ruled by what Habermas has called "the force of the better argument," ensured by approximation of deliberative practice to the "ideal speech situation." We cannot simply postulate that citizens in a democratic polity possess the cognitive capacity for reasoned argumentation.

Therefore, altogether preserving the trust in the legitimation potential of mutual argumentation, we need to provide an account of the critical power of the dynamics of judgment in the course of argumentation instead of hypothesizing the heuristic potential of communication under ideal conditions or seeking the help of demanding, politically and socially unrealistic devices and constraints. In other words, if we ascribe to discursive solutions to normative validity, we need to account for the unconstrained process of mutual argumentation as a source of critical judgment. This would amount to a critical theory of the social hermeneutics of judgment, free of ideal normative theory. I elaborate such a theory in the coming chapters. I commence by addressing the ways in which three perspectives in political theorizing have tried to resolve the judgment paradox by overcoming the standard normative model—critical theory of Frankfurt School origin; philosophical liberalism, as reformed by John Rawls's introduction of the communicative turn in normative philosophy; and Hanna Arendt's unfinished work on political judgment.

CHAPTER 2

Critical Theory

Political Judgment as *Ideologiekritik*

CRITICAL SOCIAL THEORY, AS PIONEERED AT THE Frankfurt Institute for Social Research,[1] offers a particularly opportune point of departure for an inquiry into a politically realistic normative account of justice and judgment. It is well equipped to respond to the conundrum Aristotle formulated: the centrality, in politics, of judgments over the justice of social norms and the impossibility of a general theory of justice. Let us recall that, according to Aristotle, the difficulty comes from the very nature of political judgment—the fact that it is concerned with the particulars of our collective existence.[2] Critical Theory's manner of resolving this conundrum is to conduct analysis from a point of view endogenous to social practices, that is, in the form of "immanent critique," as opposed to "transcendent critique"—one performed from an imaginary point of reference outside of its object of analysis.[3] Within such a perspective, a model of political judgment emerges in the form of a critique of ideology (*Ideologiekritik*)—that is, a critique of particular modes of consciousness in specific historical contexts of social injustice. Due to this, Critical Theory offers a propitious starting point for the articulation of the components of a theory of critical political judgment—one that is both politically realistic and normatively rigorous.

Furthermore, the very evolution of this school of thought—from the pragmatism and historicism of the first generation of Frankfurt School authors to the communicative turn Jürgen Habermas and Karl-Otto Apel[4] effected (starting in the 1960s)—is symptomatic of some of the core problems a critical theory of judgment needs to resolve.

In the first part of this chapter I review the key conceptual components of Critical Theory and lay out the grounds for elaborating a theory of critical political judgment. The second part of the chapter focuses on the logic of the conceptual innovation instigated by the communicative turn in Critical Theory. I review this evolution in the light of efforts to solve what I have earlier called the "judgment paradox"—the tension between political relevance and moral justice in theories of judgment, tension that is damaging to social criticism. In order to solve the judgment paradox, Critical Theory, through Habermas, overcomes the standard normative model (as outlined in chapter 1) by adding the hermeneutic dimension of communicative interaction among citizens. I conclude by examining the implications of this for a theory of political judgment.

Before I proceed to articulate the key components of Critical Theory that I believe a model of political judgment needs to retain, let me explain the particular discontent that motivates my attempt to reconceptualize a Critical Theory perspective on judgment.

Why Communicative Therapy Would Not Do

In the wake of the terrorist attacks on September 11, 2001, in the United States, Habermas defined terrorism as a "communicative pathology," that is, as systematic distortions of communication leading to cross-cultural violence.[5] Defining terrorism as a communicative pathology, I suspect, is indicative of the way the communicative turn has corroded Critical Theory's ability to address the structural sources of contemporary conflicts. Such a view of the nature of terrorism is indeed well in line with the theory of discourse ethics, as developed by Habermas. According to it, a just cause can be established in deliberation, that is, through a perfectly free, fully informed, and thoroughly considered judgment in the processes of unlimited discussion. This might well be the case, and rebuilding a fundamental link of trust among people, as Habermas suggests, might go a long way toward countering

terrorism—any "communicative pathology" surely necessitates some "communicative therapy." However, it is the very perspective and direction of analysis that I find disturbing.

Presenting terrorism as a matter of pathology of communication lays bare the insensitivity of communication-based critique of power toward deep, structural causes of injustice, causes related to structures of social relations that generate both injustice and its justification. By affecting the communicative turn as it did, Critical Theory, I argue in this chapter, has moved too far in the direction of moral philosophy and psychology and has disconnected itself from its original engagement with the political economy of modern societies and with structurally affected forms of consciousness (i.e., ideologies)—concerns that the early Frankfurt School inherited from Karl Marx and Georg Lukács. We might see this continual shift of interest away from political economy in the direction of culture, psychology, and morality as part of what Nancy Fraser has diagnosed as "the postsocialist condition"—a condition marked by the "decoupling of cultural politics from social politics, and the relative eclipse of the latter by the former."[6]

I believe that Critical Theory should and could regain its engagement with sociostructural sources of social injustice, providing that it performs the communicative turn differently. The central aim of this book is to offer such an alternative recasting of the communicative turn. I begin by addressing some of the key components of Critical Theory which are to be accommodated within a deliberative model of judgment.

