring fairness and competence within deliberative procedures, Ortwin Renn and Thomas Webler have also argued that deliberation is shaped by the level of complexity and intensity of conflict involved.⁴¹ Although this is not applied to environmental issues specifically, it is important to acknowledge both the relevance of these criteria as well as the difficulty of establishing functional indicators for the concept of complexity. Since no adequate criteria have yet been developed to measure complexity, I leave this aspect of my argument to the theoretical critique offered in Chapter 2 and my account of challenges posed by complexity for communication between expert and non-expert deliberators in Chapter 4. I now turn to a brief survey of studies on deliberative democracy in order to establish the terms of feasibility for a more precise comparison of cases of environmental deliberation.

⁴⁰ This definition draws on Dryzek, 2005: 60-1, 69.

⁴¹ Renn, Webler, and Wiedemann, 1995; Renn, et al., 1997.

a. Individual Disposition and Group Dynamics

Two issues have raised concerns for deliberative theorists since the first wave of critiques in the early 1990s: the character traits and disposition necessary for deliberation and the way in which interpersonal dynamics serve to transfer political problems into deliberative settings. A recent study of deliberators conducted by Diana Mutz raises significant questions for the conception of the subject underlying Habermasian deliberation.⁴² Mutz analyzes what motivates participation in politics along with what motivates deliberation about politics and finds these motivations in conflict. Participation correlates with a strong interest in politics and is increased by a high degree of certainty about the correctness of one's views that is reinforced by likeminded peers. Deliberation, Mutz finds, is motivated by precisely the opposite disposition, correlating with only a limited interest in political topics, lesser certainty about one's views, and reluctance to arrive at a decision on controversial matters. This conflict suggests that those who are most likely to be involved in deliberative procedures are the least likely to possess the requisite disposition for successful deliberation while those most likely to have such a disposition are the least likely to get involved. The correlation between high partisanship (as a measure of certainty) and low inclination to deliberate was reconfirmed more recently during a more comprehensive study of "discursive participation."⁴³

Finding that the makeup of a group has a strong impact on the way in which deliberation is carried out, more specific studies by Mendelberg and Karpowitz have looked at the gender composition of groups to determine the effect on communication.⁴⁴

⁴² Mutz, 2006.

⁴³ See "Ideology" measurement under "Political Characteristics," Table 3.2, in Jacobs, et al., 2009: 50.

⁴⁴ Mendelberg and Karpowitz, 2007. See also Gupte and Bartlett, 2007, for a more general account of homogeneity as a factor in deliberation.

Specifically, Mendelberg and Karpowitz seek to understand how groups become polarized around pre-existing identifications, whether based on opinion or attribute. What they find is that in face-to-face meetings group norms are generated in the course of discussion that impact individual evaluations of the topic under discussion. A similar view was offered as a theoretical warning by James Bohman when he wrote that, "If conflicts of interest require adjudication, conflicts of principle, if deep enough, preclude this solution: what higher order principles such as fairness consist of may be precisely what is at stake. Democratic arrangements may only exacerbate these problems of pluralism."⁴⁵ The 'possibility' invoked by Bohman, however, functions in very specific ways depending upon the composition of the group.

Further confirming the way in which composition affects intergroup cooperation, Jacobs, Cook and Delli Carpini offer a comprehensive analysis of deliberation according to a series of socio-economic indicators such as education, income, race, and sex, which are then aggregated according to procedure type.⁴⁶ While the authors find that only slight impact can be attributed to socio-economic status per se, the intersection of socio-economic status and political capital come to explain a great deal of rates and intensity of deliberation.

b. Procedure Type and Problem Type

As outlined in Chapter 2, the roots of Jürgen Habermas's conception of deliberative democracy lie in his work on communicative action and its purported ability to maintain the legitimacy of modern democratic systems through a reinvigorated public

⁴⁵ Bohman, 1995: 253. See also Young, 2000: 36-51.

⁴⁶ Jacobs, et al., 2009.

sphere. Interest in Habermas's notion of the public sphere waxed following the publication of *The Theory of Communicative Action* and translation of *The Structural Transformation of the Public Sphere* in the latter 1980s. As theories of deliberative democracy were articulated throughout the 1990s, including by Habermas, the broader reference to constructive discourse within civil society increased in appeal. This has led to attempts to compare cases of informal deliberation in civil society to more formal involvement in government policy. Michael Neblo offers a useful model of the ideal "circulation of communicative power" that enables research into procedures to be compared to a broader social context.⁴⁷

Despite the benefits of this approach, I include only formal involvement in environmental governing while excluding cases where no input was publicly gathered from citizens for two reasons. First, implicit in the arguments for Habermasian deliberation is an assumption that communication takes place in person. Although Habermas has more recently registered his approval of internet-based forums as potentially productive sites of deliberation, the way in which conditions of equality, reciprocity, and publicity are portrayed by Habermas strongly suggests that interaction occurs face-to-face.⁴⁸ Second, including both formal and informal communication makes the criteria for case selection too broad with the result that some negative evidence can be "made up for" with positive results elsewhere.⁴⁹

⁴⁷ Neblo, 2005: 177.

⁴⁸ See Habermas, 2005. The implicit assumption of face-to-face communication has been affirmed by other analysts of deliberation, both from theoretical and empirical backgrounds. See Zwart, 2003: 29; Young, 2000: 44-47; and Mendelberg, 2002: 155.

⁴⁹ See Dryzek, 2007: 244-5.

The extensive work carried out by Archon Fung on types of deliberative procedure offers a useful starting point for articulating assumptions on a wide array of issues from the mode of deliberation, the number of participants, the acquisition of information by citizen as well as by officials, and the bias of deliberation according to socio-economic status. While none of the cases Fung covers involve environmental matters, they enable me to establish initial expectations on key aspects of the deliberative process that will inform my own hypotheses.

Most important are two cases that track similarly on many key aspects.⁵⁰ Both the Chicago community policing and the participatory budgeting process in Porto Alegre, Brazil, scored high on the design for efficacy of the policies produced as well as registering the two highest scores on empowering citizens, stakes for participants, and monitoring, which registers long-term participation and potential for learning. In terms of outcomes, on information pooling both outscored other deliberative procedures such as polling and citizen summits, although this may also indicate that the issues covered by these procedures were less demanding than their more information intensive counterparts, e.g., the Oregon Health Plan. Both procedures also reflect their relative orientation to underrepresented groups in their bias scores, which show an inverse socio-economic bias. However, the two diverge at the justice of the policy, with the participatory budget process receiving the highest rank and Chicago's community policing program receiving the lowest score.

⁵⁰ Fung, 2007: 180, Figures 8.2 and 8.3.

Given that Fung finds the degree of empowerment built into the procedure and the subject of deliberation to be the two most significant influences on the outcome of deliberation,⁵¹ this suggests that since the two scored 'moderate-high' (Chicago) and 'high' (Porto Alegre) on empowerment, the difference falls to the subject of deliberation as the most likely explanation: "Neighborhood public safety" (Chicago) and "Capital infrastructure investments" (Porto Alegre).⁵² This interpretation needs to be tempered by the importance of the mode of deliberation – the organization of discussion, including the use of a facilitator – which was found to be an important factor in shaping the justice of policies.

c. Dimensions of Comparison

These findings suggest that when translating the assumptions of Habermasian deliberative democracy into hypotheses it is important to allow for inclusion of how participant disposition and group composition both perpetuate and magnify existing social norms while holding out the possibility of transforming such norms. It is feasible to conclude that the operation of significant group norms is context dependent; that is, group norms are impacted by the scope of problems in space (by political institutions and cultural media, for instance) and that as the size of groups increases the issue of composition intensifies. Thus, the spatial axis represents political boundaries as indicative of the relevant geographic scope of an environmental problem (**Figure 3.1**).

⁵¹ Fung, 2007: 171, Figure 8.1.

⁵² This finding is supported by Hajer and Kesserling, 1999: 13.

Figure 3.1: Axes of Environmental Problems

| X = Spatial | Y = Temporal | Z = Concentration |
|---|---|--|
| X _{1.0} = Boundless: Global | Y _{1.0} = Irreversible: Intergenerational | Z _{1.0} = Aggregate: Multiple |
| X _{0.75} = Transboundary: Regional (bi- or multilateral) | Y _{0.75} = Modifiable: Intergenerational | Z _{0.75} = Aggregate: Single |
| X _{0.50} = Bounded: National | Y _{0.50} = Modifiable: Intragenerational | Z _{0.50} = Mixed: Identifiable and Aggregate |
| X _{0.25} = Transboundary: Subnational | Y _{0.25} = Modifiable: Prior Initiation | Z _{0.25} = Identifiable: Multiple |
| X _{0.0} = Bounded: Local/Municipal | Y _{0.0} = Irreversible: Prior Initiation | Z _{0.0} = Identifiable: Single |

When incorporated with the correlation between increases in uncertainty of knowledge as projected timelines increase (presented in Chapter 1 and developed in Chapter 2), the spatial and temporal axes offer a way of locating instances of environmental deliberation relative to the scope and depth of the environmental problem under consideration. The temporal axis, then, simultaneously registers the duration of a given environmental event while converting this into political terms as a generational measurement of modifiability or irreversibility.

Finally, if we start by treating Habermas's discourse ethic (the 'all affected' principle) as relevant to the number of participants then, by including Fung's separate indicator for "stakes" as a measurement of engagement, it is possible to acknowledge the concentration of relevant population. While concentration is an important indicator, in

order to make it more directly a function of problem type, I scale concentration in terms of the number of identifiable actors with readily identifiable agents offering the least complicated deliberative case. The result is that concentration ranges from problems encompassing a single polluter to multiple, discrete aggregate polluters with the middle of the range covering cases in which environmental damage by an aggregate population constitutes approximately half of measurable sources of pollution with the other half made up of discrete, identifiable sources. This is the case with carbon dioxide (CO₂) emissions in a developed nation where a single cement manufacturer emits as much CO₂ in a year as thousands of cars.⁵³ In all cases, the axes employed are scaled according to the degree of complication as a function of scope and mobility outlined in this section. Thus, the further away from 0.0 along any axis the more movement involved in the problem and the more complicated the corresponding procedure is presumed to be based on problem type.

Given that each axis preserves the requisite conditions, it is necessary to test for fitness using a Kolmogorov-Smirnov one-sample test. The ordinal scaling of each axis allows cases to be treated as a cumulative frequency where the observed distribution $S_N(X)$ can be compared to the theoretical cumulative distribution $F_0(X)$ for a null hypothesis H_0 . By testing the maximum deviation D along each axis, it is possible to make sufficiently significant comparisons. This also serves to establish a basis for later examining clusters that occur in the three dimensional X-Y-Z scatterplot.

⁵³ The precise number of cars depends upon the regulations in a given country. For an explanation of how this effects international cooperation on global warming see Chasek, Downie, and Brown, 2010: 16-17. I use the term developed nation to refer to the categories described in the United Nations Framework Convention on Climate Change, Kyoto Protocol.

Performing a Kolmogorov-Smirnov test will also assuage concerns about whether measurements of 'Concentration' track too closely to 'Spatial' measurements. Such coincidence is to be expected in some cases, for example, forest management, where mobility is less of an issue. However, there is no necessary correlation. In the case of nuclear waste disposal in the United States, the issue of locating disposal facilities typically involves a small number of readily identifiable nuclear producers operating under significant federal restrictions that interacts with larger populations during transportation ($Z_{0.50}$) but crosses state boundaries without being national in scope ($X_{0.25}$). Some distortion does occur due to indicators not controlling for differences in geographical proportion between nation-states. In the case of transboundary air pollution, the issue in Europe under the Convention on Long-Range Transboundary Air Pollution (CLRTAP) is similar in scope to sulfur dioxide pollution in the midwestern region of the United States but in Europe would be considered a regional issue ($X_{0.75}$) while in the U.S. would be a subnational issue ($X_{0.25}$).

2. Comparisons and Hypotheses: The Particular Set of Environmental Cases

In order to generate significant explanations of deliberative democracy it is first necessary to establish hypotheses based upon feasible expectations. By focusing specifically on environmental problems I seek to move the discussion of Habermasian deliberation away from more abstract formulations. The drawback is that in an already sparse area of study further refining the unit of analysis decreases the number of available cases. The upside, however, is that the comparative approach increases the leverage of

findings.⁵⁴ Each of the ten available cases is coded along the x-y-z axes described above (Table 3.1) and is accompanied by a brief summary of the problem addressed and the procedure employed (Figure 3.2).

Table 3.1: Cases of Environmental Deliberation

Case 1: Nuess County, Germany

($x = 0.25$, $y = 0.50$, $z = 0.50$)

- a. Problem Description: Waste management (treatment technology and incinerator siting)
- b. Procedural Information: Nine mediation sessions were held from March 28, 1992, through August 27, 1993, in Nuess County, North Rhine-Westphalia, Germany. The meetings included representatives and members of 27 organizations. Resolutions were officially non-binding but unofficially binding by promise of the County Council if consensual agreement were obtained. (Holzinger, 2005)

Case 2: Columbia River Comprehensive Impact Assessment

($x = 0.25$, $y = 0.0$, $z = 0.25$)

- a. Problem Description: Hazardous waste storage and cleanup; prevention and cleanup contamination of surrounding water supply (drinking and crop irrigation) and fisheries
- b. Procedural Information: The Hanford, Washington, area is a Region 10, CERCLA site. The U.S. Department of Energy organized a citizen advisory board (Site-Specific Advisory Board) that included three federally recognized tribes as well as officials from the U.S. Environmental Protection Agency, Oregon State Department of Energy, Washington State Department of Ecology, and Hanford Advisory Board (local), to conduct a comprehensive risk assessment. Resolutions were non-binding and channeled through a Project Management Team. (Kinney and Leschine, 2002)

Case 3: Far North Queensland Citizens' Jury

($x = 0.25$, $y = 0.50$, $z = 0.50$)

- a. Problem Description: Maintenance plan for Bloomfield Track, a 'road' traversable only with four-wheel-drive that runs through the outback between Cairns and Cooktown passing between the tropical rainforests of Daintree National Forest and Cape Tribulation in North Queensland along coast fringed by coral reefs.
- b. Procedural Information: A twelve member citizen jury, randomly selected from amongst solicited respondents, was convened in Cairns, Australia, in January 2000. The jury was facilitated to select among presorted policy options and provide officials with non-binding information about citizen preferences for the road. (Niemeyer, 2004)

Continued on the next page.

⁵⁴ See Collier, Brady, and Seawright (2004): 229-266.

Case 4: Hampshire County Citizens' Advisory Committee

($x = 0.25$, $y = 0.50$, $z = 0.50$)

- a. Problem Description: Waste management (strategy planning)
- b. Procedural Information: Citizens advisory committees (CAC) involving three groups of 16-20 people were selected as a representative sample in Hampshire County, England. The group met six times over six months followed by a 'core forum' after the assessment was completed that met four times over ten months. Decisions were non-binding and intended to provide information about public opinion to county officials. (Petts, 2001)

Case 5: Essex County Citizens' Advisory Committee

($x = 0.25$, $y = 0.50$, $z = 0.50$)

- a. Problem Description: Waste management (strategy planning)
- b. Procedural Information: CAC involving three groups of 16-20 people were selected as a representative sample in Essex County, England. The group met five times over nine months. Decisions were non-binding and intended to provide information about public opinion to county officials. (Petts, 2001)

Case 6: Hertfordshire County Citizens' Jury

($x = 0.25$, $y = 0.50$, $z = 0.50$)

- a. Problem Description: Waste management (strategy planning)
- b. Procedural Information: In Hertfordshire, England, a citizens' jury involving 16 people recruited for their representative statuses and paid for their involvement were directed by facilitators before being divided into small groups for focused discussion. Decisions were non-binding and intended to provide information about public opinion to county officials. (Petts, 2001)

Case 7: Lancashire County Citizens' Jury

($x = 0.25$, $y = 0.50$, $z = 0.50$)

- a. Problem Description: Waste management (strategy planning)
- b. Procedural Information: In Lancashire, England, a citizens' jury involving 16 people recruited for their representative statuses and paid for their involvement were directed by facilitators before being divided into small groups for focused discussion. Decisions were non-binding and intended to provide information about public opinion to county officials. (Petts, 2001)

Case 8: Fort Collins' City Dialogue

($x = 0.0$, $y = 0.50$, $z = 0.25$)

- a. Problem Description: Urban growth planning
- b. Procedural Information: A public forum held in Fort Collins, Colorado, involved more than 500 randomly selected participants with the goal of advising the City Council. The process involved a community wide information campaign (20 page newsletter) with questionnaire followed by two independent sample surveys, and an opportunity for public input. Proposals were officially non-binding. (Weeks, 2000)

Continued on the next page.

Case 9: Shaping Eugene's Future

($x = 0.0$, $y = 0.50$, $z = 0.25$)

a. Problem Description: Urban growth planning

b. Procedural Information: In Eugene, Oregon, a multistage process brought together up to 1500 participants with the goal of advising policymakers. The process began with randomly assigned small group discussions focused on developing policy options. This was followed by public commentary, an information packet and questionnaire as well as community workshops. Discussions were facilitated. Although decisions were non-binding, the policy options were open. (Weeks, 2000)

Case 10: Glenorchy City Council

($x = 0.0$, $y = 0.50$, $z = 0.50$)

a. Problem Description: Waste management (Review services: curbside recycling, refuse collection, landfill, yard waste collection, backyard burning, litter and public refuse bins)

b. Procedural Information: This multi-stage deliberation in Glenorchy, Tasmania, Australia, in May 2000, involved convening precinct meetings to assist with carrying out a non-binding review of the city's waste services. The precinct meetings were divided into twelve smaller groups mediated by an annually elected three-member citizen committee. Review also involved a public survey and a public information-sharing campaign. Finally, each precinct elected one member of a taskforce to advise City Council as well as relay information back to the public. (Zwart, 2003)

Figure 3.2: Coding of Cases

| | Spatial (X) | Temporal (Y) | Concentration (Z) |
|----------------|--------------------|---------------------|--------------------------|
| Case 1 | 0.25 | 0.50 | 0.50 |
| Case 2 | 0.25 | 0.00 | 0.25 |
| Case 3 | 0.25 | 0.50 | 0.50 |
| Case 4 | 0.25 | 0.50 | 0.50 |
| Case 5 | 0.25 | 0.50 | 0.50 |
| Case 6 | 0.25 | 0.50 | 0.50 |
| Case 7 | 0.25 | 0.50 | 0.50 |
| Case 8 | 0.00 | 0.50 | 0.25 |
| Case 9 | 0.00 | 0.50 | 0.25 |
| Case 10 | 0.00 | 0.50 | 0.50 |
| D | 0.4327 | 1.0 | 0.4327 |
| p-value | 0.04727 | 4.122 | 0.04727 |

a. Interpreting the Cases

The limited number of cases addressing environmental problems and fitting the relatively stringent criteria of Habermasian deliberative democracy means that the p-value is too high and no significant inferences can be made yet based upon demonstrated clustering. Given that studies of Habermasian deliberation in general are of recent origin and coverage of environmental cases has often been of secondary concern for researchers, it is to be expected that most of the available case studies would be reliant upon accidental local arrangements. A more robust analysis will have to await approximately twenty more future studies, some of which are already underway at places such as the Centre for Deliberative Democracy and Global Governance at Australian National University as financial and institutional support are provided by national governments.

Although the limited number and similarity of cases severely restricts the power of the statistic for the comparative data, it does not mean that preliminary and tentative inferences cannot be generated for the purposes of developing hypotheses based on the available cases. For instance, we can see that the spatial difference (X-axis) in county level versus city level meetings is represented in the similarity of cases 1, 3, 4, 5, 6, and 7, on the one hand, and the isolation of case 10, on the other. By comparing across the most-similar cases (1, 3, 4, 5, 6, and 7) and contrasting it with the most-different case (10), it is possible to render a more precise comparison of the changes effected by moving up one level of government, that is, by increasing complication one unit of measurement, that is, how differences diminish or exacerbate features found elsewhere or whether these differences play little to no role.⁵⁵

⁵⁵ For discussion of most-similar and most-different case comparison see Gerring, 2007: 131-144.

i. Most-Similar Cases

The county level deliberations covered in cases 1, 3, 4, 5, 6, and 7, provide grounds that can inform hypotheses for a larger study. One of the first issues confronted by deliberative participants in the Hampshire and Essex County citizens' advisory committees (CAC) was how as participants became more informed about the issue of waste management, beginning to perceive some of the more complex issues involved, they also became aware of how much remained to be learned. This led to a situation in which, despite the evident learning, "it was clear that the time was insufficient for all questions to be dealt with and for an iterative process of discussion to take place."⁵⁶ Although the CACs offered only a limited opportunity for learning, they offered more than the confrontational style of the citizens' juries. The citizens' juries in Hertfordshire and Lancashire did, however, offer an opportunity for deliberators to find moments of commonality along the way that allow the "final process of consensus building [...] to capitalize upon agreement of outcomes during the process."⁵⁷ The differences between the CACs and the citizens' juries led the author to recommend restructuring future deliberations in such a way as to combine the learning opportunities present in the CACs with the opportunities to accrue agreements provided by the citizens' juries. As I discuss in Chapter 4, it remains to be determined whether knowledge and trust can be harmonized within a strictly deliberative framework.