The Frankfurt School: Six Components of Critical Theory

When I refer to critical social theory (as a school of thought initiated by Horkheimer in the 1930s), I do not imply that the works of authors commonly associated with it amount, collectively, to a unified theory of society. However, I draw on a certain style of analysis, associated with Critical Theory, in order to deliberately appropriate its essential components for the construction of a theory of critical political judgment.

By way of acknowledging the normative significance of the hermeneutic level of shared meanings, in the previous chapter I observed a variety of perspectives in political philosophy in the second half of the twentieth century that managed to articulate an internal connection between general norms of

justice and particular political rules in need of justification. Due to this hermeneutic turn, the standard normative model, I argued, has been transformed into a discursive normative model.

Critical Theory, since its inception, has worked with a normative model of the social order that already contains the hermeneutic level of culturally constituted, shared meanings in the form of *modes of consciousness*: systems of beliefs and attitudes (collective rationalizations) accepted unreflectively by the agents who hold them.[7] In the work of the Frankfurt School, a theory of political judgment emerges in the form of a critique of ideology (Ideologiekritik)—a theorizing of the relations between forms of consciousness and the social structures that ground them.

Without a claim at systematic reconstruction of this philosophical tradition, I will selectively highlight only those elements that I deem essential for developing a critical theory of political judgment. My focus is twofold. First, drawing mostly on the work of the first generation of Frankfurt School authors, I articulate elements constitutive of the style of analysis in which political judgment can be conceptualized from a Critical Theory perspective beyond a critique of ideology. Second, I address some of the reasons inviting the transcendental/communicative turn initiated by Habermas in the 1970s, as well as the implications of this turn for conceptualizing judgment.

In his programmatic statement on the difference between critical and traditional theory Max Horkheimer advanced the idea that radical critique of society is inseparable from a criticism of its dominant forms of consciousness in their relation to the structure of social relations (i.e., the social structures enabling the reproduction of capitalism) and the particular types of institutions and norms these relations engender.[8] This position contains several components essential to a model of critical political judgment. These components concern the political ontology, normative standards, and the method of inquiry.

Ontological Starting Point: The Experience of Injustice

The point of departure of critical social analysis is the experience of pain and repression, of socially produced harm experienced as injustice. This tenet, most explicitly developed by Adorno, is a strong common denominator in the writing of the first generation of Frankfurt School authors.[9] As Adorno remarks, even though "we do not know what the correct thing would be, we know exactly, to be sure, what the false thing is"[10]—that is, without being

certain of what is right, we still know that something is wrong; that "there is something missing." We therefore do not need a universal concept of justice to be moved by a sense of existing injustice and to strive for the attainable possibility of a more just society. According to this requirement, which marks an ontology built on the central political and moral significance of specific human suffering, we must start where we happen to be historically and culturally—from a particular kind of frustration or suffering experienced by human agents in their attempt to realize some historically specific project of a good life.[11]

Normative Goals

The ontological centrality of historically specific human suffering means that notions of social justice, as part of the larger issue of political legitimacy, should be understood and evaluated first and foremost as responses to *social injustice*. This leads to a formulation of the normative goals of Critical Theory not in terms of autonomy and freedom, but in terms of human emancipation (i.e., the goal to liberate human beings from the circumstances that enslave them[12]). The normative ideal of social criticism is, therefore, not an abstract notion of justice but practical human emancipation.

The intellectual engagement with specific forms of injustice and the related objectives of emancipation from the circumstances of injustice has been a constant feature of the work of authors writing in the Critical Theory tradition, which they inherit from a characteristically Marxian analysis of modernity. As Andrew Arato has observed, the analyses that Marx and Weber offer on the effect of modernity on individual autonomy are complementary: Weber's examination of the imprisonment of the individual in the iron cage of modernity dovetails with Marx's own analysis of the "socialization of society" under industrial capitalism.[13] However, Marx also offers a project for a postcapitalist alternative that is derived from and naturally follows an analysis of capitalism.[14] This articulation of an emancipatory perspective, inherent in the context of injustice, is a distinctive feature of Critical Theory that we find also among contemporary social philosophers working within this tradition. Most recently, María Pía Lara has forcefully rearticulated the central importance of reflection on social evil in her *Narrating Evil* (2007), which offers not only an analysis of the historical transformations of notions of evil but also asserts the redemptive, emancipatory force of public debates on social evil. Amy Allen's presentation of subjugation and autonomy as the

two sides of what she calls, after Foucault, "the politics of our selves" captures the programmatic for a Critical Theory connection between the ontology of suffering and the normative objective of emancipation.[15] The characteristic for a Critical Theory linking of social injustice with a project of emancipation is, of course, prominent in Fraser and Honneth's work on forms of recognition and misrecognition,[16] in Seyla Benhabib's interactive universalism, developed initially within a critique of gender injustice,[17] as well as Alessandro Ferrara's work on exemplarity as an instrument of critique of power.[18]

While the coupling of a diagnosis of social evil with a prognosis of emancipation is a feature of Critical Theory, a third theme completes the conceptual core of analysis, as developed by the first generation of the Frankfurt School. This third theme is the sociostructural sources of injustice.