Of equal significance are the conclusions presented about the expression of generalizable interests within this set of cases. Case 3, which expressly attempted to test

⁵⁶ Petts, 2001: 216.

⁵⁷ Petts, 2001: 220.

the claim that environmental issues necessarily involve a generalizable interest.⁵⁸ The Far North Queensland Citizens' Jury resulted in recommendation to regional policymakers that the Bloomfield Track be closed in stages over a 10 to 15 year period. The seven votes against five leading to this conclusion, however, recommends against accepting the claim to generalizable interests in any straightforward manner. Niemeyer explains the difference in positions to dissenters being "less environmentally risk averse" and "needing more definitive evidence before supporting any far-reaching action."⁵⁹ He goes on to conclude:

From these observations it appears that deliberation did not increase concern for the environment so much as dispense with competing symbolic perspectives. Once liberated from symbolic politics, jurors increasingly formulated policy preferences on the basis of a pre-existing environmental consensus. This consensus reflects a 'true' generalisable interest to the extent that it was widely supported and withstood the deliberative process.⁶⁰

That the generalizable interest encompasses the narrowest possible majority in this case casts doubt upon this conclusion and raises further questions about what is legitimized in the deliberative process if a generalizable interest is merely what is 'widely supported' by a single vote, thus 'withstanding' deliberation.

Casting further doubt on the assertion that environmental issues are inherently general are the findings in Case 1 on modes of communication. The author argues that "[w]hereas factual and value conflicts can be resolved by pure arguing, in conflicts of interest bargaining and arguing will appear together."⁶¹ The author compares two cases, with the Nuess County mediation serving as the 'conflict of interests' test case. By sorting

⁵⁸ John Dryzek refers to "the human life-support capacity of natural systems" as "*the* generalizable interest *par excellence*." See Dryzek, 1987: 204. See pages 58-60 for further elaboration.

⁵⁹ Niemeyer, 2004: 356.

⁶⁰ Niemeyer, 2004: 360.

⁶¹ Holzinger, 2005: 239.

speech acts during deliberation into 'bargaining' and 'arguing' and performing content analysis the author is able to show the frequency of types of statements within each mode. Of relevance to the question of generalizable interests is that even where the exchange of arguments is underway, the most common form of communication was 'to contradict,' at 21% of all arguing speech acts. While 44% of all arguing claims are a variety of neutral claim, the author correctly points out that communication periodically switched over to bargaining where 29% of all bargaining speech acts were 'demands' on other parties. Those cases in which arguing seeks to build a general interest, the author remarks, constitute only 10% of arguing speech acts while similar instances of bargaining amount to a higher 20%.⁶² While not indicative of environmental deliberation per se, the rate at which bargaining occurred (34% of all speech acts) and the more frequent gestures at 'generalizable interests' suggest that the claims made by participants must be analyzed more closely to understand whether their bargaining and arguing purposes become mixed. If mixing of purposes is found then it becomes necessary to draw upon explanations besides inherent generalizable interest to explain outcomes.

ii. Most-Different Case

The question about generalizable interests is taken up by the author of Case 10. He interprets participants' claims in light of the failure of interviewed respondents to change preferences throughout the deliberative proceedings.⁶³ The author finds that in the more local deliberation that he observes, "the concept of a generalisable interest was used

⁶² I utilize the 'to concede' category included by the author when calculating constructive communication as a percentage of 'arguing' while also incorporating the 'to offer,' 'to accommodate,' and 'to accept' categories.

⁶³ Zwart, 2003: 36.

by citizens to defend their own interests."⁶⁴ In the case of those holding the minority view, they "claimed not only to be defending their own rights, but those of all responsible incinerator users."⁶⁵ Participants favored views that presented their private interest as an indivisible component of the generalizable interest, thus avoiding the negative perceptions associated with an argument based solely on private interest.⁶⁶ To what extent this is a result of studying a more local problem is inconclusive. Distinctive to Case 10, however, is that many of those interviewed perceived the group as insufficiently representative of the relevant community. This perception affected how participants weighed the various aspects of the deliberation, leading to considering the "aggregative mechanism of the survey [...] to provide a more legitimate expression of citizens' preferences than the deliberations they participated in through the precinct system."⁶⁷

The findings from the Glenorchy City Council case also offer a relevant point of convergence with the most-similar set of cases. The reports from the citizens' juries in Hertfordshire and Lancashire suggest that agreements reached at one stage in deliberation can resound at a later stage, leading to improved outcomes. A parallel inference is made by the author of Case 10, who writes that "over the less contentious issues people did appear to take a 'deliberative' stance, which enabled an outcome to be achieved that was fair for all involved."⁶⁸ Although the impact of this similarity remains to be determined, the occurrence in cases of proximal but distinct spatial measurements indicates that it is a relevant topic for the next era of cases. At this stage, I will say only that how trust is built

⁶⁴ Zwart, 2003: 37.

⁶⁵ Zwart, 2003: 37.

⁶⁶ Zwart, 2003: 38.

⁶⁷ Zwart, 2003: 39.

⁶⁸ Zwart, 2003: 38.

within deliberative groups is insufficiently known to be considered a constant of deliberation.⁶⁹ Furthermore, the relationship between Habermasian deliberation and legitimacy, as well as the function of trust in conceptualizing legitimacy, is inadequately theorized at this stage to begin integrating the empirical and theoretical findings.

D. Extending the Framework to Comparisons of Procedure Type

A larger number of cases are needed to infer about the interaction between problem type and procedure type. As the number of case studies increases in the foreseeable future it will become possible to compare procedure type on a case by case basis. With the fitness of the present data being skewed it is not yet possible to apply the remaining component of my comparative framework. However, since the purpose of the comparative framework is exploratory, that is, intended to generate hypotheses, it is useful to proceed with exposition of this final step.

Drawing on the work of Ortwin Renn and James Meadowcroft, I have constructed a qualitative stepwise matrix to delineate the processes involved in successful deliberation.⁷⁰ Renn, et al, argue that when looking at cases of environmental deliberation the relevant criteria are the intensity of conflict between participants and the degree of complexity. Although these criteria are gauged at three discrete levels, I do not include complexity because the definition used by the authors makes it incompatible with the concept of complexity that I employ. While maintaining the criterion 'Intensity of Conflict,' I have modified it to correspond to problems arising at specific stages of deliberation.

⁶⁹ See Weatherford and McDonnell, 2007, on background trust.

⁷⁰ Renn, et al., 1997; Meadowcroft, 2004.

The second criterion for analyzing procedures on a case-by-case basis for later comparison is drawn from Meadowcroft (2004). Meadowcroft excises procedures into modes of interest representation and three stages: participation, output, and execution.⁷¹ The matrix for analyzing procedures utilizes these same stages to illustrate the most generic features of deliberative democracy (**Figure 3.3**). At each stage in the procedure, deliberation may be unsuccessful (0.00) or successful (0.33). The results are additive (as opposed to multiplicative), thus allowing for comparisons within statistically significant groupings graphed in the three-dimensional scatterplot.⁷²

⁷¹ Meadowcroft, 2004: 192.

⁷² These groupings are to be tested for proximity with nonparametric cluster analysis. The number of clusters K to be tested is problematic since K must be defined in advance. I offer the three-dimensional scatterplot to define K , using a k -means algorithm for the number of clusters thought to be present. This involves further limitations on what may be inferred but increases the validity of the inference.

Figure 3.3: Procedural Components of Deliberative Democracy

| Intensity of Conflict | Stage of Procedure | | | |
|----------------------------------|------------------------------------|---------------------------------|---|----------------|
| | Participation (Interaction) | Decision (Agreement) | Execution (Solution) | |
| Reciprocity (Interaction) | (0) Unable or unwilling to engage | | | |
| Tractability (Agreement) | (0.33) Able and willing to engage | (0) Unable to obtain agreement | | |
| | (0.33) Engage | (0.33) Able to obtain agreement | | |
| Sufficiency (Solution) | (0.33) Engage | (0.33) Obtain agreement | (0) Not actionable | |
| | (0.33) Engage | (0.33) Obtain agreement | (0) Not enforceable | |
| | (0.33) Engage | (0.33) Obtain agreement | (0) Not effective | |
| | (0.33) Engage | (0.33) Obtain agreement | (0.33) Implementable, enforceable, and effective plan | Success |

E. Proposed Hypotheses for Future Research on Environmental Deliberation

The abductive approach – to hypothesize, test, and revise – lacks the definitive findings of other empirical approaches, which is both its strength and its weakness. The purpose of employing the abductive approach is that it formalizes in a rigorous manner the same learning processes assumed by positivist approaches but substitutes transparency for conclusiveness. This transparency contributes to a broader goal of circumventing disciplinary divisions that limit exchanges between political theory and

empirical political science. The division of labor between fields alluded to by Dennis Thompson with his 'head/hand' analogy ignores the imbrication of implicit theoretical assertions in empirical research and the assumption of empirical conditions in theoretical arguments. The sorts of fine grained distinctions enabled by the most rigorous analysis collapse when viewed *in motu* and captured by the ambiguities of the concept of feasibility.

In order to avoid the charge of superficiality against ad hoc readings of deliberative democratic theory leveled by Dennis Thompson, I have focused solely on preparing hypotheses grounded in a thorough examination of Jürgen Habermas's conception of deliberative democracy as it emerges out of his theory of communicative action. Having paved the way for this by establishing a means of comparing cases of environmental deliberation, it is now possible to generate hypotheses informed by the theoretical implications developed in Chapter 2 as well as drawing on conclusions from presently available case studies, keeping in mind that current findings offer minimal purchase on the totality of Habermas's theory. Recall from Chapter 2 the assumptions made by Habermas about the 'normal' course of deliberation:

- a. "carrying out straightforward 'repair work'," which seeks to reconstruct the shared orientation to reaching understanding.
- b. "putting aside the controversial claims, with the result that the ground of shared assumptions shrinks"
- c. "moving into costly discourses of uncertain outcome and open to unsettling questions"
- d. "breaking off communication and withdrawing"

e. “shifting over to strategic action.”⁷³

I combine this set of assumptions about the 'normal' course of deliberation and the assumptions about the role of learning with the survey of empirical findings presented in this chapter. These are then correlated with indicators constituting the three-dimensional scatterplot. Stating the assumption for the low, medium, and high points of each axis and translating each into a predictor of success results in hypotheses for nine of the fifteen axis indicators (**Figure 3.4**). Answering the need for more systematic claims about the effects of scale and scope than the scattered remarks offered previously, each hypothesis is both revisable and refutable.⁷⁴

⁷³ Habermas, 1996: 21.

⁷⁴ Meadowcroft, 2004; Renn, Webler, and Wiedemann, 1995; Fiorino, 1996.

Figure 3.4: Hypotheses Regarding Environmental Deliberation

| Dimension | Assumption | Probability of Success |
|---|--|-------------------------------|
| Spatial | | |
| X _{1.0} Boundless: Global | Minimal shared 'background conditions' are offset by appeals to a generalized or universal condition | High |
| X _{0.5} Bounded: National | Political and institutional obstacles are exacerbated by decreased background consensus | Low |
| X _{0.0} Bounded: Local | Shared 'background conditions' increase adherence to norms | High |
| Temporal | | |
| Y _{1.0} Irreversible: Intergenerational | Limited available data is compounded by probabilistic calculations of risks; uneven distribution of risks is subject to discussion | Low |
| Y _{0.5} Modifiable: Intragenerational | Limited data allows knowledge claims to be challenged as incomplete while the perception of time to alter behavior allows postponement | Low |
| Y _{0.0} Irreversible: Prior Initiation | Available data are less apt to be challenged and are assisted by arithmetical calculations of harm | High |
| Concentration | | |
| Z _{1.0} Aggregate: Multiple | Complications in attributing responsibility are magnified by incentives to postpone action | Low |
| Z _{0.5} Mixed: Identifiable and Aggregate | Because some actors are already identifiable as responsible parties while secondary actors are identifiable only in the aggregate a strong incentive is created for placing blame unfairly and not communicating as equals | Low |
| Z _{0.0} Identifiable: Single | Minimal disputation of facts; difficult to present private interest as generalizable interest | High |
| Predicted Areas of Deliberative Success: (X_{1.0}, Y_{0.0}, Z_{0.0}) and (X_{0.0}, Y_{0.0}, Z_{0.0}) | | |

F. Conclusion

The foregoing approach provides a constructive starting point for dialogue between researchers of deliberation from different backgrounds along with an opportunity to refine and optimize deliberative democratic arrangements. I end this chapter with a conjecture that serves to link the analysis covered in this and the previous chapter with what follows: many of the non-deliberative, and sometimes downright undemocratic, institutions that result in the sorts of "distorted communication" that force deliberation off course are also a necessary precondition for Habermasian deliberative democracy. The reliance of 'modern' governments with complicated administrative structures upon non-deliberative elements – the governments of western Europe and the United States that Habermas singles out as exemplary of modernity – is deeply troubling to proponents of Habermasian deliberative democracy. And yet, the relationship between administrative government, decried as 'technocratic' by those advocating deliberation as a means of resolving environmental problems, and citizen involvement remains undertheorized by Habermas as well as proponents of deliberation in general.⁷⁵

The most emulated model of environmental deliberation in the countries covered in this chapter is Renn, et al (1997), which divides deliberation into three stages:

1. Identification and selection of concerns and evaluative criteria.
2. The identification and measurement of impacts and consequences related to different policy options.
3. Conducting a rational discourse with randomly selected citizens as jurors and representation of stakeholder groups as witnesses.⁷⁶

⁷⁵ For criticism of technocratic administration see Baber and Bartlett, 2005, and Smith, 2003. An exception to my charge of neglect is Warren, 1996.

⁷⁶ Renn, et al., 1997: 225-6.

Approximating this version of arrangements, as occurs in most of the cases handled above, results in a disjointed form of participation in which citizens are permitted to raise concerns or brought in to identify problems. This is typically followed by a stage without participation during which some information is deemed relevant and gathered by officials inside or outside of the deliberative process, who then develop policy options for later presentation. Though it is rare, so far, for deliberative groups to decide upon policy options, although this can occur *de facto* if enough electoral pressure can be brought to bear, deliberation often resumes in order to prioritize policy options. In some instances, citizens are able to go beyond evaluating and modify a policy's parameters. As one author included in the above cases concludes, "the optimum process for strategic waste planning is one which [...] integrates public involvement with the assessment of decision-making process."⁷⁷

The assertion that non-deliberative procedures are not accidental but essential and that these very same procedures undermine the potential for deliberation to deliver on its promises serves as a subtext to what follows. This is less a condemnation than an invitation to further explore the theoretical implications of Habermasian deliberation. The question is relevant for three reasons. First, if this dependency is inherent then it should be foregrounded and elaborated upon as opposed to ignored. In part, the next chapter takes up this line of inquiry. Second, acknowledging a necessary interplay between deliberative democracy and non-deliberative (or even undemocratic) procedures opens the door to a new set of empirical problems.⁷⁸ Finally, and perhaps most importantly, in the context of environmental problems, which as I argued in Chapter 1 constitute a

⁷⁷ Petts, 2001: 222-223.

⁷⁸ See Stokes, 1998: 123-139.

relatively new class of problems, deliberation is an attempt to substitute for a “background consensus” where none has previously existed in 'massive' way. Figuratively speaking, in the case of environmental problems, Habermasian deliberation is forced to rebuild the ship while at sea, a situation that reinforces the need for precision.

CHAPTER IV
THE AUTHORITY OF EXPERT JUDGMENTS
UNDER DELIBERATIVE DEMOCRACY

Essentially, [risk analysis] is a kind of pretense; to avoid the paralysis of protective action that would result from waiting for 'definitive' data, we assume that we have greater knowledge than scientists actually possess and make decisions based on those assumptions.

- William Ruckelshaus, former Administrator, U.S. Environmental Protection Agency¹

In the weeks prior to the Copenhagen round of the United Nations Framework Convention on Climate Change, a set of emails taken from researchers at the University of East Anglia's Climatic Research Unit were posted on the World Wide Web.² The exposed communications between researchers have been interpreted variably as suppression of evidence on climate change, mere lapses in judgment, or poorly chosen terms for calculations.³ Prior to the release of the emails, a Pew survey had already found a decrease in public acceptance of climate change among Americans, a trend that it is reasonable to presume the email scandal, dubbed "Climategate," will only exacerbate.⁴ Polling data from Britain indicates a similar retrenchment taking place.⁵ Even more recently, errors ranging in severity from typographical mistakes to baldly incorrect assertions in the International Panel on Climate Change's fourth assessment report have been subjected to public scrutiny.⁶

¹ Ruckelshaus, 2000: 53.

² Revkin, 2009.

³ Editorial, 2009.

⁴ Eilperin, 2009a.

⁵ Rosenthal, 2010.

⁶ Eilperin and Fahrenthold, 2010.

The rapid succession of disclosures is having an immediate impact in the United States where passage of a cap-and-trade bill in the House of Representatives last summer and the Environmental Protection Agency's recent endangerment finding on greenhouse gases have raised the profile of regulating carbon dioxide emissions. Throughout the latter half of 2009 the issue appeared to be whether regulation would be done through legislative action or by agency ruling. However, in recent months, on the tail of deadlocked negotiations at Copenhagen and the stalling of climate legislation in the U.S. Senate, challenges to domestic action on greenhouse gas regulation are on the rise. Legislation has been introduced in both houses of Congress by members of the majority party attempting to stay EPA authority to regulate greenhouse gases.⁷

Across the aisle, proposals go farther by attempting to overrule the EPA's endangerment finding on carbon dioxide, removing it from the regulatory purview of the Clean Air Act⁸. Governors of Texas and Virginia, citing the EPA's reliance on the IPCC's *Assessment Report 4*, are also challenging the endangerment finding and seeking to prevent EPA regulation of carbon dioxide within their states⁹. Given presidential reliance upon the Senate to negotiate a binding climate treaty, it appears that the next round of talks in Mexico in 2010 may already be in jeopardy of failing to achieve significant targets for reduction.

The relatively dramatic impact of changes in public perception of climate science should not appear out of proportion for even the casual observer. The gravity of a 35ppm shift in CO₂ in the atmosphere can result in computer models altering predictions by more than a degree Celsius for global mean surface temperature, as advocates from Bill

⁷ Lomax, 2010.

⁸ Bravender, 2010.

⁹ Clayton, 2010.

McKibbens' 350.org have pointed out, with serious implications for how to resolve the issue. It comes as no surprise, then, that scrutiny of the scientific process is intense and references in the "Climategate" emails less than cordial, at times the hyperbole reaching such a pitch as to recommend violence against one sceptic. The tense atmosphere in which climate scientists conduct research was offered by the researchers themselves as a significant reason for withholding raw data and intentionally overstating the case in their communications. The researchers worried that any suggestion of uncertainty on a particular calculation would cast doubt on the entire enterprise.¹⁰ Their concerns were not unfounded.¹¹ It is precisely this give and take, the breakdown of not only public trust in the work of these scientists, but the scientists' own trust in the receptivity of the public that goes to the core of deliberative democracies' ability to respond to environmental problems.

In order to illuminate the interactions between experts in positions of authority and non-experts in terms of mutual trust I begin by detailing the need for deliberative democratic theory to engage the issue of authoritative expertise in order to address environmental issues. I then explain the logic underlying deliberative democracy, which is posited as preferable to the aggregation of voter preferences through numerical indicators such as voting or polling on the grounds that deliberation offers better informed decisions. This argument from the epistemic value of deliberation requires differentiating between the basic approaches that have been developed. Thus, I adjudicate between three popular approaches, coming down in favor of an Aristotelian conception formulated by John O'Neill that offers the most fertile concepts for understanding the

¹⁰ Morello, 2010.

¹¹ Bocking, 2004: 29-33.

potential for democratic involvement in environmental regulation, particularly with regard to the role of trust. Turning to a more direct discussion of trust, I respond to O'Neill's call for a 'political epistemology of trust.' The chapter concludes with a brief assessment of how Kantian theories of deliberation necessitate a commitment to the precautionary principle in order to make up for the lack of a well articulated conception of authoritative expertise.

A. Accounting for Authoritative Expertise within Deliberative Democratic Theory

As the epigraph indicates, there is an intraversable gap between the equivocal claims of scientists and the certainty assumed in the formulation of policy that strains the relationship between those who generate research and those who rely upon and live with the results of it. Thus, a tension is built into our technologically advanced commercial society, with the need to regulate and administer a vast array of potentially harmful compounds that are often closely bound up with the financial success of producers. To locate such an extensive administrative process within a constitutional democracy risks heightening the tension by exposing policy formulation to public scrutiny without significantly increasing public input.

Calls for more open, participatory processes have arisen from policy planners and political theorists with a special emphasis on deliberation as a means of containing, if not actually reconciling, this tension.¹² The surge in work on deliberative democracy over the past two decades introduced more stringent conditions for democratic legitimacy than the aggregation of preferences attributed to the pluralistic polyarchy that preceded it as a topic of study. Common to most formulations of deliberative democracy is a strong role

¹² Habermas, 1996; Dryzek, 2000; Bohman, 1996.

for public reason, communication amongst affected citizens with the goals of expressing claims intended to rationally persuade others and of being open to such persuasion oneself. Consequently, the amount of time devoted to an issue is dramatically increased compared to forms of aggregation that require nothing more than voicing one's opinion. This increased commitment of political resources is, according to deliberative democrats, a boon for legitimacy. However, placing greater demands on citizens when they do opt to participate poses choices about whether a political system can continue to address as many issues or, barring a significant downsizing of government functions, must rely upon gains in legitimacy to enable a further delegation of tasks to non-deliberative institutions.

Currently, only a small amount of work has been devoted directly to the issue of democratic authority, the need to delegate tasks on an array of questions to institutions with limited popular input. Mark Warren prompted serious reflection on the issue as early as 1996. At that time, authors such as James Bohman acknowledged the limited opportunities for deliberation but were reluctant to explore them further, instead cordoning them off from discussion.¹³ However, Warren's assertion that authority is not supplemental to but a prerequisite of deliberative democracy redirects our attention to the necessity of going further than acknowledging limits and to begin elaborating particular limits. Doing so involves refraining from categorical assertions about the beneficial impacts of deliberation upon democratic authority, such as:

¹³ Bohman, 1996: 157-158.

The production and distribution by government of policy relevant information is the most obvious solution to the problem that neither capacities nor acquired knowledge can be assumed to be evenly or widely distributed in the deliberative environment. The efficacy of this epistemic division of labor would depend on public trust. That trust would increase rather than deplete through use, as ordinary citizens are successful in using information supplied by government to redirect the course of government. There will also be a need for institutional reforms that would create new forms of bureaucratic organization more consistent with participatory deliberation.¹⁴

At the same time, when analysis of democratic authority is being conducted attention must be paid not only to epistemic matters but to how delegating tasks attenuates authority. The 537 elected officials in the federal government head a bureaucracy comprising nearly 2 million civilian, non-postal workers. To take the Clean Water Act as an example, citizens elect members of Congress through voting, an act that involves significant ambiguities about which aspects of a candidate's platform are supported and which are not. Through a series of amendments various representatives modify previously enacted legislation, issuing directives to a previously erected Environmental Protection Agency where the chief administrator tasks staff members located in regional offices with handling more intricate matters such as developing measurements for nonpoint source pollution as well as standards for wastewater treatment. With further delegation not out of the question, this sequence raises significant theoretical questions about how authority is altered as it is transferred. Since it strains credulity to suggest that increasing opportunities for citizens to participate in the political process will eradicate the need to delegate tasks to administrators, it is important to consider how the more stringent conditions of deliberative democracy involve an increased reliance upon democratic authority.

¹⁴ Baber, 2003: 335.

Observing the inconspicuous involvement of scientific advisory panels in most aspects of environmental regulation, Sheila Jasanoff concludes that, contrary to the notion of political legitimacy employed in Habermasian deliberation, experts are not granted a role on the basis of legitimate authorization but provide a source of authority that is perceived as external to the political process. Jasanoff describes the situation thusly:

Faced with ever-changing arrays of issues and questions – based on shifting facts, untested technologies, incomplete understandings of social behavior, and unforeseen environmental externalities – governments need the backing of experts to assure citizens that they are acting responsibly, in good faith, and with adequate knowledge and foresight. The weight of political legitimation therefore rests increasingly on the shoulders of experts, and yet they occupy at best a shadowy place in the evolving discourse of democratic theory.¹⁵

Jasanoff attributes the rise of a 'fifth branch' in the United States to a reconfiguration of the relationship between the government, technologically-driven corporations, and research-equipped universities in the decades following World War II.¹⁶ Constituting a "new social contract," newly formed agencies found themselves assigned the task of monitoring synthetic compounds as they entered the environment at an unprecedented rate.

As we saw in Chapter 2, Jürgen Habermas picks up on the way in which new sources and modes of knowledge production in western Europe and the United States have reshaped the democratic landscape. The historical narrative that he provides of deeply fragmented social systems resulting in a legitimation crisis offers deliberative democracy as a last-best hope. The role of authoritative expertise grounded in controlled experimentation as a source of legitimacy, as opposed to recipient, is not absent from

¹⁵ Jasanoff, 2005a: 221.

¹⁶ Jasanoff, 2005b: 225-246.

theoretical accounts of deliberation. Instead, this role remains implicit insofar as deliberation is presented as providing better informed decisions than competition between interest groups or aggregation of individual preferences through voting.

B. Epistemic Grounds of Deliberative Democracy

A common thread to deliberative accounts of democracy is a suspicion of aggregation as a wholesale mechanism for political decision-taking. Reliance upon aggregation as the general form of democracy, thereby reducing citizenship to the act of voting, is amenable to quantifiable modes of analyzing political participation. This conception, however, opens proponents to the charge by deliberative democrats of supporting rule by ill-informed and interest-driven actors unable to consistently align their own preferences, particularly in complex cases where the entry cost of acquiring the relevant training is high. As James Fishkin poses the matter: "Can the simple expedient of statistically averaging responses by hundreds or thousands of ordinary citizens, nearly all of whom are uninitiated into these complexities, really represent the kind of 'rational' opinion that democratic theory would ask us to expect of citizens?"¹⁷ Undergirding Fishkin's question is a sense of the challenge posed to the legitimacy of democracy when answered in the terms made available by a more polyarchic account.

Seeking to justify a strong attachment to democracy when confronted with the meager offerings of aggregation, deliberative democrats have sought to bolster the case for an epistemic value to deliberation. Habermas paints the issue in terms of modernity:

¹⁷ Fishkin, 1997: 88.

We should keep in mind the reason why normative political theory has bought into an epistemic notion of deliberative politics: it is for solving the ‘problem of legitimation’ that the secular state faces in view of the ‘fact of pluralism.’ Once the acceptance of binding political decisions can no longer be based on justifications derived from a substantive world view that is, or can be expected to be, shared by all citizens, the burden of legitimation finally falls only on what we may expect from the democratic process.¹⁸

Democracy, then, is justified not only on procedural grounds for its fairness but also for the ability to transform citizens' preferences by educating them as well as displaying a tendency to arrive at correct answers on some, less complicated issues. The notion of deliberation's epistemic value has carried over to environmental political theory where advocates view deliberation as correcting a narrow, technical approach to addressing environmental problems. As one proponent succinctly put it:

As well as transforming normative perspective, group deliberation is also said to have an epistemic dimension. It can help to overcome the problem of bounded rationality, where complexity of (ecological) problems far outweighs the cognitive capacities of the ordinary citizen. The transformative mechanism may simply involve group deliberation reducing the ‘costs’ of acquiring information through information pooling, or combining cognitive powers in much the same way as multiple processors working in series increases the power of computers.¹⁹

In this formulation echo themes that I aim to pull together in reflecting upon the role of authoritative expertise: an admission of a fundamental disconnect between the magnitude of many environmental problems and the training needed to acquire the requisite capacities for putting information into context; disavowed potential for misplaced faith in the prospect that citizens will be transformed through involvement in deliberative institutions since, by implication, citizens constitute an as-yet untapped store of cognitive resources; and that the limitations imposed by technical calculations – ‘instrumental’ or ‘bounded’ rationality – will be transcended by alternative forms of

¹⁸ Habermas, 2005: 386.

¹⁹ Niemeyer, 2004: 349, citations omitted.

rationality. Instead, I uphold a weak version of deliberation that reverses the valuation made by Habermas specifically and Kantian theories generally. In place of arguing for institutions on the grounds of their presumed ability to enact normative and cognitive transformation, I advocate prioritizing institutions that have demonstrated their ability to be, at minimum, normatively neutral but cognitively sufficient. What this means is that deliberative democratic institutions are to be preferred where they do not inhibit resolution of the most threatening and complex environmental problems. As will be seen further along, when combined with democratic practices that promote trust over improved collective cognition what appears to be a largely diminished role for deliberation will, I hope, offer a more secure place for political participation that does not invoke citizens in transcendental terms employing 'public reason,' but as here-and-now actors concerned about harmful conditions.

Despite the assertion of an epistemic value to deliberative democracy, engagement with the issue of authoritative expertise is, at best, undertheorized where it is not altogether neglected. I understand expertise to refer to training in a body of concepts and subsequent internalization of assumptions and standards about what constitutes acceptable objects of analysis and the relevant methods for conducting recognizable analysis. Recognition by a certifying body, whether academic or professional, indicates possession of the requisite qualities for judgment, granted by dint of a relevant area of knowledge the holder is presumed to have acquired. That this process is neither thoroughly standardized nor infallible is assumed as I proceed to a more precise articulation of the conditions for trust. For now, it is important to reiterate that expertise is not defined in terms of its truth-value.

The context of debates over the relationship between democracy and expertise regarding environmental problems, outlined in Chapter 1, is not completely determined by constitutional and bureaucratic rules. In at least one significant way, the relationship is reflective of a dichotomy between an ignorant populace permitted the reins of power by democratic institutions and a numerically smaller but enlightened group. This gross caricature appears in Platonic political thought. As recent political theory has drawn heavily upon Kant, this caricature inherited from Plato remains implicit in a conception of the 'mature' citizen as relying solely upon his own reason.²⁰ As deliberative democrats have attempted to accommodate the demands posed by environmental problems, the notion of the citizen self-reliantly engaged in public reasoning according to the force of the better argument polarizes ambiguous lines of inquiry around a commitment to proceduralism or government by technocrats.

Instead of setting the poles at strict proceduralism and rule by experts, I foreground the aspect of expertise as initiation into a normalized, and often professionalized, language. In doing so, the terms of discussion are no longer limited to the likelihood of correctness by democracy or the legitimacy of expert rule. The focus, rather, is on what one observer of deliberation refers to as the "clear tension between modes of expressions," with "members of the public using anecdotal and personal evidence whilst experts used systematic and generalized evidence based on abstract knowledge."²¹ Analyzing expertise in terms of modes of expression is not to assume that all modes of expression are equally valid and commensurable. In fact, it is precisely to highlight the differences in what gets expressed and how it is expressed that I opt for this

²⁰ The point is made forcefully in O'Neill, 2002.

²¹ Dietz, Stern, and Rycroft, 1989.

angle. Expertise, as I have sketched it, is premised upon increasing transparency amongst initiates by exposing the various steps used in argumentation in order to clarify what is contested. This aim coincides *prima facie* with the overarching goals of deliberation as provision of reasons. Attempts to ground deliberation in public reason, however, run into the problem that along with offering qualitatively distinct forms of knowledge that may not be commensurable, the ideal of transparent knowledge runs the risk of sabotaging itself when confronted with more experiential and anecdotal claims. This is due to experiential claims being indisputable in a way that expertise is not. Anecdotal evidence is neither reproducible nor open to challenge and revision. While such standards do not exclusively define what is admissible in political dialogue, it must be granted that the burdens born by each presenter differ in kind.²²

Expertise is not the only valid source of knowledge claims and the distinction between controvertible and incontrovertible claims does not exhaust the variety of sources that can be drawn upon. The task is to define valid claims to knowledge in such a way as to avoid the false dichotomy offered in the Kantian conception of maturity while also retaining the capacity to distinguish claims that are ontologically mutually exclusive. That is to say, it is imperative to distinguish competing claims about environmental phenomena where both offer assertions about a verifiable state of affairs. Seeking a middle ground between a relative constructivism that abandons arguments about environmental phenomena to competing discourses and an absolute naturalism that takes knowledge to be a transparent discovering of discrete phenomena involves placing knowledge production within a social context without treating that context as determinate.

²² For further discussion of the construction of what counts as valid evidence see Moore and Stilgoe, 2009. Although our claims are not mutually exclusive, the authors do not address directly the claim that anecdotal evidence is distinguished by this different burden.

In as much as experiential or anecdotal evidence differs from the qualities sought in more rigorously designed experimental research or in-depth case studies, it is the difference between what Sheila Jasanoff terms regulatory science and research science that is most relevant for parsing authoritative expertise. The standards undergirding research science – peer reviewed, large-*n* control-group or double-blind experiments – is, as Jasanoff points out, distinct from the conclusions drawn when establishing regulatory standards. Take, for example, the 2006 decision by the EPA to lessen the amount of daily exposure to fine particle matter in the air while leaving unchanged the annual standard against the advice of its Clean Air Scientific Advisory Council which had voted 20-2 in favor of lowering the annual standard as well. Coming in for much criticism, the decision by EPA administrator Stephen Johnson was taken by the editorial staff at the *New York Times*, among others, as yet another sign of science being overruled by political considerations.²³ Jasanoff's distinction between research and regulatory science draws attention to the issue of judgment, which neither pretends that the production of knowledge is walled off from external concerns nor directly accessible by all. Instead, focusing on judgment involves a broader conception of authoritative expertise that combines rigorous processes of validation as well as the socio-economic cues attached to producers. As she puts it,

Judgment in the face of uncertainty, and the capacity to exercise that judgment in the public interest, are the chief qualifications sought today from experts asked to inform policymaking. In these circumstances, the central question is no longer which scientific assessments are right, or even more technically defensible, but whose recommendations the public should accept as credible and authoritative. That question leads immediately to a second-order query: whose judgment should we trust, and on what basis?²⁴

²³ See Editorial, 2006.

²⁴ Jasanoff, 2005a: 211.

In order to show how a prudential approach favoring the political authority of considered judgments offers a better suited democratic involvement than Habermas's discourses of justification and application, it is necessary to first explain why this approach is preferable on the grounds that it is better suited to environmental problems.

C. Deliberative Approaches to Authoritative Expertise via Epistemic Value

The proliferation of deliberative democratic theory, despite only limited engagement with the issue of authoritative expertise, offers sufficient basis for comparing approaches. We should be wary, however, of posing the issue in overly stark terms, as suggested above, between rule by a group of truth-possessors and rule by the uninformed majority. Putting this version aside and allowing our conception of expertise to retain a stronger sense of the Latin *experiri* from which both expertise and experience derive, clears the way for a less dichotomous analysis.

Within recent literature on deliberation, two lines of inquiry have emerged on the issue of authoritative expertise: the need for mutuality between laypersons and experts, on the one hand, and whether expertise meets the requirement for publicity.²⁵ As James Bohman has pointed out, "Good democratic arrangements and their normative constraints promote [reasonable] solutions by ensuring deliberative liberties and the conditions of mutuality in dialogue."²⁶ To put the matter more succinctly, arriving at democratically acceptable decisions requires mutual and complementary contributions from each member. The question is what form of contribution is required by experts and does it violate the qualifications of deliberation. I adjudicate between these approaches to

²⁵ For further discussion of the issue of expertise and publicity see Bohman, 1996: 151-195, and Baber, 2004: 340-341.

²⁶ Bohman, 1996: 104.

determine which offers the most constructive account of authoritative expertise for addressing environmental problems, distinguishing them by how each construes the relationship between laypersons and experts, either symmetrically or asymmetrically.²⁷

1. Epistemic Symmetry

Those theories that exhibit epistemic symmetry either discern no relevant differences between experts and non-experts in their capacities as democratic participants or, where differences are seen, the positions are treated as incomparable and, as a result, equally valid. The extension of deliberative democratic theory to environmental issues has benefitted tremendously from the work of John Barry, who argues for a strong role for public participation in environmental decision-making. More specifically, Barry claims that the distinction between what constitutes a technical or non-technical problem, with serious implications for the role assigned to experts in political proceedings, should be determined by the deliberations of the affected public, regardless of any demonstrated technical competence.²⁸ The point is to establish, on political grounds, the equality of contributors to deliberative proceedings in order to gain the benefits of summation without dismissing the need for democratic participation to offer some epistemic value.

The arrangement seen in Barry's approach raises the fundamental question as to whether or not a purely symmetrical conception can be defended while still upholding the need for mutual contributions. To be in a position to make such a distinction requires some basis for judgment. Treating technical knowledge as exclusive, as Barry does, leads to treating experts as the only ones in possession of both technical and non-technical

²⁷ I acknowledge in advance that these sketches are incomplete. They are not intended to be an exhaustive description of each theory under review.

²⁸ Barry, 1999: 199.

knowledge (in their capacities as citizens). Since non-technical knowledge is considered non-exclusive, experts are the only group to retain access to both and, on these grounds, would be better positioned to make such a distinction. In order for Barry to conclude laypersons, lacking technical knowledge but possessing non-technical knowledge, are in equal standing with regard to distinguishing between the two he must also claim that laypersons and experts are in equivalent positions or that technical and non-technical knowledge are interchangeable. Since claiming that technical and non-technical knowledge are interchangeable would negate the need to make any distinction, it is to be expected that Barry opts to defend the symmetry of the two parties.

To reiterate, the question is not simply whether experts and laypersons can be treated symmetrically but whether it is possible to do so while maintaining the condition of mutuality according to which experts should contribute to the collective any technical knowledge that is deemed useful. Where laypersons are viewed as having non-technical knowledge but lacking technical knowledge, being deficient in one domain and competent in another, strict symmetry would indicate that experts are deficient in non-technical knowledge and competent in technical knowledge. In support of the claim to symmetry, Barry asserts that how a problem is defined will impact the available solutions. He argues that viewing environmental problems as technical issues leads to technical solutions and, since laypersons are not privy to exclusive technical knowledge, the implication is that laypersons are written out of the picture. While this claim makes sense in light of his starting point, attempting to defend the symmetry of the parties as opposed to restructuring deliberation to increase the complementarity of their distinct domains leads Barry to an unfortunate conclusion. He states that technical expertise should not exclusively define the problem or the solutions, claiming that science should inform democratic deliberation without "authoritatively determining" the outcome.

On this account, neither laypersons nor experts should exclusively define a problem or solution, a conclusion that appears acceptable at first glance. However, this balance can only be achieved by treating experts in a one-sided manner. When the topic up for discussion falls within their field of expertise, experts possess both non-technical knowledge in their capacity as a citizen and technical knowledge in their capacity as one competent in the specialized language of a field. Barry runs into the problem that he must treat experts as lacking in non-technical knowledge, denying their status as citizen-

layperson in most matters, or proceed without acknowledging how one's standing is altered by the topic under discussion. The remaining option is to return to the view that there is no relevant difference between the two forms of knowledge, thus removing the need for any distinction between technical and non-technical while falling back on the assumption that democratic decision-making is inherently valuable. To do so, however, is to fail to offer any support for the claim that deliberation possesses epistemic value; that is to say, Barry defends symmetry at the expense of epistemic value.

Barry expresses a need to retain a place for technical knowledge, stating "this is not to say that green politics is anti-science, but that scientific or technocratic assessments of social-environmental relations should be placed within the wider political-normative context of those relations."²⁹ Despite his claim, Barry's vision of environmental politics provides only a reluctant space for judgment, reserving the ontological commitments entailed in judging for after democratic deliberation. By conflating the equality of citizens to offer assessments with the equal quality of those assessments, Barry's own faith in democracy risks overgeneralizing its value.

Of relevance, however, is the need to understand authoritative expertise in an embodied form as always both expert in a small number of matters and layperson in others. This condition, referred to by James Bohman and others as 'epistemic dependency,' places everyone within a web of relationships that are constantly reshaped by the topic of discussion. Unfortunately, Bohman offers only a rather ambiguous demarcation of when this dependency operates and even less assistance understanding how it affects environmental politics specifically. Bohman himself articulates support for the epistemic value of democracy in a way that only partially clarifies the claim to

²⁹ Barry, 1999: 200.

symmetry. Dividing issues into typically complex, which remain amenable to being resolved through deliberation, and excessive or 'hyper' complex, which confound attempts to make rational public decisions, Bohman points the way toward a clearer delineation. He states that, "[e]ven when self-critical and aware of its limits, use of public reason cannot gain full knowledge of hypercomplex effects on intentional forms of social coordination."³⁰ Such issues are, according to Bohman, characterized by highly interdependent relationships between differentiated and independent social causes and the non-linear effects they have on their environment.³¹ He concludes that,

[I]n tightly coupled systems there is constant monitoring of the environment, with minimal flexibility regarding the time and the resources needed for immediate intervention. Maintaining such a system demands increasingly specialized expert knowledge, which in turn multiplies experts' authority over decisions pertaining both to the system's maintenance and (more fatal to democracy) to the monitoring of the system's environment.³²

Although Bohman does not use the term environment to designate ecological systems, he makes a point of stating that such relationships are not limited to cases of technology, citing agricultural production as an example of such a system.