The Structural Sources of Injustice

Suffering, which is the analytical starting point of Critical Theory, is caused by relations of domination (*Herrschaft*), understood as illegitimate, "surplus" repression, or oppression. As the exercise of legitimate power always implies repression, the point is to target critique at illegitimate forms of frustration, that is, ones that are linked to unequal distribution of power.[19] Significantly, however, illegitimate forms of frustration are perceived in categories of social relations that enable the reproduction of capitalism as a social order; the relations of domination that cause suffering are embodied in the basic social practices and institutions. In other words, "surplus repression" is not simply a matter of randomly unequal distribution of power (a *relational* dimension of domination) but is also rooted in the particular structure of social relations that enable oppression (a *structural* dimension of domination). Even when rejecting, in the spirit of Lukács, the direct translation of economic domination into political power, for the early Frankfurt School writers (and especially Horkheimer) attention is focused on the material conditions of social reproduction—"the ultimate object and terrain of the critical enterprise remained political economy."[20]

Thus, it is a triad of concepts—oppression/injustice, emancipation, and sociostructural sources of injustice—that forms the thematic core of Critical Theory as established by the first generation of the Frankfurt School authors. I next turn to the particular conceptualization of power that links these three components.

The Concept of the Political

Oppressive social institutions are kept in existence not merely because of social inertia but also because they foster and promote the real and perceived interests of some particular social group. The concept of the political develops out of a notion of society split into groups with conflicting interests; groups engaged not simply in conflicts over culture-specific ideas of the "good life" but conflicts generated by the very structure of social interactions and rooted in the political economy of advanced modernity. From the point of view of such an understanding of the political, the quest for the critical validation of social norms cannot afford to bracket power—that is, to immunize critique against the influence of power asymmetries by imposing idealizing assumptions (such as the "ideal speech situation" or requirements for reciprocity and impartiality). On the contrary, critical inquiry should center on the institutional and normative embodiments of power and target critique at the way individual perspectives represent collective social identities and reproduce structural features of the social order.

Critique of Ideology as Critique of Power

The link between social knowledge (forms of consciousness), on the one hand, and the structural sources of injustice (the social practices and institutions that cause injustice), on the other, is a main target of Ideologiekritik. Ideology is not just any form of consciousness but a "world picture" that stabilizes or legitimizes oppression. The exercise of oppression takes place through the maintenance of the norms that give it support and legitimacy. In acting, the agents "produce" their basic social institutions, and it is the normal operation of these institutions that maintains the world picture (form of consciousness) that stabilizes or legitimates them.[21] Critical Theory, therefore, draws attention to the way symbolic practices (including democratic deliberation) work to constitute and stabilize the position of dominant groups.

In order to analyze ideology as a process of stabilization and legitimation of oppression, Critical Theory typically targets the causal link between some social institution and the agents' suffering. Therefore, the mechanism of ideology critique depends on an understanding of how ideology functions in the maintenance of oppressive power relations. The process of ideological stabilization and legitimation of oppression takes place along the following logic. Power, including oppressive power (Herrschaft) is based on a claim to

legitimacy. Political legitimacy, as voluntary acceptance of social norms and political decisions, relies on the binding normative force of worldviews (forms of consciousness). Therefore, the normative repression through which Herrschaft is imposed is accepted by the agents, who are submitted to oppression, because of certain normative beliefs they hold. It is thanks to these beliefs that Herrschaft makes a claim to legitimacy. Although the claim to legitimacy might not be valid (because power is oppressive), the claim is accepted as legitimate because of ideology. Thus, the discrepancy in the dynamics of legitimation between the rules' *acceptance* and their *justice* is the work of ideology.[22]

How do ideological stabilization and the legitimation of oppression take place? Forms of consciousness are "systems of beliefs and attitudes accepted by the agents for reasons they could not acknowledge."[23] Agents cannot acknowledge them because of an objectification (or reification) mistake: mistaking a social arrangement for a natural phenomenon and thus giving undue normative support to structural injustice.

The masking of social contradictions and the stabilization of unjust practices, institutions, and social relations (unjust in the sense of involving exploitation, hegemony, or domination) are due to two types of beliefs. The first consists of cognitive beliefs that present that relation as unchallengeable (e.g., "socialism collapsed because it was economically unfeasible," "capitalism in Eastern Europe was inevitable because of the fall of communism," "the oppressive regime is too powerful to be resisted"). The second type consists of normative beliefs that present the relation as just ("rules that are produced by means of a democratic procedure are just," "equal opportunity justifies unequal outcomes"). Due to these features of ideology, a form of consciousness supports and/or justifies unjust social practices and the social institutions that enable them. This means that a model of critical judgment should uncover these processes of stabilization and legitimation of power.