The point of this line of analysis is to illustrate the general direction if we allow for the possibility that authoritative expertise and lay knowledge of citizens are asymmetrical. By acknowledging that authoritative expertise is not an open invitation to permanently empower a class of individuals on all matters, as suggested by the notion of expert rule, and that some topics pose problems which deliberative democracy is incapable of addressing, we are able to see that an asymmetrical conception will involve

³⁰ Bohman, 1996: 158.

³¹ Bohman, 1996: 158-9.

³² Bohman, 1996: 159.

further exploration of the role of trust.³³ Before proceeding further down this path, however, it is necessary to survey how asymmetry has been dealt with by current approaches to deliberation.

2. Epistemic Asymmetry I: Kantian Approach

The first view of expertise and lay knowledge as asymmetrical derives expressly from the critical tradition of Kant, emphasizing awareness of the limits of knowledge as well as viewing politics in terms of normative justification. Recent ideas along these lines come from those developing the work of John Rawls or Jürgen Habermas. In the Kantian version of asymmetry, the division between expert and layperson is reshaped by a more fundamental distinction between empirical and normative knowledge that leads to conceptualizing deliberation not only in terms of public reason but as the collective establishment of normative principles prior to determining how such principles apply.

The prioritizing of normative over empirical issues is called for by Habermas, which he divides into discourses of justification and discourses of application. However, application of previously decided norms is not entirely straightforward. Retaining the critical awareness of Kant, Habermas first designates the limits of deliberative democracy, that is, he defines the scope of what problems can and cannot be rectified through deliberation:

³³ For further discussion of the role of trust in relaying scientific information to the general public under democratic conditions see Jasanoff, 1996.

Moral knowledge is obviously affected differently than empirical knowledge by the history and historical constitution of the world. Indeed, this is the reason for the peculiar bilevel nature of the moral justification of actions. I am referring to the familiar point that well-grounded moral norms can claim only validity *prima facie*. For *ex ante*, only the consequences and collateral effects of typical cases, which can be anticipated, are considered. Unanticipated constellations of conflict situations that occur subsequently give rise to a further need for interpretation that must be met from within the altered perspective of a discourse of application. During the process of application, the norm that is “appropriate” to the situation is selected from the plurality of warranted norms that might be applied in any given case. [...] universal norms can determine future actions only to the extent that typical, probable circumstances can be anticipated — that is, in principle, incompletely.³⁴

Organizing deliberation according to discourses of justification which precede discussion of application introduces a significant limitation in terms of environmental problems insofar as deliberative democracy contributes epistemic value only in cases where “typical” and “probable” circumstances can be anticipated. Where normative issues are treated as comfortably within the purview of all individuals, presumably eliminating any distinction between moral ‘experts’ and laypersons, the domain of application involves empirical questions whose typicality requires an awareness of a larger set of cases. Furthermore, as suggested by Bohman above, many environmental problems involve complex calculations about thresholds, unpredictable rates of recovery, or highly specific questions about resilience that defy broad categorization and comparison. As I discuss in Chapter 2, it is necessary to account for the insight that many environmental problems fall outside of the scope defined by Habermas.

As a case of epistemic asymmetry, Habermas’s distinction between normative and empirical discourses, when overlaid onto the issue of authoritative expertise, raises serious doubts about whether deliberation must exclude some individuals on the grounds that they lack the relevant competence to participate. This impression is reinforced

³⁴ Habermas, 2003: 245-6, footnote omitted.

elsewhere in Habermas's theory when he acknowledges that some issues are beyond the abilities of individual participants without specifying how the relevant knowledge may be shared:

[T]he abstractness of these highly generalized norms leads to problems of application as soon as a conflict reaches beyond the *routine interactions in familiar contexts*. Complex operations are required to reach a decision in cases of this sort. On the one hand, one must uncover and describe the relevant features of the situation in light of competing but somewhat indeterminate norm candidates; on the other hand, one must select, interpret, and apply the norm most appropriate to the present case in light of a description of the situation that is as complete as possible. Thus, problems of justification and application in *complex issues often overtax* [überfordern] *the individual's analytical capacity*.³⁵

It would appear that we have returned to a scenario that reproduces many of the features of the exclusionary and problematic 'rule by experts' while also avoiding any committal statements about the quality of decisions – the epistemic value – to be expected from deliberation.

In a more recent effort to clarify the role of authoritative expertise, David Estlund seeks to combine the normative import of Rawlsian proceduralism with the epistemic value he argues arises out of deliberative democratic arrangements. Compensating for Habermas's lack of articulation of the quality of democratic decisions, Estlund offers an extended treatment of authoritative expertise. Distinguishing between authority as the moral power to require action and legitimacy as the permissibility of coercively enforcing commands, Estlund posits the relationship between expert and layperson as one of deference, construing the issue as whether laypersons are obligated to suspend judgment. Here, the separation of normative and empirical questions intervenes to keep the epistemic argument from overwhelming the procedural issue. Estlund admits that, "We are permitted to doubt the moralist even though it would be irresponsible to doubt the

³⁵ Habermas, 1994: 115, emphasis added.

physicist in parallel circumstances" and that determining how expertise on the two issues differs "is all somewhat puzzling."³⁶ He salvages his arguments by relegating such problems to stronger 'correctness theories' that "say the minority ought to obey the outcomes of majority rule because this gives them their best evidence about what the substantively correct decision is."³⁷ He views his own solution, which he refers to as epistemic proceduralism, as avoiding the need to clarify such matters since the "reasons it gives the citizen are moral reasons to comply, not epistemic reasons to believe."³⁸

By setting the claim in favor of democracy's epistemic value at 'better than random,' Estlund need only show that deliberation performs well in severe cases by preventing what he calls 'primary bads.' It is at this stage that Estlund's treatment of the issue introduces a highly suspect premise for an asymmetrical argument. He writes that:

When we ask whether democracy makes good decisions, we must recognize that its decisions include any law or policy, whether produced by direct popular vote or not, whose legitimacy or authority is held to derive from its democratic production broadly conceived. The regulatory decisions of an appointed agency are surely included. The commissioners are appointed, but in a democracy (characteristically, if not by definition) any government official is either elected or appointed by someone who is elected, *or at least by someone whose appointment is traced in this fashion back to someone who is elected*. All the official decisions of all these people must be counted as among the democracy's decisions.³⁹

The rather tenuous assumption that authority is transferred without diminution begs for qualification. Estlund, however, does not substantively account for how authorization occurs. Instead he focuses on ideal justification, which leads to an innovative theory of null non-consent, or 'normative consent' as the basis of democratic authority.

Unfortunately, the theory of null non-consent results in pushing the issue of trust between

³⁶ Estlund, 2008: 106.

³⁷ Estlund, 2008: 106.

³⁸ Estlund, 2008: 106.

³⁹ Estlund, 2008: 161, emphasis added.

experts and laypersons, so evidently called for by the suggestion that authority extends without alteration, off the table by reinscribing a division between normative and empirical knowledge. Although Kantian approaches do not preclude an inquiry into trust, it is telling that few in this lineage feel compelled to pursue such an inquiry. It remains, then, for the second account of epistemic asymmetry to articulate a relationship between experts and laypersons that includes a role for trust in place of an argument about consent.

3. Epistemic Asymmetry II: Aristotelian Approach

The second version of epistemic asymmetry draws upon an Aristotelian conception where expertise is learning how to scrutinize received opinion. Viewing knowledge acquisition as a process of training and accumulation of relevant experience in judging, this conception treats the relationship between expert and layperson as a specialized division of labor. Thus, the contiguity between *doxa* and *endoxa* does not allow anyone to monopolize claims to participation, much like the normative-empirical categorization, while retaining the relevant distinctions regarding the development of experts' capacity to make judgments, a point that is lost when experts are relegated to providing empirical support.

Of equal importance to the conception of expertise as experienced judgment is the way in which treating the lay-expert distinction as a specialized division of labor gives a prominent place to the role of trust. This change of emphasis is made explicit in the work of John O'Neill who poses the question: "When is it rational and defensible for citizens to accept the judgement of another individual, the grounds for which they are not in a

position to appraise?"⁴⁰ The issue of rational deference is approached differently than by Estlund, who understands deference to be about whether one is under an obligation to suspend judgment. O'Neill writes: "The statements of those whom we take to be authorities we accept not simply because we have not the time to corroborate the grounds for their utterances, but because we lack the relevant judgements in the absence of an apprenticeship in the practice."⁴¹ By qualifying the statement as he does, O'Neill divides judgment in two: judgment of an epistemic claim and judgment of deference to another person. Obligation is irrelevant on this account since he is not claiming that rational terms of deference are binding. By attaching a qualifier, O'Neill treats the issue of commensurate knowledge claims as a settled matter since he grants that the layperson is not in a position to evaluate the particular claim. The issue, then, is considered a matter of practical knowledge, of accomplishing a task that one is ill-equipped to address: no more a moral issue than calling a doctor or electrician.⁴²

⁴⁰ O'Neill, 1993: 123.

⁴¹ O'Neill, 1993: 125.

⁴² For a different, albeit relevant, version of this claim see O'Neill, 2002b: 257-8.

The shift in emphasis becomes apparent when, having defined asymmetry as about the significance of a given claim, O'Neill is now able to introduce the question of what knowledge is required to arrive at a rational judgment about reliance upon other people's specialized knowledge. At this stage, the credibility of the speaker involves both an epistemological and an ethical dimension.⁴³ Where viewing the relationship between democracy and expertise in dichotomous terms, this leads to the conclusion that where uncertainty exists, expertise must admit failure. On the contrary, the Aristotelian conception leads to the conclusion that recognizing uncertainty supports turning to those who possess a sense of proportion in terms of the significance of uncertainty for a particular study. That is, judgment becomes all the more pertinent in such cases.

Insofar as expertise is seen as practical knowledge, as the proper application of more abstract, theoretical principles, O'Neill is able to find a constructive role for participation and for a contribution from the lay 'users' of expertise. Of greater significance to my own analysis, though, is the introduction of external factors affecting the way in which laypersons and experts interact. O'Neill makes the case that laypersons may draw upon formal principles of logic to assist in adjudicating between claims by competing authorities as well as arguing that equality (*isonomia*) is a precondition for rational deference to authority. The call for equality arises from a need to separate positions premised upon possessing expertise, what O'Neill calls internal authority, from standards external to a given area of knowledge such as wealth or prestige, which he terms external authority. O'Neill argues, "[J]ustifiable scepticism of the external source of authority infects the credentials of the internal source and can lead to scepticism about all

⁴³ O'Neill, 2006: 161.

authoritative judgements."⁴⁴ Where inequality does exist, however, rational deference demands inquiring into the credibility of a source:

The existence of a strong link between power, wealth, and special interests and particular authoritative judgements does provide *prima facie* grounds for scepticism about their claims. What is often presented in logic books as an example of the 'fallacy of relevance' -- questioning a person's judgement by reference to her having an interest in saying it -- is a legitimate tool in the practical art of suspicion.⁴⁵

Without entrenching experts as a stable class of persons possessing inexorable decision-making power, O'Neill upholds an asymmetrical version of the lay-expert relationship necessary for evaluating environmental knowledge claims as considered judgments and foregrounds the role of trust in maintaining that relationship. He accomplishes this while retaining a strong role for participants utilizing tools of suspicion.

Given the argument presented in Chapter 1 that environmental issues constitute a unique set of problems due to the uncertainty and complexity generated by the interaction between societies and natural phenomena, it is possible to draw a few conclusions on the basis of the preceding analysis. To begin with, an asymmetrical conception of the relationship between experts and laypersons is preferable because it is necessary to preserve criteria for rigorously evaluating competing claims regarding environmental impacts. This, however, does not entail designating a stable class of experts with exclusive rule since specialized fields of knowledge render some experts in one field but laypersons in others and environmental research often partakes of multiple fields of study.

With regard to the competing asymmetrical versions of expertise and lay knowledge, I view the Aristotelian conceptualization of epistemic asymmetry as best capturing the fraught relationship present on the issue of authoritative expertise. Not only

⁴⁴ O'Neill, 1993: 136.

⁴⁵ O'Neill, 1993: 137.

does the version covered by John O'Neill avoid relying upon the false dichotomy that pits deliberative democracy against rule by experts, but it provides a great deal of flexibility for thinking about how participation usefully improves expertise while simultaneously being dependent upon it. The Aristotelian version is, however, open to objections from proponents of the Kantian view that it relies upon an instrumental defense of deliberative democracy and that it involves a slackening of the standards for deliberation. To the charge of employing less stringent standards for deliberation, the issue is less relevant for an Aristotelian conception. If authority is primarily concerned with "moral reasons to comply, not epistemic reasons to believe," as David Estlund puts it, where one is under an absolute obligation then deliberative democracy must offer a categorical account of its moral legitimacy.⁴⁶ This is reflected in the approach taken by Habermas as well as many followers of Rawls.⁴⁷ If, instead, authority is about having reason to believe that another is better positioned to understand and address a problem then practical reasons are sufficient for establishing authority. I come down on the side of the Aristotelian conception precisely because it offers an account of authoritative expertise capable of specifying conditions for withholding trust, as opposed to a justification of authority defined in the general terms of legitimacy described in Chapter 1.

The second hypothetical criticism is that the role of authoritative expertise implied by the Aristotelian account suggests deliberative democracy is heavily dependent upon external circumstances for its value. Deliberative democracy, then, cannot be viewed as inherently desirable since it will perform unevenly. Granting the criticism, it is worth pointing out that deliberation is also not inherently objectionable on this account,

⁴⁶ Estlund, 2008: 106.

⁴⁷ See, for example, Benhabib, 1996; Cohen, 1997; Gutmann and Thompson, 1996; Manin, 1987.

but valuable with regard to some aim. Where a strong commitment to proceduralism has led to the charge that deliberation falls prey to supporting incorrect outcomes, a charge David Estlund views as sufficiently problematic to warrant a theory of epistemic proceduralism, there is a feasible alternative that need not deny striving for the most accurate empirical judgments. As we have seen, environmental problems are especially difficult to address deliberatively due to the complexity and uncertainty involved in measuring changes in ecosystems and in determining the impacts of a phenomenon.

D. A Political Epistemology of Mutual Trust

As argued by Mark Warren in his exploration of democratic authority, it is necessary for a deliberative democratic theory to argue either for a massive down-scaling of political structures or to specify conditions for authorizing non-democratic decisions. That collective decision-taking cannot occur on most, or even many, important topics is a constraint that is recognizable when dealing with the broad range of environmental problems. However, insofar as authorization is conceived of in terms of a handover of popular sovereignty it rests on an inherently fragile relationship of trust between grantors of collective power and users. Trust, in this instance, encompasses both the scope of authority as well as the extent to which violations of trust will be rectified. Warren elaborates:

Inherent in a trust relationship is that the truster *does not* monitor the background of interests and conditions. When one trusts another, one forgoes whatever opportunities one has for monitoring – although it is important that the opportunities exist and may even sometimes be used. But if one monitors continually, not only would the advantages of trust in terms of existential security, reduction of complexity, and extensive divisions of labor be lost, but the one who is monitored would herself feel untrustworthy, subject to a suspicion corrosive of trust. And yet, there is nothing more corrosive of social relations than trust that is abused, typically arousing in the victim a moral bitterness that not only damages future relations with an individual or institution but also reflects upon all other potential relations of vulnerability, producing a downward spiral in trust.⁴⁸

Warren illustrates the contours of the dilemma: trust is fragile precisely because it is a two-way relationship, a mutual composition. Too much scrutiny and the relationship is transformed into an instance of supervised activity that risks dictating the trustee's actions; too little scrutiny and one risks engendering in trustee's a sense of self-authorization that treats violations of trust as undetectable.

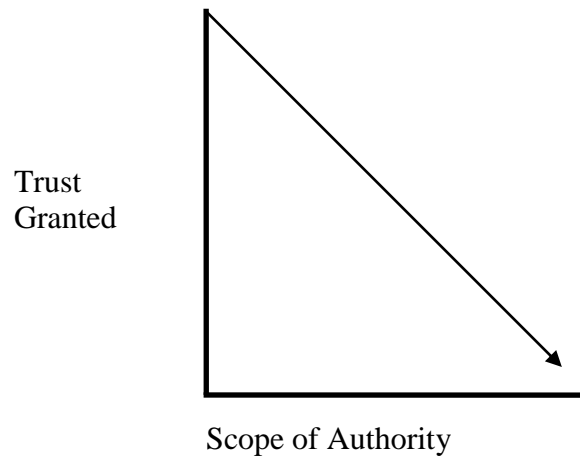
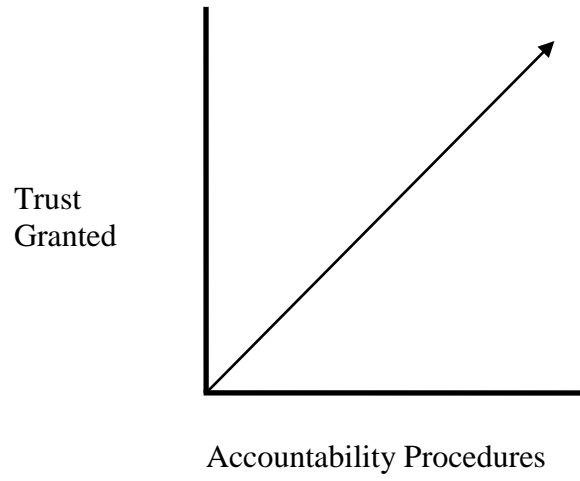
This account of the role of entrusting poses special challenges to a democratic vocabulary that offers transparency and accountability as the solution to the need for authoritative expertise. In the case of the Climatic Research Unit's exposed emails, it is clear that operating in a context of heightened suspicion contributed to presenting data in ways that were expected to diminish doubt. Such attempts by scientific advisers to shape relationships between themselves, regulatory bodies and affected publics, underscores the asymmetry that exists as well as the dependence upon those with the requisite capacities for informed judgment. The challenge arises from grafting conditions premised upon trust onto conditions for punishing violations of trust.

⁴⁸ Warren, 1999: 328, emphasis in original.

In her attempt to compare social contexts of trust, Sheila Jasanoff develops criteria for measuring 'civic epistemology,' that is, the "institutionalized practices by which members of a given society test and deploy knowledge claims used as a basis for making collective choices."⁴⁹ Jasanoff treats trust as a function of accountability, that is, as following from the characteristics of institutional procedures for holding experts accountable. Implicit in her criteria is that trust is coterminus with procedures for challenging trustees (**Figure 4.1**).

⁴⁹ Jasanoff, 2005b: 255.

Figure 4.1 Trust and Accountability



Without discounting the value of Jasanoff's analysis, she captures but half the picture. Although accountability is necessary for relationships of trust to develop between regulatory bodies informed by scientific advisers and democratic publics, it is not sufficient by itself. Recalling the temporal displacements described in Chapter 1, trust as the motivation for deferred judgment is granted on rational grounds but is defined by an evaluation of the likelihood that those grounds will be redeemed. Where grounds for trust are vindicated, accountability is moot. The scope of authority, as I argue in Chapter 1, is defined *in motu* as ambiguous circumstances are acted upon and actors are evaluated by citizens in light of the consequences of their action. It is this non-linear conception of politics that most completely differentiates my own analysis from Kantian deontology and whose dangers are best mitigated by Aristotelian virtue-ethics.

It is necessary, however, to articulate a more nuanced idea of trust to illustrate how authoritative expertise in the context of a political institution differs from expertise more generally. Claus Offe, drawing on his research on emergent institutions in post-Soviet Europe, provides a pivotal starting point. Offe begins by distinguishing trust relationships built upon repeated interaction and familiarity, or experiential trust, from trust that goes beyond familiar relationships, or generalized trust. The problem of generalized trust for thinking about democracy is posed by Offe: "Why is it that I have more to fear from the discretionary powers of autocratic (though at least conceivably benevolent) rulers than from the (potentially highly detrimental to me and 'my' values) legislative will of democratically constituted representative bodies or popularly elected governments?"⁵⁰ Offe analyzes possible responses: 'vertical' trust in "elites' wisdom and fairness," "confidence in the robustness and durability of institutions, specifically in the

⁵⁰ Offe, 1999: 58.

institutional setup of a liberal democracy," or "attaching some abstract and indirect bonds of trust to the *citizenry* as a whole."⁵¹ Offe sees vertical trust, between citizens and elites, as fraught with difficulties and abstract attachments as too reliant upon signaling trustworthiness where the "increased use of trust-inviting signals is responded to by the spread of distrust in the cognitive value of these signals, which in turn is responded to by heavier doses and the accelerating innovation of such signals."⁵²

Of greater significance to my argument, Offe views as faulty arguments suggesting that institutional procedures to ensure accountability on the back end are an apt substitute for trust on the front end by making trust dispensable. Offe offers two reasons for rejecting substitution. First, the incomplete coverage of rules leaves large areas in need of implementation that remain open to conflict between justifiable positions. Second, the contestability of institutions leads Offe to understand them not as "conventions, but rather the opposite, namely patterns of *precarious* and potentially contested cooperation."⁵³ Instead of viewing institutions as a means of substituting for trust, Offe argues that institutions build trust by serving to coordinate normative expectations amongst strangers. He summarizes his position:

*[I]t is this implied normative meaning of institutions and the moral plausibility I assume it will have for others which allows me to trust those that are involved in the same institutions. [...] 'trusting institutions' means something entirely different from 'trusting my neighbor': it means knowing and recognizing as valid the values and form of life incorporated in an institution and deriving from this recognition the assumption that this idea makes sufficient sense to a sufficient number of people to motivate their ongoing active support for the institution and the compliance with its rules.*⁵⁴

⁵¹ Offe, 1999: 58-9.

⁵² Offe, 1999: 64.

⁵³ Offe, 1999: 67, emphasis in original.

⁵⁴ Offe, 1999: 70, emphasis in original.

For Offe, this "anticipated formative impact," along with the protection granted by rights significantly decreases the risk of trusting others since citizens come to find a set of normative expectations built into institutions.⁵⁵ Designating the specific set of values that promote generalized trust (truth-telling, promise-keeping, fairness, and solidarity), Offe claims that "their capacity for mediating trust is most critically undermined if any or all of these values are seen to be betrayed or insufficiently enforced."⁵⁶

I applaud Offe's efforts to draw attention to the formative potential of institutions and his willingness to elaborate the particular norms that he views as best able to build or enhance trust. However, a problem arises in thinking about the applicability of such a theory to environmental issues. It is crucial, on Offe's account, that at least some pertinent assertions be made good. As he describes it, promise-keeping is,

truth telling not about 'given' facts in the world, but actively redeeming propositions concerning my own future action, thereby *making* them true. [...] the perceived failure of policy makers to redeem their own promises or hold other actors liable for keeping promises, be it due to their lack of effort and intention, or be it due to circumstances beyond their control, will undermine the general level of trust.⁵⁷

Generalized trust, as an argument for the contribution of democratic institutions, falters when confronted with what is a regular occurrence in environmental politics: the lack of verifiability. Offe's notion that the redemption of propositions is necessary for trust among citizens parallels Habermas's attempt to construct communicative ethics around an orientation toward redeeming one's assertions implicit in the act of communication. In both instances, though, the ability to redeem assertions is taken for granted. Such a view, however, is unwarranted in light of the central place of counterfactuals in identifying

⁵⁵ Offe, 1999: 72.

⁵⁶ Offe, 1999: 73.

⁵⁷ Offe, 1999: 74.

problems and foreseeing problematic effects of environmental trends.⁵⁸ In many cases, the need to act on a given environmental problem is not because impacts are complete but because ongoing processes stretch out in time so as to make changes appear singular and anomalous or as merely a recurrence of a pattern. The reliance upon counterfactuals is amplified whenever the issue is a low-probability, high-risk event where the only verifiable predictions are those that are not averted.

By removing opportunities to establish shared normative meaning through promise-keeping, as Offe requires, the notion that a broadly shared trust will occur beyond familiar relationships remains unsatisfying. The prudential response lies not in attempting to transcend the uncertainty and fragility surrounding authoritative expertise but to embrace rational deference in all of its precariousness. As John O'Neill claims, citizens' tools of suspicion – the application of logical criteria to the competing arguments of experts and awareness of potential conflicts of interest for those producing information – cannot replace informed judgment, but are not insubstantial either so long as the signals used in applying the criteria for credibility are rendered as direct as possible. Authoritative expertise involves an elaborate, if faulty, system of credentials, certifications, and institutional vouching to signal credibility. The context that must be sought to allow for authoritative experts to trust citizens' reception of judgments is one where generalized trust enables a more refined form of scrutiny to suffice. On the other hand, citizens will only be in a position to do so if accountability does not have to fulfill the role of trust.

⁵⁸ On the role of modeling as indispensable to aggregating global surface temperature see Edwards, 2010.

E. Institutional Fragmentation and the Precautionary Principle as Unifying Norm

The notion that accountability may substitute for or generate relationships of trust becomes problematic in the context of environmental politics where temporal and spatial scale readily exceed any single experience, where low-probability, high-risk events are known entirely through forecasting, and where solutions are posed as counterfactuals. Thus, along with the 'tools of suspicion' citizens possess, further adjustments are called for to develop trust between those capable of informed judgment and those dependent upon such judgments. Accountability is merely an opportunity to punish violations of trust.

But if the inability to disconfirm the judgments of authoritative experts undercuts the formative power of institutions for generating trust, what options remain for building such relationships between publics and experts? I propose a three part answer that, while falling far short of a guarantee, answers to the deficiencies identified thus far without foreclosing opportunities for deliberation. First, decrease the risk involved in trusting by encouraging a proliferation and unbundling agencies with highly circumscribed authority. Second, replace recent 'transparency' campaigns with more selective but higher profile publicity of information to invite scrutiny. Third, mandate the precautionary principle as a regulatory decision-taking standard in order to establish the normative significance of environmental institutions.

The first proposal to build trust involves providing a context for trust to flourish by decreasing the risk involved in trusting. This is the same idea that guided Claus Offe's claim favoring the proper normative meaning of institutions. However, once a key component of his theory is not operative, i.e., promise-keeping, then it is necessary to

find an alternate route without presuming the success of institutions' ability to transform citizens. Since it is unwarranted to assume that institutions employed to address environmental issues through some degree of citizen involvement are to be equally successful in building trust, the goal is to divide consolidated sites of authority into smaller units performing separate functions. While this idea introduces significant issues for coordinating activities across environmental institutions, threatening to undermine trust if such coordination proves illusory and ineffective, this is merely transferring a problem of coordination within current hierarchies to coordination across networks.⁵⁹

The second change I argue for is replacing transparency as open access to information with a more selective form of publicity. The notion of transparency in government parallels the notion of information in economic exchange as a theoretical innovation capable of ensuring fair transactions. In the case of economic exchange, so long as parties to an exchange are in possession of complete and accurate information about the objects being exchanged (and are entering the exchange voluntarily) then equivalence is established between the objects and the transaction can be said to be fair.⁶⁰ Transparency, in terms of political representation, serves as the mechanism by which correspondence between citizen preference and governmental decisions is established as legitimate. To put it differently, transparency imposes the economic idea of consumption onto a political process.

If, instead, we focus on building mutual trust between authoritative experts and citizens then publicity is equally as important as participation. That is, hearing takes on as much significance as voicing. Publication of government decisions may count as

⁵⁹ For an assessment of what conditions enable successful agency cooperation see Thomas, 2003: 257-279.

⁶⁰ Friedman, 2002: 12-13.

transparency, but is incomplete when it comes to developing trust. Publicity involves not only the announcement of significant decisions but opportunities to learn. Thus, publicity as I understand it, includes availability of research conclusions along with question-and-answer sessions between researchers and public. This more selective scrutiny, vastly different from the open-ended processes described in Chapter 3 in which challenge takes place at every stage, would be restricted to questions for clarification. On the basis of such publicity, a second stage for political participation can be implemented for more thorough challenges to regulatory decisions, as distinct from informational reports.

Along with a more diffuse institutional landscape and effective publicity, it is necessary to establish clear expectations regarding authoritative expertise. A version of this idea is advocated by Mark Warren, who writes that "desirable forms of trust are facilitated by political contexts that provide *actual* recourse to monitoring, specifically through institutional devices that [...] align the interests of truster and trusted, thus limiting the risks of trust."⁶¹ Warren argues that "it is a less complex matter to judge the configuration of interests that motivate a trusted individual or institution than it is to judge the information, knowledge, and competencies upon which the truster relies when he trusts" and that "even in the absence of necessary information, it is relatively easy to design institutions to facilitate commonalities of interest and block conflicts of interest."⁶² Warren's argument dovetails with the 'tools of suspicion' called for by John O'Neill. However, Warren overstates his case by claiming that blocking conflicts of interest between an expert and third parties is similar to creating common interests between experts and those who are dependent upon them. While aligning interests may encourage

⁶¹ Warren, 1999: 328.

⁶² Warren, 1999: 332-3.

trust, trust in expertise is predicated upon identifiable interests on the part of experts. Thus, I recommend focusing on safeguards against conflicts of interest, such as full disclosure policies without exceptions for proprietary information, while simultaneously seeking the greatest clarity about the normative significance, as Offe puts it, for environmental institutions. This is best accomplished through the use of single-purpose, well-defined mission statements that employ the precautionary principle as a decision-taking standard.

A number of factors recommend the precautionary principle, understood to attribute the burden of proof for technologies or practices with the potential for low-probability, high-risk catastrophes to producers prior to manufacture, not regulators seeking to restrict after the fact. Although some formulations of the precautionary principle have been drawn more broadly to encompass any probability at any level of risk, I begin with a minimum definition precisely because it avoids "encouraging a public debate about every possible consequence that a technology or social practice might have."⁶³ However, the point is not the particular threshold that is set but the shift in burden away from proving harm to proving non-harm.

As Kerry Whiteside argues, the emphasis built into the precautionary principle is on consequences, focusing discussion on beneficial environmental impacts in place of more complicated cost-benefit or cost-cost analysis. Employing the precautionary principle as the standard for regulatory decisions serves to decrease ambiguity about an agency's mission, thus requiring less discretion for implementation. Furthermore, the

⁶³ Whiteside, 2006: 123. Whiteside, paraphrasing, states that "The legitimacy of the precautionary principle will be undermined if it comes to apply to just any fear that people happen to have in regard to new technologies. So protecting that legitimacy requires measures to limit the effect of ordinary citizens' unfocused social concerns in decision-making processes" (Whiteside, 2006: 120). Although I argue for such limits on practical grounds instead of in terms of legitimacy, the claim amounts to the same thing.

precautionary principle decreases opportunities for conflicts of interest between regulators and regulated as the default position is inaction for all parties. Finally, committing authoritative experts to the precautionary principle through agency mandates promotes trust by clarifying the normative significance of environmental institutions, giving an evaluable purpose to regulatory agencies and deliberative bodies.

Committing environmental institutions, including deliberative fora, to the precautionary principle runs counter to the arrangements of Habermasian deliberation in which deliberative bodies must first settle 'discourses of justification,' that is, the normative principles to be used during 'discourses of application.' When confronted with the novelty of environmental problems deliberation should, in Habermas's theory, serve to build 'background consensus' where none previously existed. As I address in Chapter 2, this promise fails on both theoretical and practical grounds. Although Whiteside salvages a strong case for why deliberative democratic theory should employ the precautionary principle, I go further. Versions of deliberative democracy grounded in a Kantian notion of public reason necessitate a version of the precautionary principle as a substantive, general norm in the absence of 'background consensus.' The precautionary principle would then constrain the majoritarian tendencies of deliberative democracy in the absence of citizens' perspectives being transformed in much the same way as constitutional principles operate in Habermas's political theory.

Although the precautionary principle would operate as a pre-democratic constraint on the decisions of a deliberative body, the notion that deliberation assumes substantive normative content is not new.⁶⁴ Increasing the degree of trust between authoritative experts and lay citizens involves only a limited commitment insofar as the

⁶⁴ See Young, 2001, Gutmann and Thompson, 2003.

precautionary principle settles only one portion of 'discourses of justification' without precluding agreement upon other non-contradictory norms. Employing deliberation to accompany decision-making around low-probability, high-risk events while permitting authoritative expertise to cover routine regulatory decisions grounded in the precautionary principle involves sacrifices both in terms of what decisions may be arrived at democratically and in terms of what decisions may be arrived at administratively.

Utilizing the precautionary principle as a general, substantive norm does not exclude more conditional norms shaped by local context to emerge at the rate of events. It is this risk which, as discussed in Chapter 2 and returned to in Chapter 5, is implied in Kantian visions of cosmopolitan politics where consistency is brought about through the universalizing of state functions and done so in a way that is disavowed. The arrangements I envision remove regularized decision-making power over numerous high-risk phenomena from any single authoritative body. While environmental problems occur irrespective of political boundaries, I do not argue that the institutional alterations I support are comprehensive in their ability to meet all possible challenges. But neither do I subsume the necessity for non-democratic institutions within promises of citizens transcending politics in order to preserve the environment.

CHAPTER V

DEMOCRACY OUT OF BOUNDS: CITIZENS, MOVEMENTS, AND STATES IN INTERNATIONAL ENVIRONMENTAL POLITICS

[T]he adequacy of the state's response to the ecological challenge needs to be seen as analytically separate from the extent to which the character of the state has in fact evolved or changed (although there may be important interconnections). [...] the ecological challenge has indeed been one of the most important factors contributing to the changes that have taken place in the changing normative structure of international society. And yet, even in relation to the environment, there is a real danger that transformationist claims overstate the scale of the changes that have actually taken place and, more important, that this exaggeration might lead to a misdiagnosis of the challenges to be faced.¹

The formalization of international environmental law, dating to the Trail Smelter arbitration between the United States and Canada in 1935, developed in response to problems that were previously unnoticed or nonexistent. However, it was not until the United Nations Conference on the Human Environment in 1972 that sustained international attention began to replace *ad hoc* cases. In less than four decades, hundreds of bilateral and multilateral environmental treaties have been negotiated to address issues from the depletion of whales due to commercial hunting to the ratio of greenhouse gases in the atmosphere. With an array of issues being recognized and handled in a relatively short period of time, it is little surprise that the various legal frameworks have achieved radically divergent levels of success.

Subsequent conferences aimed at diagnosing and preventing irreversible damage to the atmosphere have taken place in the context of 'globalization,' the increased movement of capital, expansive production and communication networks, and to a lesser extent the mobility of persons. In the years following the collapse of the Soviet Union,

¹ Hurrell, 2005: 181.

the internationalization of capitalism and the emergence of international political institutions under the auspices of the United Nations (e.g., UN Environmental Program) or international financial institutions (e.g., World Trade Organization and International Monetary Fund) have shaped the terms of political discourse. If one is to believe *New York Times* columnist Thomas Friedman, these developments are related insofar as liberal democratic institutions and capitalism are mutually reinforcing so that the emergence of 'green' capitalism offers the best hope for resolving global environmental problems.²

The emergence of global environmental conditions that overflow the territory of sovereign states have led in recent years to formulations of global democracy that supersede existing government institutions. This vision is informed by the view that states are rapidly declining as a result of an inherent inability to confront transboundary environmental problems, generating substantial opportunities for non-institutional democratic politics along the way.³ Dovetailing with the recent scholarship on 'globalization,' this vision attempts to resituate calls for environmental protection outside of the authoritarian lineage of the finitary political imagination explored in Chapter 1. Retaining the impulse for more experimental and non-institutional conceptions of democracy that animated the environmental movement in the United States of the 1960s, this version of the finitary political imagination articulates its environmental projections as more indeterminate, provisional commitments. At the other end of the spectrum is a thoroughly articulated vision of a global democratic state that functionally consolidates multilateral state power.

² See Friedman, 2005; Friedman, 2008.

³ See Dryzek, 2006.; Bohman, 2007; Keuhls, 1996.

A point of commonality for proponents of transnational democratic politics who reject state-based solutions is the focus on international environmental activists and non-governmental organizations (NGOs) construed as part of a global public sphere. The emergence of international NGOs working against nuclear energy following events at Three-Mile Island and Chernobyl or monitoring human rights violations (e.g., Amnesty International and Human Rights Watch) in the late 1970s and early 1980s was accompanied by more expressly environmental groups. Along with the growth of international environmental NGOs like Greenpeace out of Canada, World Wildlife Fund from Switzerland, and Friends of the Earth headquartered in Sweden was the establishment of research networks focused on global environmental problems. These ranged from the nongovernmental advocacy of the Worldwatch Institute to extensions of scientific associations such as the World Climate Research Programme to hybrid groups of scientists and policymakers such as the Intergovernmental Panel on Climate Change.⁴ Whether or not this array of associations constitutes a global public sphere capable of supporting robust claims for transnational democracy will be taken up in the course of this chapter. There is evidence, however, that international environmental NGOs have played a significant role in shaping the negotiation process of treaties to be more inclusive as well as the wording once rules for inclusion, such as the Aarhus Convention,⁵ were passed.⁶

⁴ For a dated but thorough overview see McCormick, 1995.

⁵ The Aarhus Convention is shorthand for the "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters" under the United Nations Economic Commission for Europe, which was adopted in 1998.

⁶ For a survey of the evidence see Betsill and Corell., 2008.

The interchange between international environmental law and global public sphere as well as far-reaching communications and financial networks shorn of state-ties appear to bolster claims that the prominence of states to handle collective problems is receding. However, without speculating on the long-term viability of states or for that matter intergovernmental organizations, I argue that the energy of citizens and groups hoping to promote environmentally benign arrangements or rectify environmental harms should not become fixated upon promoting participatory international institutions, although such pursuits need not be abandoned altogether. Instead, environmental activism, advocacy, and protest should support international environmental laws that enmesh domestic laws while also devoting attention to raising awareness at the domestic level of violations of international agreements. Stated succinctly, a multi-pronged strategy must not only include but prioritize 'greening' developed states. This strategic imperative becomes clearer in light of the pattern of international negotiations that show the presence of domestic environmental laws to be a strong indicator of a government's support for an international treaty.

A. Imagining Cosmopolitan Identity: Risk and Fate

The subtext to the finitary imagination is conflict; more specifically, war. The steady build up of surface and atmospheric measurement capacity during World War II, aided by more extensive satellite and computing networks during the Cold War arms race, is not coincidental. France developed an "international weather telegraphy network" following the loss of a naval fleet during the Crimean War.⁷ Animated by a Malthusian strain, there remains at stake in the finitary political imagination the supposed threat of

⁷ Edwards, 2010: 41.

societal breakdown as populations encounter their carrying capacity, driving individuals to infringe upon others' rights. The ordinary political imagination, too, was inspired in its Hobbesian expression by the conclusion of the Thirty Years War at Westphalia. Furthermore, not only did the French Revolution offer fodder for Kant's argument for progress but the Treaty of Basle occasioned his writings on perpetual peace.⁸ In both accounts, the unit of conflict is the nation-state.

The debate within political theory over the nature of relationships created by globalization has, likewise, centered on the relevance of the nation-state. In many ways, attempts to posit cosmopolitan democracy in terms that either extend or bypass the state misapprehend the equilibrium that exists at present as well as available opportunities. The relationships generated in the course of globalization – unequal, mediated, far-reaching, untraceable – operate in a way that social contract theories focused on voluntary associations as well as deontological theories focused on obligatory principles are ill-prepared to capture. This is due, in part, to the way in which both approaches have framed debate over whether a non-exclusive global 'people' is brought about through the occurrence of problems in common (affectedness) or by dint of consensual identification (membership). From the vantage of prudential analysis that treats legitimacy as insufficiently contextual, it is possible to see that such a split is inherited from the presupposition of the nation-state built into Kantian cosmopolitanism in which membership and affectedness were aligned without remainder.

The questions of who constitutes a global 'people' and on what grounds are central for political theorists who countenance cosmopolitan democracy. For those for whom inclusion is premised upon affectedness, environmental problems are easily categorized

⁸ Kant, 1991: 276, *n.* 1.

as a subset of risk-calculations, which identifies groups in terms of shared risks. German sociologist Ulrich Beck poses the issue clearly:

The international intractability of modernization risks is matched by the way they spread. At least for the consumer, their invisibility hardly leaves a decision open. [...] They can be in anything and everything, and along with the absolute necessities of life – air to breathe, food, clothing, home furnishings – they pass through all the otherwise strictly controlled protective areas of modernity. [...] In this sense they bring about a new kind of risk ascription by civilization. This recalls in some respects the status fate in medieval society. Now there exists a kind of risk fate in developed civilization, *into which one is born, which one cannot escape with any amount of achievement*, with the 'small difference' (that is the one with the big effect) that *we are all confronted similarly by that fate*.⁹

Beck ties together two key points. First, the risks posed by the very act of existing and by day-to-day objects occur outside of any identifiable system of choice by consumers such that they appear as fated. Second, no one is exempt from risks in general and so share a similar fate. Thus, a community of fate becomes coterminous with a universal risk society, providing the bridge from seemingly local industrial products (and by-products) to a global community.