A core element of this model is an understanding that the objectification mistakes through which ideology works are not random (mistakes that isolated agents make by accident) but are rooted in the way society operates, that is, in society's constitutive mechanisms. Like the reification of commodities, objectification mistakes are necessary for social reproduction and for the normal operation of the basic social institutions. Linked to Critical Theory's original concern with the political economy of oppression, such a reading of Ideologiekritik allows to think of critique (and judgment) not simply as normative, but as a project of uncovering the roots and the possibility of

crisis and transformation of particular socioeconomic formations. In a word, critique of ideology becomes a matter of discovering the social determinants of our consciousness and action, the structural roots of social injustice.

Methodology: Internal Criticism

The relations between Critical Theory's ontological starting point (the practical experience of suffering and oppression, rooted in structural features of the social order), its normative goal (of liberation from particular circumstances of oppression), and its focus on ideology as the stabilization and legitimation of oppression emulate the following "hermeneutic requirement." Suffering and liberation, as well as the forms of consciousness within which they are experienced and interpreted, make sense only from the internal perspective of those who are the subjects of that experience. In this sense Adorno talks about "immanent critique" in opposition to "transcendent critique"—one performed from an imaginary point of reference outside of its object of analysis.[24] This hermeneutic requirement functions also as a methodological one: We start from a historically specific pattern of injustice and derive the theory of emancipation from the perspective of the agents to whom the analysis is addressed. Thus, Critical Theory is committed to the principle of "internal criticism": Valid criticism is only what could in principle be part of the self-criticisms of the agents to whom the analysis is addressed.

The discussed elements of the critique of power furnish some of the necessary components of a critical theory of judgment, which I develop in subsequent chapters. Let me now highlight four particularly salient points for a conceptualization of political judgment as judgment on the justice of binding social norms as grounds of political action.

First, even if Aristotle is right that the search for a general theory of justice is futile, the first generation of Frankfurt scholars demonstrated that a practical approach to political judgment is possible. In their work, the issue of judgment arises as an issue of concrete human emancipation from a particular *pattern of injustice*, not as an abstract notion of justice.

Second, according to Critical Theory, emancipation and enlightenment are achieved by making agents aware of hidden coercion, thus enabling them to withstand the pressure of the legitimatory apparatus of society. Thus, the difference between the *legitimation* of rules (in the sense of their public acceptance as binding and thus ensuring voluntary compliance) and their *justice* is essential for a model of critical judgment.

Third, a critique of ideology is not a purely normative critique (cast in the terms of normative political philosophy of justice); it necessitates an analysis of the *structural sources of injustice*. In other words, a critical theory of judgment needs to maintain focus on the (institutionally mediated) relation between the structural sources of injustice and the normative debates on justice. Thus, beginning from the identification of a pattern of injustice, we should proceed to elaborate a model of judgment that targets the structural origins of injustice and the way injustice is reproduced in the normative frameworks of values, laws, and institutions whose validity rests on their accepted authority. In other words, if ideology critique is to prevent the acceptance of unjust rules as legitimate, it cannot be conducted without analysis of the relations between forms of consciousness and the structures of social relations within which human activity takes place.

Fourth, within Critical Theory the "judgment paradox" emerges as a tension between the hermeneutic requirement of immanent criticism and the imperative of ideology critique as described earlier. If we want social criticism to be relevant to the political reality of suffering and oppression, we need to perform critique from within this very reality. If, however, at the same time we acknowledge the normative power of forms of consciousness (the particular normativity of worldviews), how can we ensure that judgments of justice, formulated in line with the hermeneutic requirement of immanent critique, are also free of the ideological features in actors' worldviews?

Apart from the idea of immanent critique of ideology, we find no explicit model of judgment within the classical works in Critical Theory. The main reason for this is that the notion of "critique," on which the notion of judgment depends, has been in flux. The starting point of this evolution is constitutive of the Frankfurt School itself: It is the redefinition of Marxism as critique of ideology rather than as direct critique of political economy. It further evolved into a critique of state power (between the 1930s and 1940s)[25] and into the critique of instrumental reason that Habermas initiated in the 1960s. My goal is not to offer an overview of this transformation. For the purposes of my search for a critical theory of political judgment, I focus on the way the communicative turn has affected the status of political judgment.

The Communicative Turn

The Judgment Paradox Revisited

Let us recall that the hermeneutic requirement for internal criticism is a key feature of Critical Theory's approach to the critique of power. According to this requirement, a theory of emancipation can be derived only from the form of consciousness of the agents to whom the critique is addressed. Thus, the criterion of justice and emancipation is derived from the very standard of rationality these agents tacitly accept. However, when we view the hermeneutic requirement from the perspective of Critical Theory's understanding of ideology as a form of consciousness that tacitly supports oppression (without the agents' awareness of this), the hermeneutic requirement becomes suspect. Thus, why assume that the agents' very "epistemic principles" (from which a theory of emancipation is to be derived) are not part of the problem of maintaining oppression? Adorno was aware of this danger when he admitted that the critic risks being seduced by the object criticized.[26] If we are to provide criteria of legitimacy from within, how can we make sure that they are not simple rationalizations of existing norms supporting oppressive practices? In this sense, the hermeneutic requirement impedes social criticism.[27] This is the particular way in which Critical Theory confronts the judgment paradox: Judgments on the justice of norms are able to remedy injustice (and thus, be politically relevant) only if they are passed from the internal perspective of the social agents to whom the critique of ideology is addressed. Yet, the "internal perspective" cannot guarantee that these judgments will be free of ideological distortion and thus morally valid. Critical Theory thus faced the risk of subsuming normative justification (justice) into legitimacy—the practical acceptance of norms as binding. This would not only foreclose the possibility of social criticism in the form of a critique of domination, but also of accounting for morally responsible human agency.