The angling of potential hazard into common fate, even while acknowledging the uneven nature of the threat, emerges almost simultaneously in the international arena around environmental questions. Beck's *Risk Society*, originally published in Germany in 1986, is complimented by the report of the World Commission on Environment and Development, also known as the Brundtland report, published in 1987. In the opening chapter entitled "A Threatened Future," the Brundtland Commission offers a parallel, albeit only slightly less dramatic, diagnosis:

Societies have faced such pressures in the past and, as many desolate ruins remind us, sometimes succumbed to them. But generally these pressures were local. Today the scale of our interventions in nature is increasing and the physical effects of our decisions spill across national frontiers. The growth in economic

⁹ Beck , 1992 : 40-1, emphasis added.

interaction between nations amplifies the wider consequences of national decisions. Economics and ecology bind us in ever-tightening networks. Today, many regions face risks of irreversible damage to the human environment that threaten the basis for human progress.¹⁰

Offering the Commission as a micro-cosmopolitan unity, Gro Brundtland states that commissioners "were acting not in our national roles but as individuals; and as we worked, nationalism and the artificial divides between 'industrialized' and 'developing', between East and West, receded. In their place emerged a common concern for the planet [...]."¹¹

To take a final example that brings the analysis more directly into environmental political theory, Barry Holden in his treatment of global warming argues that "the very existence of the global warming problem may well be a powerful inducement for the emergence and growth of a global community. Here there is, indeed, a 'community of fate', but on a global scale."¹² In positing this connection, however, Holden rejects linking this community grown in response to a particular problem to something resembling a global state. Claiming that "a global community would not necessarily be linked with the existence of government," Holden borrows the distinction between government and governance, where governance is managed by a "global civil society."¹³

There is much to be sympathetic with in this line of thinking, particularly insofar as the emergence of new and difficult issues reshapes the political landscape. However, I am reluctant to make the leap from collective problems to collective identity so swiftly, especially when such identities are seen as both undefined while simultaneously reflecting the democratic urges of a global environmental movement. Of significance in

¹⁰ WCED, 1987: 27.

¹¹ WCED, 1987: xii.

¹² Holden, 2002: 126.

¹³ Holden, 2002: 127.

this conception of a global community is that it simply arrives, occurring without volition. My hesitancy, then, derives from the lack of answers for two different problems. First, granting the possibility that nothing precludes attachments to abstract, collective identity at the global level, the question remains as to the nature of this attachment. The supposition amongst those advocates just discussed appears to be that a cosmopolitan identity will arise that is sufficient to override other attachments that may be less abstract. To put the issue a bit differently, the burden is on those whose arguments necessitate a global collective identity to explain whether such 'thin' relationships are likely receive priority over 'thicker,' more comprehensive relationships. Second, and of greater importance, is the questionable assumption that the global collective identity attributed to the mix of activists and NGOs forming a transnational environmental movement is, in fact, a democratic identity. The implication is that in the constitution of global democracy, nation-states exist simply as a barrier that, once removed, would allow an informal democratic politics to unfold. Such an assumption is even more troublesome for those who subscribe to more demanding deliberative notions which entail not only a particular normative orientation for citizens but also a set of competencies for exercising one's political agency.

B. Constructing Cosmopolitan Community: A Humanitarian State

Beginning from affect leads, in the above accounts, to the involuntary emergence of 'governance' tied to an amorphous global public sphere in which democracy manifests a popular will. An alternative line of reasoning that defines collective identity in terms of consent is also present in recent attempts to conceptualize a global democratic order.

Turning to the full-blown conceptions of cosmopolitan democracy offered by David Held and Jürgen Habermas allows me to trace more directly the potential for and limitations of the nation-state in addressing large-scale environmental issues.

While both authors build their theories on a diagnosis of the modern nation-state as undergoing – either presently or in the recent past – a 'legitimation crisis,' David Held's vision for cosmopolitan democracy seeks to incorporate affectedness into consensual membership. Seeing the all-affected principle (see Chapter 2) as generating 'overlapping communities of fate,' Held nonetheless envisions a union of such communities in terms commensurate with a social contract. He writes,

Nonetheless, the idea of a democratic cosmopolitan order is not simply compatible with the idea of confederalism, a wholly voluntary, treaty-based union, constantly renewed through limited agreements. It is the case that the creation of a cosmopolitan democracy requires the active consent of peoples and nations: initial membership can only be voluntary. It would be a contradiction of the very idea of democracy itself if a cosmopolitan democratic order were created non-voluntarily, that is, coercively.¹⁴

Differentiating this contractual basis from the involuntary association generated by the all-affected principle, Held proposes reorganizing established political units into a federated system. In this version, a tiered structure brings together already existing (democratic) governments through a transfer of authority, mimicking the erection of government from out of civil society in a Lockean state of nature.

Held's version of cosmopolitan democracy fits squarely within the Kantialineage, offering intergovernmental relations defined by treaty and infused with a cosmopolitan ethos at the top. He writes, "[t]he case for cosmopolitan democracy is the case for the creation of new political institutions which would coexist with the system of states but which would override states in clearly defined spheres of activity where those activities

¹⁴ Held, 1995: 231.

have demonstrable transnational and international consequences."¹⁵ Despite claiming that this federation would serve as a separate source of authority within well-defined areas, it is the notion of 'overriding' states that is pregnant with ambiguity. The character of a cosmopolitan inspired international federation is described as 'overriding' states in a very limited sense. Held writes,

A cosmopolitan democracy would not call for a diminution *per se* of state capacity across the globe. Rather, it would seek to entrench and develop democratic institutions at regional and global levels as a necessary complement to those at the level of the nation-state. This conception of democracy is based upon the recognition of the continuing significance of nation-states, while arguing for a layer of governance to constitute a limitation on national sovereignty.¹⁶

Held assures his readers that state *capacity* is not to be diminished, merely state sovereignty. Given the demands that Held places upon cosmopolitan democracy, maintaining this distinction results in a 'thin' citizenship attached to emaciated institutions incapable of fulfilling the tasks assigned to them.

In order to ensure that a cosmopolitan democracy does not encounter a 'legitimation crisis' of its own in which citizens abide by laws out of more instrumental reasons such as avoiding punishment or achieving a desired end, as opposed to a more favorable normative sympathy, Held sees his model democracy as involving more robust institutions than those offered by ambassadors and diplomats. He goes on, "[a]t issue, in addition, is not merely the formal construction of new democratic institutions, but also the construction, in principle, of broad avenues of civic participation in decision-making at regional and global levels."¹⁷ Held continues, posing two requirements that will serve as a guide in specifying the sorts of institutional structures he has in mind,

¹⁵ Held, 1996: 354.

¹⁶ Held, 1996: 354.

¹⁷ Held, 1996: 354.

Two distinct requirements arise: first, that the territorial boundaries of systems of accountability be restructured so that those issues which escape control of a nation-state [...] can be brought under better democratic control; and, second, that the role and place of regional and global regulatory and functional agencies be rethought so that they might provide a more coherent and useful focal point in public affairs.¹⁸

Based on these requirements, Held articulates a vision of cosmopolitan democracy that involves creating or enhancing 'regional parliaments' whose "decisions become recognized, in principle, as legitimate independent sources of regional and international regulation."¹⁹ In an attempt to accommodate the groupings formed by the all-affected principle, Held includes "general referenda" tied to "constituencies defined according to the nature and scope of controversial transnational issues," while offering "elected supervisory boards" as a potential balance insofar as they are "statistically representative of their constituencies."²⁰ Finally, in line with the federated model that Held employs, a set of rights and obligations would be "enshrined within the constitutions of parliaments and assemblies (at the national and international level)" and the "influence of international courts be extended so that groups and individuals have an effective means of suing political authorities for the enactment and enforcement of key rights, both within and beyond political associations."²¹

The call to amend constitutions (where they exist) and establish a set of universal rights raises the question: how are violations of rights to be enforced? Even in light of Held's more extensive juridical system and more numerous representative bodies, the issue of enforcement calls upon altogether different capacities. Although Held claims to

¹⁸ Held, 1996: 354.

¹⁹ Held, 1996: 354-5.

²⁰ Held, 1996: 354-5.

²¹ Held, 1996: 354-5.

uphold state capacities, it is difficult to reconcile this position with his statement that "a proportion of a nation-state's police and military (perhaps a growing proportion over time) could be 'seconded' to the new international authorities and placed at their disposal on a routine basis."²² His federal model of cosmopolitan democracy has, up to this point, replicated the basic features of the United States' constitutional distribution of roles between state and federal government. With his treatment of enforcement powers, however, Held diverges from this example in his understanding of loaning police and military services. Enforcement here entails something more than an alliance, along the lines of the North Atlantic Treaty Organization (NATO), or a coordinating body like the International Criminal Police Organization (INTERPOL). Held's response to the question of enforcement amounts to alternating, as opposed to shared, control in such a way as to challenge any notion of a state as possessing a monopoly on the legitimate use of violence. In the process, Held grafts the trappings of the post-Westphalian nation-state, centered on military and police administration, onto a global regulatory body that no longer serves as a 'complement' to or 'layer of governance' built upon the 'continuing significance of nation-states.'

What remains unique in Held's plan for cosmopolitan democracy is his abandonment of the more pared down, minimalist cosmopolitanism outlined by Kant in an attempt to address the problems arising from an 'interconnected' world. Where Kant's emphasis is on conditions that would eliminate war, Held's more ambitious aims of rectifying transboundary, collective problems involve significant differences such as the retention of 'state capacities.' He explains his divergence from Kant on this point:

²² Held, 1996: 356.

For Kant universal hospitality is, therefore, the condition of cooperative relations and of just conduct. But while Kant's opposition to colonialism and arguments for universal hospitality are noteworthy, they do not elaborate adequately the conditions of such hospitality. For without conceiving of cosmopolitan law as cosmopolitan democratic law, the conditions for the protection of freedom and autonomy for each and all cannot be satisfactorily envisaged.²³

Thus, the principle of hospitality offers little purchase on the sorts of problem-solving that Held sees as necessary. Held lends substance to the principle of hospitality, instead arguing for increased control over the circumstances shaping one's life:

Moreover, in a highly interconnected world, 'others' include not just those found in the immediate community, but all those whose fates are interlocked in networks of economic, political and environmental interaction. Universal hospitality is not achieved if, for economic, cultural or other reasons, the quality of the life of others is shaped and determined in near or far-off lands without their participation, agreement or consent.²⁴

By interjecting the all-affected principle into a theory grounded in consent, Held attempts to uphold Kant's valuing of autonomy while also responding to Kant's reasons for rejecting a unified state.

Held sets himself an enormous task – preserving individual autonomy in the face of global interconnectedness – for which his response is to argue for consensual intergovernmental association outfitted with not only representative bodies but access to military force while also claiming to avoid reproducing the nation-state. Unfortunately, he misconstrues Kant's reasons for defining cosmopolitanism in minimal terms. As Richard Tuck points out,

Kant's intention was to show that a genuinely Hobbesian account of modern international relations was possible, and that Rousseau's pessimism on this score was unfounded: it was not the case that one was caught between the Scylla of a world state and the Charybdis of perpetual war. The central aspect of this claim was that the rules governing the relationship of modern states would be minimal

²³ Held, 1995: 228.

²⁴ Held, 1995: 228.

in character, thicker (on Kant's account) than those of a Hobbesian state of nature, but much thinner than those of a civil society.²⁵

Cosmopolitanism does not transcend the nation-state, but aims for equilibrium between states, which is why for Kant the means of achieving a cosmopolitan order is to integrate international law. Insofar as Held insists on combining the all-affected principle, which he claims is necessary to account for the interconnectedness brought about by globalization, with a confederation built on membership, he must explain the consent of states in terms of the needs of global civil society. It is this difficulty that renders Held's project untenable.

One finds in Jürgen Habermas's cosmopolitanism greater fidelity to Kant's stress on international law despite the distance he seeks to establish.²⁶ In contrast to David Held who clearly identifies the need for his cosmopolitan democracy to possess regulatory authority in order to address the problems that give rise to it, Habermas disavows the 'state capacities' that Held embraces. When viewed in light of the authors' convergence on the need for similar content to international law, the difference illuminates a significant limitation to cosmopolitan democracy in general: the inability to specify what functions are available to achieve global 'governance,' particularly when approached in terms of legitimacy as opposed to effectiveness.

Habermas defines the aims of 'transnational' democracy in nearly identical terms to Held. Where Held starts from a diagnosis of globalization as increasing the vulnerabilities of individuals to effects of activities and decisions over which they have little to no control, Habermas sees "fears of the disempowering effects of globalization"

²⁵ Tuck, 1999: 221.

²⁶ Habermas, 1998d.

as "far from unjustified."²⁷ Habermas, likewise, seeks to pose the issue of democracy without assuming any attachment to nation-states, primarily focusing his attention on the prospects for a European political unit built upon a consciously constructed political identity. To clarify, Habermas does not reject understanding the scope of 'the People' according to a community of fate, but refuses that the solidarity of such a community can arise under present conditions as a primordial or "pre-political community."²⁸ Instead, the emergence of a (European) civil society enables a distinctive political public sphere to form that is, on Habermas account, capable of sustaining a collective identity to generate solidarity.

Unlike David Held, uncoupling democratic institutions from the territorially bounded nation-state does not lead Habermas to global democracy *tout court*. His digression from Held's strictly global vision hinges on important reservations about the degree of attachment that can be generated amongst and between citizens. Because Habermas is much more explicit than Held about the need for global redistributive policies, what he refers to as "world domestic politics," he is attuned to the greater degree of solidarity called for in order to support welfare provisions for a broader, abstract community. He writes of the United Nations as a prototype for global democracy:

The restriction to elementary services for maintaining order is a response not just to the pacifist motivations that gave rise to the United Nations as a world organization in the first place. The world organization also lacks a basis of legitimacy on structural grounds. It is distinguished from state-organized communities by the principle of complete inclusion – it may exclude nobody, because it cannot permit any social boundaries between inside and outside. Any political community that wants to understand itself as a democracy must at least distinguish between members and non-members. The self-referential concept of collective self-determination demarcates a logical space for democratically united citizens who are members of a particular political community. Even if such a

²⁷ Habermas, 2001c: 80.

²⁸ Habermas, 2001c: 101.

community is grounded in the universalist principles of a democratic constitutional state, it still forms a collective identity, in the sense that it interprets and realizes these principles in light of its own history and in the context of its own particular form of life. This ethical-political self-understanding of citizens of a particular democratic life is missing in the inclusive community of world citizens.²⁹

By focusing on the role of shared normative commitments, Habermas relegates the possibility for non-exclusionary politics to Kant's 'kingdom of ends.' Lacking the "active solidarity" required for redistributive policies, the "reactive" solidarity characteristic of global democratic politics is, for Habermas, limited only to agreement on the general principles.³⁰

As I detailed in Chapter 2, Habermas's diagnosis of modernity leads him to depict social cohesion as deeply fragile. As I have just shown, this diagnosis extends to his argument against a global democratic politics. However, this does not lead Habermas to reject transnational democracy. Instead, the potential for transnational democracy finds its fulfillment not in common language or ancestry, but in the more circumscribed realm of shared history and attachment to normative principles.³¹ The development of constitutional patriotism develops, according to Habermas, "in the medium of politics itself."³² What this amounts to is the transference of attachments to the nation-state as a manifestation of popular self-expression to the guiding principles embodied in the universal rights. Thus, constitutional patriotism serves as the conceptual bridge between 'pre-political' attachments and expressly political attachments by way of dialogue and debate. Habermas further specifies: "To the extent that *identification with the state* mutates into an *orientation to the constitution*, the universalistic constitutional norms

²⁹ Habermas, 2001c: 107, endnote omitted.

³⁰ Habermas, 2001c: 108.

³¹ For further details on the basis of collective identity, especially language, see Habermas, 2001d.

³² Habermas, 2006a: 77.

acquire a kind of priority over the specific background context of the respective national histories."³³ All that remains for Habermas's theory is an object that embodies the universal principles informing various constitutions and to which postnational citizens can redirect their attachments.

Differentiating his use of constitution from a document articulating constraints on state power, Habermas sees in international law an already existing constitution:

International law, which in its classical form presents an inverted image of the state and the constitution, provides the starting point for a juridification of international relations that promotes peace. What is missing in classical international law is not an analogue of a constitution that founds an association of free and equal consociates under law, but rather a supranational power above competing states that would equip the international community with the executive and sanctioning powers required to implement and enforce its rules and decisions.³⁴

On this account, human rights serve as universal principles offering the greatest potential for normative agreement between citizens, albeit mediated by states. Presenting the notion of constitution in this way allows Habermas to frame a global 'domestic politics' without defending a robust global government. Indeed, Habermas turns to the formula of 'global governance without global government' that Held utilizes, stating:

No structural analogy exists between the constitution of a sovereign state that can determine what political competences it claims for itself [...], on the one hand, and the constitution of an inclusive world organization that is nevertheless restricted to a few, carefully circumscribed functions, on the other.³⁵

And like Held, Habermas also envisions a tiered political infrastructure divided into national, transnational (regional), and supranational (global) levels. The supranational level is tasked with "securing peace and promoting human rights," while the transnational level links the various economic and environmental arenas that are already ongoing but

³³ Habermas, 2006a: 78, emphasis in original.

³⁴ Habermas, 2006b: 132.

³⁵ Habermas, 2006b: 134.

charges them with "promoting actively a rebalanced world order."³⁶ States, then, would remain the decisive terminus for most international politics despite the presumption that states agree to forego war.

As one critic has correctly pointed out, Habermas's characterization of a tiered international order as lacking "the character of a state *as a whole*" underestimates the degree to which even "[g]enerality and consistency in law presuppose some capacity to enforce legal norms without undue dependence on those against whom they may need to be enforced."³⁷ While Scheuerman aptly challenges Habermas's disavowal of state functions and Robyn Eckersley sees constitutional patriotism as potentially failing "to ignite the same depth of human sentiment as, say, local attachment to place, or one's familiar linguistic or ethnic community," I expose Habermas's shortcomings from a different angle.³⁸ This is not to dismiss Scheuerman's and Eckersley's critiques, both of which are complementary to my point: Habermas's cosmopolitan theory places its conceptual burden on the rule of law but overstates the coherence of international law.

International law does not exist as a body of jurisprudence in the sense that differing regimes are bound to follow precedents set in alternative arenas. Habermas isolates the conjunction of Universal Declaration of Human Rights and the priority of law formulated under the United Nations over other treaties as specified in Article 103 of the UN Charter. Isolating this strain of international law is crucial for Habermas to argue that the role to be performed at the supranational level of governance is well circumscribed, with "the enforcement of established law" taking "precedence over the constructive task of legislation and policy-making," which "demand a higher degree of legitimation, and

³⁶ Habermas, 2006b: 136.

³⁷ Scheuerman, 2008: 142.

³⁸ Eckersley, 2004: 189.

hence more effectively institutionalized forms of citizen participation."³⁹ Although he indicates that recent disputes under the World Trade Organization "increasingly take into account the protection of human rights,"⁴⁰ Habermas offers a less optimistic assessment of the transnational level:

The pressure of problems generated by an increasingly globalized society will sharpen the sensitivity to the growing need for regulation and fair policies at the transnational level (i.e. the intermediate level between nation-states and the world organization). At present, we lack the actors and negotiation procedures that could initiate such a global domestic politics. Realistically speaking, we can only envisage a politically constituted world society as a multilevel system that would remain incomplete without this intermediate level.⁴¹

As I demonstrate below, what Habermas calls the transnational level – comprising myriad legal regimes – does contain significant normative innovations, but it does so because of the flexibility enabled by unconsolidated coverage of international environmental laws. This lack of coherence is recognized by Habermas but is construed as failure. He claims,

International organizations operate more or less well at this intermediate level as long as they perform coordinating functions. However, they fail in tasks of global regulation in the fields of energy and environmental policy and in financial and economic policy.⁴²

Ironically, given Habermas's concern with the construction of international normative principals, he fails to give innovations such as the precautionary principle and differentiated responsibility sufficient attention and focuses only on perceived shortcomings in coordinating regulation. This inaccurate weighting masks a potentially more important point: the fragmented and incoherent 'system' of rules that Habermas designates transnational may offer a more effective source of normative agreement than

³⁹ Habermas, 2006b: 174.

⁴⁰ Habermas, 2006b: 140.

⁴¹ Habermas, 2006b: 178-9.

⁴² Habermas, 2006b: 178.

the human rights at the heart of the supranational level. The Convention on Long Range Transboundary Air Pollution (CLRTAP) is a prime example of a regime that is "relatively short on regulatory content" while "changing the discourse in terms of which this issue is addressed and drawing its members into an increasingly complex social practice that has altered responses to long-range air pollution over a period of several decades."⁴³ The key difference between international environmental law and human rights law is that human rights are more thoroughly codified – having roots reaching back to the natural rights theories of Aquinas, Grotius, and Suarez – while environmental problems have initiated processes of negotiated response that are, as yet, unsettled.