This danger, endemic to the hermeneutic requirement for immanent critique, is reinforced by a diagnosis of advanced capitalism as a context in which the reification of consciousness has reached its apex—a vision probably best articulated in Horkheimer and Adorno's *Dialectic of Enlightenment*. This signals the incapacity of the methodology of immanent critique to provide an emancipatory perspective, thus eliminating one of the elements constitutive of Critical Theory—the transformation of the critique of power

into a project of emancipation. Confronted with the prospect of losing its intellectual identity, Critical Theory faced a need of renewal.

Such renewal emerged in the form of the theory of communicative rationality and discourse ethics, as developed by Habermas and influenced by Apel. In order to be able to have a critical force, Habermas suggested, philosophy should be able to judge established convictions "by the standards of a rational conception of justice."[28] In order to redeem the lost Kantian perspective of continual emancipation, he introduced a language-based equivalent of Kant's universal moral principle (the categorical imperative)—undistorted human communication. The new vantage point of critique is human beings' practical interest in securing and expanding possibilities of mutual and self-understanding in the conduct of life. The idea is that properly structured communication—freed from the distortions incurred by power, money, and ideology—can lead us to a rationally demonstrable universal interest.[29] The recourse to a "rational conception of justice" as a vintage point of critique thus installs a transcendental element into Critical Theory; yet this transcendentalism has features of "immanent critique": Reason as a mental faculty is reinterpreted as an intersubjective relation in line with Critical Theory's view of the relational nature of social reality.

From this new perspective, the hermeneutic level of culturally constituted meanings (forms of consciousness) is transformed in such a way as to enable it to perform a critical function. This transformation consists of two steps: The first is to reduce the hermeneutic level (of culturally constituted meanings) to communication; the second is to define the conditions of communication in such a way as to ensure the justice of norms, communicatively established. In combination, these steps constitute a soft transcendentalist turn in Critical Theory, which I next briefly review.

The Transcendentalist Turn and the Notion of Critique

Seeking to provide secure grounds of normative justification by reflecting on the communicative preconditions of cognition, Habermas, following Apel, proposed to found a universal ethics on the principle of dialogue. Thus, the communicative turn (discourse theory) consists in a set of views about language use and its preconditions, from which a normative argument is developed about the possibility of valid judgments on the justice of rules. Here is how Apel summarizes the logical beginnings of discourse theory:

> Since the rationale of consensual communication must always have been inherent in human interaction, we may claim the existence of an *anthropological* counterpart or analogue to the transcendental-pragmatic foundation of ethics.[30]

Note that the possibility of universally valid judgments is rooted in a general, intrinsically human (anthropological) capacity for speech that enables agents to recognize statements as being true or false. Hence, the satisfaction of the emancipatory interest is secured on general anthropological grounds: the capacity for critical-reflective knowledge is stipulated to be a feature of the human species. The vision of social cooperation based on an exchange of claims among participants in a process of communication oriented toward agreement is a vision constitutive of Habermas's project. The proposal is to equip agents with competence for reflective communicative action oriented toward reaching a shared understanding apart from their capacity for instrumental, interest-driven behavior.[31] Hence, "*Mutual* critique would be possible only if the agent could for his part take up interpersonal relations, act communicatively, and even participate in the special form of communication (loaded with presuppositions) that we have called 'discourse.'"[32] In other words, universal principles can be discerned as being intrinsic to the formal features of argumentation and action oriented to reaching a shared understanding. This allows Habermas to replace *moral* duties and rights with *argumentative* duties and rights[33] that form the universalization principle (U) obtained through a "transcendental-pragmatic derivation"[34] from the very presuppositions of argumentation. According to U (which is a rule of argumentation, not a substantive principle), a norm contested by the participants in a practical discourse is valid only if "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*."[35]

Once U is derived from the universal capacity of persons for rational dialogue, the basic idea of a moral theory is formulated in terms of the principle of discourse ethics (D): "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."[36]

In combination, the principles U and D amount to a synergy between elements of transcendentalism and pragmatism: The "weak transcendental necessity" imposed by the structural conditions of an intersubjectively shared

language[37] is combined with an understanding that substantive principles of justice are not available a priori, but are articulated in actual practices of mutual reason giving: "The principle of discourse leaves open the type of argumentation, and hence the route, by which a discursive agreement can be reached."[38]