C. States and the Fragmented Jurisdiction of International Environmental Law

The building of competing, even contradictory, international environmental legal regimes can be viewed as evidence of failed regulation, as it is by Habermas. There is, however, a unique dynamic to the current configuration of international environmental law that lends extra weight to a strategy of state-centered political transformation. At minimum, this dynamic suggests that environmental activists and advocates will be less successful achieving their objectives if they fail to recognize states as viable sites of political contestation. Underestimating governmental politics – whether strategic litigation, interest-group lobbying of federal, state, and local legislators, or pursuing appointments in executive administration – and misunderstanding the way in which environmental politics at the nation-state level shape and are shaped by international law can result in missed opportunities that will be harder to recapture as international environmental laws becomes more comprehensive.

⁴³ Oran Young, et al., 1999: 270.

Although a strong case has been made for amending constitutions to include a set of environmental rights, I target the level of routine, day-to-day politics in economically developed, constitutional democracies (see Chapter 3 for criteria).⁴⁴ Rights-oriented and state-oriented strategies for environmental politics are not mutually exclusive. However, in showing the unique opportunities available within international environmental law, I am more concerned with demonstrating what may be lost by an overemphasis on democracy 'beyond the state.' This task is made all the more important insofar as environmentally benign policies are not already perceived as necessary or desirable in any determinable way within Australia, the United Kingdom or the United States, while even Germany has experienced some curtailment of its environmentally magnanimous policies during the most recent economic recession. If environmental activists wish to focus their energies on non-state politics, they cannot afford to do so without initiation of a Habermasian 'background consensus' that guides environmentally neutral behavioral patterns. The other option is to accept that regulation as well as monitoring and enforcement of environmental conditions will diminish without vigilant groups with access to professionals watching over environmental agencies.

⁴⁴ For defense of a rights-based approach see Hayward, 2005.

The turn away from state-centered politics occurs alongside the rise of theories favoring 'ecological modernization', also known as sustainable development, in which economic and ecological goals are made to coincide. Market incentives, however, are not by themselves sufficient for establishing a broad normative orientation supporting environmentally neutral outcomes, although such incentives may succeed at more narrow changes. While it is not possible to launch into a detailed critique of reliance upon incentives, it is worth recalling that if behavior is motivated by incentives and disincentives then outcomes are dependent upon the continuance of those (dis)incentives.⁴⁵

The prospects for selectively engaging territorially-defined states within the context of fragmented and incoherent international environmental laws are difficult to discern since doing so requires untangling lines of influence from international environmental NGOs. Given that arguments for the presence of a global civil society cite such associations as evidence, it is important to determine what can be accomplished by movements and what by institutional politics. As Ken Conca argues, "examples of global civil society in action emanate from two very different types of domains, one in which state authority is at its strongest, the other where it is weakest."⁴⁶ He clarifies his point:

[S]tates in pluralistic societies guarantee the existence of at least semidemocratic space for civil society to operate. In the latter instance, civil society fills a void left by the retreat of weak, illegitimate, and often postcolonial states – states which were never really there to be transcended.⁴⁷

This leads Conca to caution against "assuming that we are seeing the institutionalized authority of the nonstate, when we may in fact be seeing nothing more than episodic

⁴⁵ For a more detailed critique of incentives see Dobson, 2003: 2-3.

⁴⁶ Conca, 2005: 193.

⁴⁷ Conca, 2005: 193.

instances of the temporary convergence of the requisite amounts of power and legitimacy."⁴⁸ Without subscribing to the particular terms in which Conca frames the issue, the basic point that it is unclear how an impermanent movement is to be sustained as an international force in the absence of inclusive policies protected by state-actors is valid.

The UN Framework Convention on Climate Change's fifteenth Conference of the Parties (COP15) at Copenhagen, Denmark, in December 2009, illustrates the precarious involvement of environmental activists in the negotiation of environmental treaties. The perceived importance of COP15 as effectively the final opportunity to devise a continuous plan in expectation of the Kyoto treaty expiring in 2012 led to a massive increase in registration, particularly from NGOs. As one analyst noted, the official preliminary number of registered participants was listed at 30,123, with 20,611 being individual observers from NGOs.⁴⁹ To put this into perspective, the highest previous number of registrants was at COP13 at Bali, Indonesia, in 2007 with 10,828.⁵⁰ Increased NGO registration, combined with heightened security measures in the face of approximately 60,000 to 100,000 protesters outside of the convention and a publicly announced takeover of the building by protesters, led to a noticeable decrease in NGO participation within negotiations.⁵¹ The tentative conclusion reached by Dana Fisher that "the more civil society actors try to participate – and the diversity of perspectives represented by the civil society actors involved – the less access they are likely to have," suggests the relationship between inclusion, participation and voice is not straightforward.

⁴⁸ Conca, 2005: 194.

⁴⁹ Fisher, 2010: 12.

⁵⁰ Fisher, 2010: 12.

⁵¹ Fisher, 2010: 14.

Presently, international environmental law comprises multiple jurisdictions, what one author calls a "patchwork," each covered by a set of bi- and multilateral treaties and lacking a central judicial body.⁵² The development of numerous regimes – understood to include "the principles, norms, rules, and procedures contained in one or more interrelated agreements, organizations, standard practices, and shared understandings that together regulate international action in a particular issue area" – has led to unevenness and inconsistency in the handling of environmental problems.⁵³ On one hand, this unevenness can lead to ineffective or counterproductive practices. For instance, the replacement of chloroflourocarbons (CFCs) with hydrochloroflourocarbons (HCFCs) and hydroflourocarbons (HFCs) following the London amendments to the Montreal Protocol either eliminates (e.g., HFCs) or slows (e.g., HCFCs) the accumulation of ozone damaging compounds but at the cost of increased retention of greenhouse gases. The effect, then, is that improvement under the ozone regime makes resolving climate change more difficult by entrenching reliance upon HFCs and HCFCs, which trap more CO₂ in the atmosphere than CFCs.⁵⁴

⁵² Stephens, 2009.

⁵³ Downie, 2011: 71.

⁵⁴ For the impact of HFCs see EPA, 2010a. For HCFCs see EPA, 2010b.

On the other hand, the uncoordinated operation of international environmental law also generates important opportunities best brought to fruition by functionaries of (developed) states. The two primary reasons for this situation are, first, that only states possess legal standing to instigate lawsuits and non-compliance procedures under environmental treaties, as distinct from some human rights and amnesty laws. Second, certain states possess the requisite capacities for coordinated monitoring and reporting, although the capacity to take isolated measurements is possessed by numerous private and public institutions.

That states are the only actors granted legal standing is merely a manifestation of the purchase the notion of state sovereignty maintains. The effect of exclusive standing is twofold: states not only choose whether or not to press other states on violations of treaty obligations but states also choose what forum through which to pursue action. Insofar as environmental law intersects other areas of law, states can opt to challenge violations under less (or more) environmentally-inclined organizations such as the World Trade Organization or the International Court of Justice. The implication of this available choice is, as Tim Stephens puts it, "that in practice much will hinge on international environmental *diplomacy* rather than international environmental law."⁵⁵ What may be perceived as a failure to enforce a rule against a non-compliant party need not be understood one-dimensionally as an inherent deficiency in a state-centered arrangement.

Diplomacy, despite serving as a means of leveraging military or financial advantage against others, also permits rules to be adapted to specific circumstances without the need for reopening negotiations. Furthermore, diplomacy can help build relationships out of which capacity-sharing measures can grow such as China's decision

⁵⁵ Stephens, 2009: 302, emphasis added.

to accept U.S. assistance on developing an inventory of greenhouse gas emissions.⁵⁶ In the case of employing less punitive non-compliance procedures, Stephens observes, flexibility can lead to future improvements with laws:

[T]here may be value in a precise environmental rule that is enforced somewhat flexibly. Because NCPs [non-compliance procedures] offer greater prospects of a cooperative rather than a confrontational approach to compliance problems, states may be more willing to agree to more extensive and better defined environmental obligations.⁵⁷

Not being hit with punitive sanctions for unintended violations, states lacking the capacity to accurately monitor activity within their territory can receive the help needed to make implementing domestic regulations more constructive. So long as states remain the object of environmental regimes, the need to develop capacity is necessary for effective international environmental regulation.

The exclusive access to adjudicative fora granted states is unlikely to be altered in favor of including NGOs. At present, NGOs are the only segment of the 'transnational' environmental movement with a sufficiently coherent identity to be recognized as a litigant. However, it is also unclear what status could be granted to such groups that would permit them entry into courts in any substantive way.⁵⁸ Many environmental activists and theorists have posited that international NGOs, along with domestic groups, should speak for otherwise unrepresentable entities such as 'nature' or future generations.⁵⁹ While doing so may very well lead to a more consistent enforcement of environmental laws on one level, greater access for NGOs may also be counterproductive for improving the laws themselves. Given the difficulties in ascribing liability, it is hard

⁵⁶ Eilperin, 2009b.

⁵⁷ Stephens, 2009: 88.

⁵⁸ Stephens, 2009: 264.

⁵⁹ See, for example, Luke, 2002; O'Neill, 2001; Saward, 2006; Eckersley, 1999.

to envision what sorts of changes would need to take place in ascertaining harms to future generations. At minimum, standing would have to be broadened far beyond its current incarnation. Here again, Tim Stephens, addressing the narrower issue of access via *amicus curiae*, outlines the implication: "allowing unfettered access by NGOs may make states increasingly reluctant to utilize international adjudicative mechanisms to resolve environmental disputes."⁶⁰ This goes double for a more extensive change to standing that would permit members of global civil society to initiate suits.

Instead of seeking greater access at the international level, whether in the immediate process of treaty negotiation or as unofficial enforcement agents operating through international courts, the various movements from western Europe, the United States and Oceania would be better positioned to effect more stringent laws by directing their attention to domestic legislation. This is not to say that these groups, which constitute the majority of individual political actors in international environmental politics, should cease pressure from the 'outside,' through protest and attention-garnering activities. Beyond improving international environmental laws, though, there is also good reason to think that the sorts of normative principles likely to be favored by environmentally-minded Kantian cosmopolitans – fairness of opportunity, prevention of undue harm, and equitable distribution of burdens – are more likely to flourish as general principles of international law through their being embedded in environmental treaties.

International environmental law reflects prior struggles to shape domestic environmental law in states exerting *de facto* veto power as a result of being heavy polluters. Two correlations support the strategy I recommend. The first correlation is that states with pre-existing environmental regulations do not oppose and are more likely to

⁶⁰ Stephens, 2009: 269.

support a comprehensive regime than states without domestic laws already in place.⁶¹ A prime example is the support by the United States in the years immediately preceding the Montreal Protocol. In 1984, after President Reagan sought to retract EPA oversight, the Natural Resources Defense Council brought suit against the agency to enforce nondiscretionary provisions of the Clean Air Act. This was accompanied by a shift in strategy by CFC-producing companies who foresaw stricter legislation.⁶² With the passage of domestic regulation the U.S. began advocating stricter international controls on CFC production, going so far as to threaten restricting imports on CFC containing products.⁶³ A similar change of negotiating position followed the European Union's adoption in 2005 of an emissions trading scheme in line with Article 17 of the Kyoto Protocol. Prior to the 1997 Conference of the Parties in Kyoto, the European Union had sought to prevent including such a provision but by COP15 in Copenhagen it sought an expanded use of emissions trading credits. The second correlation is the role played by an active, well-organized domestic environmental movement in pressuring states to avoid actively working against strict international environmental laws. Although the relationship is not determinate, strength of domestic environmental movement correlates in most cases with the position a state takes in negotiations.⁶⁴

This is not to discount the impact that NGOs are capable of having on negotiations, only to acknowledge that it remains unclear whether devoted efforts at greater inclusion in international processes is the panacea it is presumed to be by

⁶¹ For an overview of the issue see Chasek, Downie, and Brown, 2010: 55-59. For more regime-specific arguments see Wettstad, , 2002, and Breitmeier, Young, and Zürn, 2006.

⁶² DeSombre, 2000: 93.

⁶³ DeSombre, 2000: 94. On the U.S. leadership during negotiation rounds see Parson, 2003: 122-128.

⁶⁴ For an overview see Chasek, Downie, and Brown, 2010: 55-59. For regime-specific results see Betsill and Correll, 2008.

cosmopolitan political theorists.⁶⁵ Furthermore, there are numerous intervening factors, especially the ability of coordinated economic interests to frame issues and influence policymakers in ways contrary to what members of the environmental movement might prefer. Sufficient treatment of these factors, however, leads beyond the scope of this chapter.

D. Legitimacy without the State

Challenging directly the state-oriented political strategy I recommend, John Dryzek and associates have drawn on comparisons of the interaction between environmental movements and domestic politics in the U.S., U.K. Germany and Norway. According to Dryzek, et al, implementing a state-oriented political strategy, as opposed to a communicatively inclusive strategy that favors civil society initiatives for participatory democracy, is faulty under prevailing conditions. It is important to address this challenge not only because it opposes the line of argument I have offered but because it illustrates the problem with attempting to frame analysis in terms of legitimacy: argumentation is viewed as a sufficient proxy for political struggle even while popular support remains immeasurable and unverifiable. In Dryzek's case, this results in placing far more faith in an 'outsider' strategy – political actors seeking to change policy without becoming members of formal representative or regulatory institutions – than is warranted because the concept of legitimacy leads in the case of the United States to truncated and misleading historical analysis.

⁶⁵ For a balanced assessment of NGO and movement potential see McCormick, 1995.

Dryzek, et al, portray environmental movements within the United States as confronted with the options of an outsider, anti-state politics or a 'passive inclusion' built into pluralism that risks co-optation. The narrative on offer sets the environmental legislation of the early 1970s as the high watermark for inclusion that is effective but which becomes co-opted. The starting point for Dryzek's analysis is the ascription, following Jürgen Habermas and Claus Offe, of 'legitimation' and 'economic' imperatives to the state, that "set of individuals and organizations legally authorized to make binding decisions for a society within a particular territory."⁶⁶ Diagnosing the United States as "a leader in the late 1960s and 1970s that has turned into a laggard," Dryzek, et al, see the formation and subsequent professionalization of the 'modern' environmental movement in the late 1960s as central to this decline.⁶⁷ The problem as they define it is that, given modern environmentalism "directly challenged the core economic imperative of all states," it was able to successfully influence a "massive burst of environmental policy innovation" so that this "comprehensive embrace of (moderate) environmentalism on the part of the federal government suggested that environmentalists were, at least for a while, welcomed into the core of the state."⁶⁸ Thus, the question becomes: "How could this happen, in the face of the evident conflict between early 1970s environmentalism's defining interest and the economic imperative of the state?"⁶⁹

⁶⁶ Dryzek, et al., 2003: 12.

⁶⁷ Dryzek, et al., 2003: 17. I make a similar point with regard to the correlation between strength of environmental movements and impact on the negotiating position of developed states, although I see this as continuing into the present.

⁶⁸ Dryzek, et al., 2003: 58-59.

⁶⁹ Dryzek, et al., 2003: 59.

The answer, according to Dryzek and his co-authors, is that "environmentalism could be linked to the state's legitimation imperative."⁷⁰ Viewing the heightened political activity of the 1960s as a legitimation crisis leads these authors to interpret President Richard Nixon's willingness to refrain from vetoing new environmental legislation, in effect receiving legitimacy from environmental groups, as a necessary ignoring of the state's imperative to ideologically protect capital accumulation. Dryzek describes this process of co-optation:

To contain this destabilization, the Nixon administration sought to 'make peace' with the environmental movement, which appeared to be the least radical and threatening aspect of the counter-culture. Nixon and his associates had no personal commitments to environmental values.

By embracing this one movement the Nixon administration, enthusiastically supported by Congress, sought to regain legitimacy for the political economy without acceding to any more radical counter-cultural demands. [...] It is not that the imperatives of the state and those of the environmental movement were identical, but that the threat to legitimation from one direction – especially the anti-war and New Left movements – could be defused by inclusion from a different direction – environmentalism.⁷¹

⁷⁰ Dryzek, et al., 2003: 59.

⁷¹ Dryzek, et al., 2003: 59.

Inclusion, on this account, resulted in an initial spate of legislative activity but at the cost of dividing 'mainstream' and 'radical' environmental groups along a line of inside or outside, pro- or anti-state. Amongst those groups embracing inclusion, "we see professionalization and hierarchy growing with time" as "large Washington-based organizations increasingly sought to secure deals and 'carry' their largely passive membership."⁷² In terms of democratic legitimacy, Dryzek, et al, charge, centralization came without member input as "[a]t the top of the movement, impassioned amateurs fuelled by moral outrage were replaced by professional directors and presidents: thinking like a manager replaced thinking like a mountain."⁷³

The interpretation of events offered by Dryzek, et al, describes the 'laggard' period of U.S. environmentalism as a reassertion of the state's economic imperative, particularly under President Ronald Reagan, limiting the influence of the environmental movement to peripheral measures aimed at preventing gross violations. In their broad coverage Dryzek and co-authors acknowledge that successes have been achieved by 'included' groups but that these are difficult to distinguish from the day-to-day operation of interest group politics.⁷⁴ The strategy advocated by John Dryzek and Christian Hunold writing on the same subject is that:

In the United States conventional interest group action within the state made perfect sense in the early 1970s. After that, the rewards of such action became meager. However, this did not lead the major groups to change their strategy; either they did not realize what had happened or they could not resist the incentives of passive inclusion. For such an insider strategy to make sense once again, ecological modernization must get on the U.S. policy agenda. But ecological modernization has made no headway in U.S. policy discourse, still dominated by conflicts between economy and environment.⁷⁵

⁷² Dryzek, et al., 2003: 95.

⁷³ Dryzek, et al., 2003: 95.

⁷⁴ Dryzek, et al., 2003: 150-151.

⁷⁵ Hunold and Dryzek, 2005: 90.

This rejection of state-oriented political strategy except when aligned with the state's legitimation imperative – a point expanded into the claim that "an effective state-related politics of environmental risk require[s] a vital green public sphere" – rests on a troubling analytic framework.⁷⁶

The approach taken by Dryzek, et al, involves two points of emphasis that result from placing legitimacy at the center of their analysis: first, a truncated historical narrative and, second, an overstatement of the environmental movement's shortcomings following its professional institutionalization in the 1970s and 1980s. It comes as a bit of a surprise that given Dryzek, et al, acknowledge the legislative precursors to the early-1970s environmental policy boom, the admittedly halting development of environmental regulatory law is treated as unrelated. They defend this decision on spurious grounds, arguing:

A focus on environmentalism makes our study tractable because the movement has a well-defined beginning in the 1960s. Thus we have history as grist for our study, but not too much history. While organizations that we can in retrospect style 'environmentalist' existed long before that, there was no consciousness of 'the environment' as such, nor any sense of a movement that united the concerns that came to be grouped under the environmental heading. And in sheer numbers and political influence, these pre-1960s developments look tiny compared to their successors.⁷⁷

⁷⁶ Dryzek, et al., 2003: 194.

⁷⁷ Dryzek et al., 2003: 11.

Speaking only to the U.S. context, the claim that because groups concerned with conservation and preservation such as the Sierra Club, National Audubon Society, Izaak Walton League, and Wilderness Society did not speak in terms of 'the environment' is to miss the essential point: because groups formed in an earlier era of political dispute had since pursued different missions, sometimes to the point of dividing members, they were crucial to the existence of a 'modern' environmental movement.

There are clear surface-level connections that are ignored in Dryzek's legitimation narrative such as the formation of Friends of the Earth by David Brower being the immediate result of Brower's resignation as executive director of Sierra Club in 1969.⁷⁸ A similar relationship can be seen in the support provided to the fledgling Environmental Defense Fund, which had a tactical alliance with the National Audubon Society (NAS) in seeking to ban DDT in 1966, as NAS and the Conservation Foundation provided financial backing for the group's activities until "they were able to obtain a Ford Foundation grant to establish the organization's own tax-exempt status."⁷⁹ The immediate support provided by well-established environmental organizations should not distract from the more important point that many of them began during previous periods of struggle. Neglected is the period of heightened activity at the beginning of the twentieth century, with John Muir leading the foundation of the Sierra Club in 1892, Gifford Pinchot working out of the U.S. Forest Service and creating the soon-to-be-named National Conservation Association in 1908, or again in the era of the New Deal which witnessed the convening of the Wilderness Society and the National Wildlife Federation.

⁷⁸ Bosso, 2005: 42.

⁷⁹ Bosso, 2005: 42.