Habermas justifies the formulation of the rule of argumentation U through "transcendental-pragmatic derivation" prior to D with the need of avoiding what he calls "the fallacy of misplaced concreteness"—the confusion of rules of discourse with the conventions serving their institutionalization.[39] This fear dovetails with the fear, constitutive of the critical enterprise, of subsuming principles of justice into the pure public acceptance of norms as authoritative and binding. Normative rightness (and validity in general) requires that "the counterfactual meaning of rational *acceptability* cannot be reduced to that of *acceptance* within a community of interpreters."[40]

It is the "transcendental constraint of unavoidable presuppositions of argumentation"[41] that checks this fallacy by ensuring that "validity claims be motivated solely by the rational force of the better reasons."[42] The transsubjective structures of language are seen to impose on actors the weak transcendental necessity to "step out of the egocentricity of a purposive rational orientation toward their own respective success and to surrender themselves to the public criteria of communicative rationality."[43]

In order to ensure that norms, agreed upon through communication, are free of ideological bias, untainted by instrumental reason, and unmarked by differences in power, only certain kind of deliberations can generate validity (i.e., the fiction of such deliberations can serve as a normative standard of validity). The validity of arguments is gauged against the metatheoretical device of an "ideal speech situation"—conditions that ensure undistorted communication as rational dialogue, that is, inclusive, uncoerced, and unlimited discussion among free and equal participants.[44] Hence, what it means for a statement to be true (or a norm to be just) is that it would be the one on which all agents would agree if they were to discuss all of human experience in absolutely free circumstances for an indefinite period of time. The only coercion to which agents are subjected is the "unforced force of the better argument."[45]

This idea is modeled on Kant's second *Critique* (the critique of moral reason) and takes Critical Theory in the direction of Kantian moral universalism. As it presupposes (rather than mandates) the conditions for universal validation, the "ideal speech situation" transforms Kant's *categorical* imperative into a *hypothetical* one. Although the newly added transcendental argument

is in line with the hermeneutic turn in political philosophy (it is centered on a set of views about the intersubjective use of language), it is significant that the new focus on language is explicitly nonhistoricist. Symptomatic of the nature of the revision Habermas undertakes is the nature of social science that he uses in his analyses. He shifts away from his former reliance on historical and political sociology in, respectively, *The Structural Transformation* of the Public Sphere (1962) and in *Legitimation Crisis* (1973) in the direction of developmental psychology, which he uses in *Communication and the Evolution of Society* (1979),[46] and engagement with speech act theory in *The Theory of Communicative Action* (1981).[47] The recourse to developmental psychology does enable a unity between normative and empirical inquiry but dehistoricizes the critique of power. Critical Theory's hermeneutic requirement is respected, to the extent that the focus is on human communication, but it is detached from the original focus on the structure of the social order. The internal point of view is stretched indefinitely; it becomes universal: The "ideal speech situation" serves as a transcendental criterion of truth, freedom and rationality. Most importantly, the hermeneutic requirement is disconnected from the original concern with the political economy of advanced capitalism and its structural sources of injustice. While Critical Theory thus regains its lost emancipatory perspective, it does so at the expense of its capacity to engage with specific sociohistorical critique of capitalism.

The Pragmatic Turn

Habermas's effort to increase the political applicability of discourse ethics[48] has triggered a continual process of revision of the model in the direction of reinforcing its pragmatist features, which concern (1) the procedural conditions for normative justification, (2) the status of nonmoral (ethical) values, (3) the epistemic grounds of validity, and (4) the operationalization of the principles of discursive validity in the political domain.

Thus, in the original edition of *Moral Consciousness and Communicative Action* (1983), Habermas avowedly "employed an overly strong notion of normative justification," which he subsequently corrected.[49] In the reformulation, the idealized conditions of the ideal speech situation are only presupposed by participants and should be approximated in practical argumentation.[50]

In order to relate discourse theory to concrete political practice, Habermas's writing begins in the late 1980s to focus on the *application* of moral rules in

concrete practices of justification; with this, however, attention centers on shared values (ethics) rather than universal notions of justice. To some extent as an answer to objections to his rationalistic concept of morality, in his Howison Lecture (1988) Habermas introduces a distinction between moral and ethical discourses (as discourses related, respectively, to the just and the good) that he would subsequently operationalize. This enables the more historically situated analysis of social integration of modern societies we find in *Between Facts and Norms* (1992). Here his normative account of legitimate law is based on an understanding that, in treating ethical-political discourse (in contrast to moral discourse on rightness claims), we need to relax the counterfactual requirements of idealized consensus, because contextual particularities (concerning traditions, identities, and life histories) affect the process of argumentation in a cogent way.[51] Thus, it is the level of shared ethics (rather than universal morality) that Habermas sees as appropriate for treating issues such as environmental protection, ethnic minorities, and immigration policy.[52] Attention shifts from the universal validity of claims (checked against idealized consensus) to the very process of generalization of the first-person perspective into shared values and interpretations: "Such questions call for discourses that push beyond contested interests and values and engage the participants in a process of self-understanding by which they become reflectively aware of the deeper consonances (*Übereinstimmungen*) in a common form of life."[53] Thus, in later writings, the hermeneutic level in society's normative order emerges as a community's particular, yet shared, ethics. This designates the territory of an additional level of normativity that transforms the three-level standard normative model into a four-level discursive normative model.

In line with the increased sensitivity to the hermeneutic level of shared values and meanings, in 1996 Habermas reformulates the principle of universalization, U, to include "value-orientations" (nonmoral, ethical, reasons) where previously only "interests" were mentioned. The principle D is also adjusted to take account of the presence of a fourth, hermeneutic level: Habermas notes that D does not by itself state that a justification of moral norms is possible without a recourse to a substantive background consensus,[54] thus recognizing the important function of the new normative level. Thus, although he maintains that "sharp distinction must be made between an utterance that is held to be valid and one that is valid,"[55] he admits that "questions of meaning cannot be separated completely from questions of validity."[56] The attention shifts further to the emergence of a shared ethical perspective

from that of particular interests: In practical discourses, an individual interest, when stripped of its intrinsic relation to a first-person perspective and thus translated into an intersubjectively shared evaluative vocabulary, becomes a "value-orientation" shared by other members of a community.[57] Most important, it is this shared value orientation that serves as a basis for regulating the matter that had been an object of disagreement.[58] This recognition of the role of pragmatic and ethical reasons is crucial for making the model more relevant to actual conflicts as it helps to take into account the particular worldviews of individuals or groups, as Habermas admits, allowing "a hermeneutic sensitivity to a sufficiently broad spectrum of contributions."[59] This increases the practical political relevance of discourse ethics as it allows an analysis of the way human circumstances affect the definition of needs and the formation of identities as relevant elements in political discourses about justice.

Significantly, Habermas starts to link the understanding of a speech act with knowledge of "the kinds of reasons that a speaker could provide in order to convince a hearer that he is entitled in the given circumstances to claim validity for his utterance—in short, when we know *what makes it acceptable.*"[60] Knowing what makes a claim acceptable requires a shared understanding of human circumstances and social identities pertaining to the contexts in which participants deliberate. Thus, Habermas comes to embrace more unambiguously the context-specific practices of reason giving as the locus of the generation of valid norms rather than the earlier abstract counterfactual fitting between an ideal speech situation and practices of argumentation.

While initially Habermas had derived validity conditions from the structure of any natural language, modeling normative rightness on propositional truth, he later concedes that validity reasons should be sought beyond language in social practices that are disclosed only in language: "Knowledge of a language is . . . entwined with knowledge of what is actually the case in the linguistically disclosed world. Perhaps knowledge of the world merely hangs on a longer chain of reasons than does knowledge of a language."[61] This "longer chain of reasons" points to dynamics of interaction beyond the clean dichotomy of strategic and communicative action.

The pragmatic turn within the communicative turn is probably at its apex when Habermas, a decade after the formulation of the status of the principles U and D in "Remarks on Discourse Ethics" (1983),[62] revisits their relationship in the *Inclusion of the Other* (1996). Here, the principle of universalization is presented as a (mere) *operationalization* of D, specifying how moral norms

can be justified. Most important, he withdraws the claim that U, as derived from a notion of a community of autonomous agents, is the best operationalization of D in matters political:

> It has become clear to me in retrospect that (U) only operationalized a more comprehensive principle of discourse with reference to a particular subject matter, namely, morality. The principle of discourse can also be operationalized for other kinds of questions, for example, for deliberations of political legislators and for legal discourses.[63]

As Habermas relaxes the stringent communicative demands, he introduces the concept of "strong communicative action,"[64] which allows space for weaker forms of communicative action, a move that defies the rigid distinction between communicative and strategic action. Later still, he comes to espouse a "pragmatic epistemological realism," according to which the objective world rather than ideal consensus is the truth maker. This is an important correction to the epistemic basis of validity as it allows the meaning of an accurate representation to be established pragmatically in terms of its implications for everyday practice and discourse.[65] This allows Habermas to speak, more recently, of laws as being valid if they can be considered as reasonable products (rather than single right answers modeled on the singularity of a true proposition) of a sufficiently inclusive deliberative process, thus granting citizens' actual deliberations more decisionary power.[66] In recent writing Habermas does not present the critical point of view in terms of formal qualities of rational dialogue but as "the moral point of view from which modern societies are criticized by their own social movements."[67] Overall, the pragmatic turn that Habermas effects within the communicative turn in Critical Theory amounts to a shift of focus from validity to validation (justification), from normative principles to the formation of judgment and the process of judging in concrete practices of contestation and argumentation.

Although the continuous revision of discourse ethics in the direction of pragmatism indicates a promising road to solving the judgment paradox by reducing reliance on ideal theory, the pragmatic turn remains incomplete. Thus, the additional (hermeneutic) dimension of collective ethics that Habermas introduces in later writing does not substitute universal morality but rather remains parallel to it. A peculiarity of the ethical dimension, as presented in *Between Facts and Norms*, is that it has only a motivational function; it does not play a role in determining the content of morality. Ethical