At the tactical level, the nascent environmental movement honed its tactics while simultaneously seeking a more ambitious regulatory agenda. In particular, the implementation of massive infrastructure projects served as targets for experimenting with different approaches. The positions staked out in the battle over the damming of the Hetch Hetchy valley under President Theodore Roosevelt were in play again as President Franklin Roosevelt sought the construction of Echo Park Dam. The campaign to prevent the building of Echo Park Dam involved learning to employ communications media in new ways. As one historian puts it:

[A]s a precursor and training ground for the modern environmental movement it was a key turning point in American environmental politics, both symbolically and practically. The Echo Park controversy marked the postwar rebirth of the ecological preservation groups as an effective political force, and taught them new tactics for using the mass media to mobilize broad-based political opposition. From this experience they began to generate organizational momentum for more far-reaching campaigns [...]. They also shifted their tactics away from ad hoc publicity campaigns on behalf of particular places into more organized and ongoing political lobbying in state capitols and Washington, which no conservation group had previously done.⁸⁰

The utilization of symbolic acts to attract media attention, rallying public support as a means of pressuring government, and direct lobbying of legislators and agency officials found expression in the Echo Park campaign. The simultaneous pressure of both 'insiders' and 'outsiders' would be both effective and difficult to duplicate on a predictable basis.

Along with learning to engage media outlets, the legislative victories of the 1930s and 1940s served as major breakthroughs that subsequent legislation of the 1960s and 1970s would build upon as direct precedent. On three fronts – air, water, and policy integration – the legislation of the 'golden era' turned to previously established executive authority. Although these had not previously been housed under a single agency as with

⁸⁰ Andrews, 2006: 191.

EPA, even this idea had been pushed by Secretary of the Interior Harold Ickes and supported by the President's Committee on Administrative Management of 1936.⁸¹ In the case of the 1969 passage by Congress of the National Environmental Policy Act, proposing environmental impact assessments for governmental agencies while opening up new participatory avenues for environmental groups, a strong predecessor existed for interagency assessments in the water-specific Fish and Wildlife Coordination Act passed in 1934 and amended in 1946 and 1958.⁸² Waterways had been regulated to prevent public health issues since the revision of Public Health Service standards in 1925 but federal-level influence would be expanded in 1948 with the passage of the Water Pollution Control Act.⁸³ The passage of the Clean Air Act in 1970, likewise, built upon steadily expanded federal government regulation of previously state and local problems. Although a great deal of the heavy lifting was accomplished by the cost-sharing structure of federal grants provided for under the Clean Air Act of 1963, the 1970 version promised for the first time to combine vehicle and stationary emissions sites under the rubric of a national ambient air quality standard.

This is not intended to downplay the significance of the environmental movement of the 1960s and 1970s, but to illustrate that these were moments of crystallizing political struggle as much as catalyzing them. The fluid development of the early environmental movement, tied as it was to in-house conflicts between government officials and patronage, has led one historian to describe the shift 'from conservation to environment' as a disjointed process tied to changing patterns of consumption following World War II,

⁸¹ Andrews, 2006: 175.

⁸² Andrews, 2006: 173-4.

⁸³ Andrews, 2006: 204-5.

which is "a convenient dividing line between the old and new values."⁸⁴ In another case, however, a more serious challenge to the narrative offered by Dryzek and co-authors is made. Speaking of the rapid passage of air quality legislation in 1970, Richard Andrews writes:

Such a sudden and unprecedented expansion of federal regulatory authority deserves close attention. It would be tempting to attribute it to the rising influence of environmental advocacy groups, or of mass public concern for the environment, but in fact all these statutes except the 1970 Clean Air Act were enacted *before* those forces had coalesced at the national level.

A more persuasive explanation, therefore, is that as a few leading states and cities began to toughen their air pollution control regulations – though only a few, such as California, Pennsylvania, New York City, and Los Angeles – key industries themselves acquired a powerful new interest in obtaining moderate and uniform federal standards that would preempt more stringent and inconsistent state and local standards.⁸⁵

The notion that companies operating in a large national market would prefer to be subject to a unified set of rules, particularly since this streamlined lobbying efforts as regional and national actors could consolidate under industry-wide umbrella organizations, highlights the difficulty of framing the issue in terms of 'legitimation' and 'economic' imperatives. Is this simply an instance of an 'economic' imperative aligning with environmental interests in a more uniform but expansive policy or should the passage of this legislation be viewed as a state trading momentary legitimacy for some groups to preserve the legitimacy of capitalism over the long-term? The answers are problematic precisely because the terms in which the question can be asked are deficient.

The narrative offered by Dryzek, et al, remains problematic on an even more important level: the notion that gains in legitimacy resulted from broad popular participation or 'thinking like a mountain.' This is to let the symbolic importance of Earth

⁸⁴ Hays, 1987: 3.

⁸⁵ Andrews, 2006: 209.

Day in 1970 replace the subtler changes in attitudes that took place during earlier struggles. A number of factors shaped not only the motivations but the reception of the modern environmental movement, making it fundamentally inseparable from a broader context. Not least of these factors was the involvement from 1933 to 1941 of approximately 2.5 million males aged eighteen to twenty-five in the Civilian Conservation Corps. Although it is impossible to know with any certainty, I concur with Andrews's judgment that this contributed to the increase in outdoor recreation of the 1950s, helping to shape future proponents of environmental protection as well as the perceptions of many parents in the 1960s.⁸⁶

Furthermore, the notion that the environmental movement was allowed access to 'the core' of the state in order to quell a legitimation crisis, translating a political calculation on the part of President Nixon into a structural function of the state, is insufficiently attuned to historical detail in its treatment of legitimacy. Although Earth Day witnessed large-scale participation, this should not be mistaken for democratic participation in leading 'grassroots' environmental groups. Upholding the characterization of grassroots movements offered by Robert Gottlieb as "predominantly local in nature, more participatory and focused on action," Dryzek and co-authors view environmental civil society today as a new source of 'legitimacy' based upon the inclusive and participatory nature of grassroots environmental organizations.⁸⁷ It is worth noting, however, that at the time that 'mainstream' and 'radical' environmental groups divided over strategic disputes, it was an older, membership-based organization that allowed participation while the more radical group pursued the visions of a small band of leaders.

⁸⁶ Andrews, 2006: 164.

⁸⁷ Gottlieb, 1993: 170.

As Christopher Bosso points out, the departure of David Brower from the Sierra Club was emblematic of a willingness on the part of some more radical leaders inspired by a wholesale critique derived from the New Left, to view members as too conservative.

Bosso describes the situation thusly:

Brower came to regard the Sierra Club's traditional governance structure – in particular, the power of its members to elect the board – as too unwieldy and an obstacle to the rapid responses needed to carry out the battle on multiple fronts. In his view, the membership was a source of revenue and a base to mobilize for political battle, but an organization's leaders should be free to set the agenda and choose the tactics. Members could always 'vote with their feet' if they were unhappy. [...] None of the environmental advocacy organizations created during or after the wave of the late 1960s and early 1970s made any pretense of giving dues-paying members, assuming they had any, a voice in agendas, tactics, or governance.⁸⁸

According to Bosso, the reason for this different receptiveness was that the older conservation organizations "were also the only environmental organizations built on a base of local chapters or affiliates."⁸⁹ Thus, the notion of legitimacy elides too many important distinctions, its analysis too blunt, to capture the politically relevant dimensions of environmental politics.

At stake, then, is the visibility of past successes from which groups may learn and in which individuals may seek inspiration for future involvement. In the years leading up to the publication of their work, Dryzek and his co-authors were able to observe what appeared to be the blossoming of a global environmental movement as large-scale protests against institutions such as the World Trade Organization occurred repeatedly from 1999 through spring 2003. This new movement linked a call for sustainability with a strong critique of global capitalism and its purported capture of international institutions. However, much as in the years following the heightened expressions of political agitation

⁸⁸ Bosso, 2005: 52.

⁸⁹ Bosso, 2005: 52.

in the 1960s, flourishes of protest occurred but have not been sustained, even by the institutionalization of global fora such as the World Social Forum. The logic of the analysis provided by Dryzek, et al, leads to a lopsided portrayal of political potentiality as such activities wane. Retreating into a search for conditions of legitimacy, however, is to neglect the role of vindication in a political world in which power still operates; that is, in a political world in which inaction remains a form of action. It is in the unevenness of political structures, institutions, and change that opportunities reside to be vindicated, even where such opportunities are mundane and unheroic.

E. Political Opportunity in an Uneven World

As I have articulated above, international environmental politics is uneven and asymmetrical, with some institutions and associations serving as sources of democratic opportunity (e.g., the Aarhus Convention) at the same time that others exercise a futile regulatory agenda (e.g., the Kyoto Protocol). Thus, although I do not anchor a vision of an environmentally benign international politics to deliberative or participatory democracy, I also do not preclude their expansion where warranted. By jettisoning legitimacy as the standard of measurement, I have highlighted striations invisible from within the purview of deontological politics.

Despite a subtle shift of argument away from an assumed, inherent value of democratic politics, I follow Robyn Eckersley in what she terms an "inside-out-inside" approach.⁹⁰ Thus, environmental political strategy should incorporate state-oriented politics in order to foster "multilateral agreements between states that create overlapping supplementary structures of rule that actively utilize existing territorial governance

⁹⁰ Eckersley, 2004: 191.

structures."⁹¹ Eckersley, likewise, grounds a practical vision in a similar assessment of unevenness. Describing her strategy as "unit-driven transformation," it is "developmental (rather than just ad hoc and incremental) in that it conscientiously seeks to extend promising domestic and multilateral trends in environmental governance" that "proceeds by means of patchwork rather than comprehensive change."⁹²

Allowing for the possibility that change is not a homogeneous process, Eckersley concludes that "it is quite possible and feasible to transnationalize democracy in piecemeal, experimental, consensual, and domain-relative ways" capable of upholding "the practical negotiation of principles in tension in response to particular transnational problems, rather than a priori."⁹³ Eckersley likewise acknowledges that the fragmented character of international environmental law is a source of normative innovation, establishing differentiated responsibility, the polluter-pays principle, the precautionary principle and even sustainable development.⁹⁴ Going so far as to recognize that environmental politics must accommodate non-democratic elements, seeking change instead through persuasive example, she concludes:

To the extent to which a Hobbesian anarchy is transcended by the demonstration effect, the resulting international order would be variegated, made up of what might be clusters of transnational green states operating within a larger, less green and more traditional set of interstate relationships. This means that only where zones of affinity emerge among particular groupings of states – such as in the European Union – that a genuine transnational democracy becomes possible. However, it would not be global. [...] Whether green states eventually proliferate to the point where they create a 'critical mass' and change the character and practices of the society of states must remain an open question.⁹⁵

⁹¹ Eckersley, 2004: 193.

⁹² Eckersley, 2004: 199.

⁹³ Eckersley, 2004: 192.

⁹⁴ For an overview of principles of justice see Louka, 2006: 49-54. For more detailed discussion see the collection by Ebbesson and Okowa, 2009.

⁹⁵ Eckersley, 2004: 201-2.

The implication, seen clearly when magnified through the lens of international politics, is that the *a priori* privileging of democratic politics demands a more narrowly defined procedural scope in order to translate input evenly. The relative homogeneity called for by cosmopolitan political theory helps explain the disavowal of state functions by Beck, Habermas, and Dryzek. The willingness on the part of strong advocates of cosmopolitan or global democratic theories to tradeoff gains in participation based upon an ambiguous measure of legitimacy while accepting that environmental concerns may have only a marginal hope of democratic success even as they point to crises is problematic. It suggests an inability to locate 'imperfect' opportunities in a world operating under the 'logic of consequences' (see Chapter 1) where inaction becomes active reinforcement of a *status quo*.

The crucial difference between Eckersley and I lies in our depth of commitment to democratic politics. Insofar as Eckersley treats "more effective and more legitimate ways of addressing the shortcomings of exclusive territorial governance" with parity, we diverge.⁹⁶ On my account, the unwillingness of environmentally concerned advocates of cosmopolitan and global democratic politics to accept the coexistence of non-democratic and democratic procedures and institutions at the international level parallels the unwillingness of deliberative democrats to recognize the importance of expertise grounded in experienced and informed judgment as formatively asymmetrical at the national (and sub-national) levels. It is not coincidental that both take their bearings from a Kantian political framework. Differences or inequalities in status, capability, and power between political actors are relevant features that must be accounted for during analysis. Even where inequalities are normatively problematic, inclusiveness is insufficiently inculcated, or recognition not forthcoming, these issues should not monopolize the critical landscape.

At the international level, the proliferation of highly circumscribed institutions I proposed in Chapter 4 as potential bulwarks against abuse by experts are more readily available. At the same time, these arrangements have proven capable of accommodating differences between states, from populous authoritarian structures to small, culturally homogeneous democracies. Likewise, despite the fact that the United States has actively worked against employing the precautionary principle in environmental treaties, it has appeared with greater frequency and consensus since being formulated at the UN Conference on the Environment and Development at Rio de Janeiro in 1992. Similar to the role played by the precautionary principle as a decision-guiding rule for national

⁹⁶ Eckersley, 2004: 193.

policymaking, the inclusion of this principle in multilateral agreements lessens the need to exhaust political energies by defending all possible counterfactuals as plausible without foreclosing the disputation of harm.

F. Mundane Institutions and Episodic Citizenship as Ecologically Irreconcilable

Transboundary and transgenerational environmental problems raise difficult questions for political theory, particularly insofar as the terms available for understanding new phenomena and invisible relationships are derived from previous debates. The debate over membership or affectedness – whether a citizen's political attachments are based upon the community into which they were born or upon the community generated by being similarly harmed – repeats this dilemma. As political attachments overlap two notions of citizenship reflect the priority granted to differing aspects of a single problem. Construing the tension between different types of relationship as contradictory, each side in the debate asserts its analysis with greater sophistication. Thus, Andrew Dobson offers a nuanced attempt at a materialist account of transboundary obligations, taking into account what I have called the unevenness of international environmental politics. Even this version of deontology, however, forces its subject into terms capable of addressing individual responsibility for concrete harms but neglects collective responsibility.

Over the past decade Andrew Dobson has analyzed the status of and potential for citizenship in a contemporary world characterized by increased global economic activity as well as environmental harms. His approach begins from the ‘embeddedness’ of humans and how this is shaped by processes of globalization. Figuring humans as “organisms whose production and reproduction depend on adequate provision of

environmental goods and services,” Dobson goes on to state that, “this metabolic relationship with our non-human natural environment constitutes the ineluctable frame within which our political projects are carried out.”⁹⁷ The metaphor of metabolism here expresses a relationship of necessity between biological conditions and material capable of adequately fulfilling these conditions that manifests itself in creative acts of supplying for needs and wants over time.

In his move from the idea of ecological politics to an account of citizenship, Dobson offers a diagnosis of globalization that corresponds to his emphasis on production and reproduction. Working through critique as much as through positive analysis, he rejects conceptualizing globalization in terms of interdependence and interconnectedness. In the case of interdependence, Dobson claims that this concept does not acceptably capture *inequality* as a central feature of global political relationships.⁹⁸ Stating that “the capacity to act globally is unequally distributed,” Dobson offers the example of the Kyoto protocol and the United States’ withdrawal from the agreement to demonstrate the different degrees of dependence that exist and the way in which acts can have unilateral effects.⁹⁹ In Dobson’s hands the version of globalization as interconnectedness fares no better since he claims that this view understates the *asymmetrical* developments of globalization.¹⁰⁰

Based on these criticisms, Dobson recommends placing power at the center of analysis. Recognizing the disproportionate relationship between those responsible for environmental harm and those most vulnerable to and likely to be effected by

⁹⁷ Dobson, 2006: 176.

⁹⁸ Dobson, 2003: 10.

⁹⁹ Dobson, 2005: 264.

¹⁰⁰ Dobson, 2003: 12.

environmental devastation leads Dobson to view globalization as ‘constitutively asymmetrical.’¹⁰¹ This emphasis on power lends itself to an interpretation of the environment as playing “the role of a *weapon* of globalisation in the hands of the powerful and in which globalisation is seen as a project where specific local languages are turned into global grammars.”¹⁰² Furthermore, emphasizing the role of power as the basis for the constitutive asymmetry of globalization provides Dobson with a strong position from which to argue that globalization changes both “the source and nature of obligation.”¹⁰³ Specifically, Dobson posits that an “asymmetrically globalizing world” implies the non-reciprocal nature of obligation in such a world.¹⁰⁴

Unevenness, then, results from the interface of political processes and the disturbance of seemingly stable environmental patterns. However, an impossible distinction must be introduced between two different aspects to a relationship of harm: that for which an individual is responsible that has no significant impact when isolated and the cumulative negative effect of that same action when taken aggregated with similar acts by other individuals.

According to Dobson, the political obligation attributed to citizens derives from responsibility for harm, where harm is understood to occur through materially binding relationships of production. Given this source of obligation, Dobson views the nature of obligation as one of justice such that one is obligated to provide redress for harms committed. The issue of scope, then, is defined in dynamic terms as extending to the community of citizens generated by a particular set of harms caused.

¹⁰¹ Dobson, 2003: 20-1.

¹⁰² Dobson, 2005: 259, emphasis in original.

¹⁰³ Dobson, 2003: 31.

¹⁰⁴ Dobson, 2003: 24.

The liberal environmental citizenship that Dobson rejects focuses on claiming entitlements in the form of rights.¹⁰⁵ This is closely tied to the territorially bounded political configurations necessary for the adjudication and enforcement of rights, with politics being conducted exclusively in the public sphere where virtue is exhibited as reasonableness, acceptance of procedural legitimacy and a commitment to the force of the better argument. When looked at through Dobson's analysis of globalization this conception appears problematic. Specifically, the claiming of rights is not able to rectify harms done when confined to a territorially bounded polity given the relatively common problem of environmental harms crossing boundaries.

The non-territoriality that Dobson insists on is a rejection of equating citizenship with membership in a "bounded community."¹⁰⁶ His reasoning is that when citizenship becomes a matter of defining membership in terms of requisite qualifications it is transformed from a mode of political action into a good to be distributed.¹⁰⁷ By focusing on 'specific communities of historical obligation' that generate "obligation spaces," Dobson's ecological citizenship purportedly allows for a multiplicity of political memberships.¹⁰⁸ The relationships between citizens' multiple memberships in communities of obligation constitute, for Dobson, a global civil society, with lines of obligation and communication crossing territorially defined boundaries.¹⁰⁹

Insofar as Dobson embraces a multiplicity of citizenships that one can become involved in to show that ecological citizenship is not dependent on a territorially bounded polity, the issue is whether these multiple citizenships dissolves when a given harm has

¹⁰⁵ Dobson, 2003: 89.

¹⁰⁶ Dobson, 2003: 69-70; 73.

¹⁰⁷ Dobson, 2003: 68.

¹⁰⁸ Dobson, 2003: 74.

¹⁰⁹ Dobson, 2003: 74.

been rectified. However, as Harlan Wilson states in his review of *Citizenship and the Environment*:

Constructing the meanings of citizenship in terms of unequal power also has the effect of divorcing citizenship from the public political experiences of members in actual communities. Dobson's citizens do not seem to be members of any political association; or, rather, their membership is incidental to their citizenship. Hence, an account of public collective responsibility is lacking; obligations apparently accrue to individuals only.¹¹⁰

Considering Dobson's claim that responsibility is a motivational force that helps to generate and perpetuate a global civil society beyond the state, it appears that he speaks only of individual responsibility. Wilson's comment, however, does not exhaust the matter. While the conceptual description of ecological citizenship appears to refer only to individual responsibility, when Dobson attempts to explain how this citizenship operates he is unable to do so in terms of individuals. Instead, Dobson relies upon aggregated units when describing specific obligations. Take for example his description of global climate change:

"If global warming is principally caused by *wealthy countries*, and if global warming is at least a part cause of strange weather, then monies should be transferred as a matter of compensatory justice rather than as aid or charity./ What prompts the idea of obligation in this instance is the recognition that our actions affects the life chances of distant strangers."¹¹¹

The reliance on aggregated units, in this case 'countries,' is, in part, a result of the sheer quantity of relationships and the magnitude of permutations that must be traced to account for individual harm within these relationships.

What Dobson fails to see is that membership is mundane, surrounded by the arena of electoral politics with its campaigns, parties, administrative decisions, and legal proceedings. The reason citizenship appears coextensive with the community in which

¹¹⁰ Wilson, 2006: 280.

¹¹¹ Dobson, 2004: 6, emphasis added.

citizens are embedded is as a result of institutionalized conventions that, to some extent, predate and extend beyond consent but within which this mundane political activity is undertaken as if consent had occurred. Focusing on relationships of harm, or affect, highlights a more episodic form of politics that exists both within and without this more mundane landscape. That is to say, an episodic politics of harm that dies out as motivation is lost or victories are won is nested within and often channeled through more durable political institutions. Seeking to deduce politics from obligation, even sophisticated deontologies such as that offered by Dobson must assign responsibilities that occur in both registers. Attempting to proceed on the basis of this nigh impossible distinction leads to postponing all questions in order to get the obligations right. However, by seeking the implementation of the precautionary principle as a legal foundation for environmental decision-making at the national and international level, it is possible to proceed cautiously, recognizing the necessity of making judgments in the face of uncertainty without needing to first unravel threads of responsibility.

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