and moral questions remain two distinct forms of argumentation; the former concern identity and are directed toward individual and collective self-understanding; the latter, toward normative validity proper. Transcendentalism, though weakened, persists in the continual reliance on the "rational force of the better reasons" in recent writings,[68] as well as in the recourse to universal morality in the validation of social and political norms. As noted earlier, Habermas concedes that the universalization principle, U, might be applicable exclusively to morality and not be the best principle of operationalization of the discourse principle in matters political.[69] Yet, to the extent that decisions about political rules involve also claims about their moral rightness, recourse to U seems unavoidable. Thus, when addressing objections against universalistic concepts of morality in works in the late 1980s he reiterates the usefulness of the metatheoretical device of the "ideal speech situation" ("that is, to think of processes of communication as if they took place under idealized conditions"[70]) to ensure the primacy of the just over the good. Affirming morality's self-sufficiency, Habermas maintains that we can criticize and structure the ethical from the point of view of the moral (in terms of universal morality), direct access to which we are given by the correct (ideal) procedures of deliberation. Only in this way, he maintains, can we avoid reducing the rational acceptability of norms to their mere acceptance.[71]

The precaution, typical of Critical Theory, against subsuming the just into what are taken to be authoritative (legitimate) norms also affects the epistemic basis of validity. Since a "sharp distinction must be made between an utterance that is held to be valid and one that is valid,"[72] he must maintain the weak transcendental imperative contained in the transsubjective structures of language. Hence, though aspiring to give an empirical foothold to discourse ethics, Habermas finds himself compelled to continue specifying the mechanism that makes rationally motivated agreement possible ("acceptability conditions") by analogy to the truth-conditional account of the meaning of sentences. With this, the counterfactual presuppositions of an "ideal speech situation" become indispensable for safeguarding the possibility of the discursive vindication of norms.

Thus, despite an instinct to weaken reliance on transcendentalism (resorting to idealized human speech as a transcendent vantage point for judgment), Habermas does not offer a mechanism for bridging ideal and actual deliberations. They remain two distinct models of political judgment. The former is running the risk of political irrelevance; the latter, that of imperfect justice. The paradox of judgment remains unresolved.

Conclusion: The Price of Social Criticism

The communicative turn, as effected by Habermas, radically changes Critical Theory's notion of critique. The model of normative judgment comes to be based on the conviction that individuals' freedom is dependent upon the state of communicative relations, not on the state of the political economy, as in the Frankfurt School's original version of critique. The freedom in modern complex democracies stands as freedom achieved by reaching agreement in language.[73] The goal of democratic theory, therefore, is to point to ways in which communicative relations constitute a medium of interaction free from domination, while communicative freedom is modeled on intersubjective speech. Although such recasting of Critical Theory has enabled analysis of social inclusion and the public sphere with important political and sociological insight, this comes at a price. Such a position is strikingly remote from Critical Theory's original concerns (inherited from Marxism) with the structural sources of injustice, sources located within the political economy of modern societies. To assert that our "real" interests are the ones we would form in conditions of complete freedom of discussion is to adopt a view of social agency void of a notion that interests and identities are formed in the course of social practices and that relevant social practices surpass discussion. This view contradicts some of the core requisites of critique developed by the first generation of Frankfurt School authors. It is thus difficult to say how discourse ethics is a critique of ideology in the original sense of discovering the ***social determinants*** of our consciousness and action. In order for a political judgment to have a critical, rather than simply a validating function, it needs first to do the work of ideology critique—of accessing the structural roots of injustice—before setting out to chart a trajectory of emancipation.

The insertion of idealized conditions of consensus-generating communication entailed a retreat from the original pragmatism of Critical Theory as such conditions of validity imbue the model with too much ideal theory to allow it to engage effectively with the social particularity of the sources of injustice. Let us recall that a key thesis of the (early) Frankfurt School is that radical critique of society is inseparable from a criticism of its dominant forms of consciousness ***in their relation*** to dominant structures of social interaction. Unfortunately, the powerful idealizing assumptions of discourse ethics lead away from the political economy of injustice. Thus, Critical Theory, in its discursive modus, fails to resolve the judgment paradox: It gains normative vigor at the expense of both its political relevance and its capacity for social criticism. This is not a minor loss. In order to regain its critical function, Critical Theory needs to add an account of the way democratic deliberations in specific conditions are able to unveil the structural sources of injustice. It needs to unmask the dynamics of oppression, not postulate norm creation within an apolitical setting guided by the fiction of an ideal speech situation.

The revisions of discourse ethics that Habermas has undertaken (his incomplete pragmatist turn), as discussed earlier, especially in his treatment of ethical-political discourse, do much to enhance the model's political relevance. Of particular importance is the idea of an intersubjectively elaborated conception of political justice in the conceptualization of the ethical perspective—the focus on generalizable value orientations and the interest in processes of validation as a practical generalization of first-person (interest-based) perspective into a shared evaluative vocabulary. This indicates the contours of a model of judgment centered not on a rationally demonstrable universal interest as a guarantor of the validity of norms but instead on the "negatory potential embodied in the social tendencies to unstinting self-criticism."[74] Thanks to this contextualization of discourse ethics, the force of the emerging model of judgment resides in the capacity to examine the way social movements in their process of dialogue achieve a new sense of justice in their quest for social inclusion.

Some of the most significant contributions to Critical Theory in recent years have taken this road of reducing reliance on ideal theory in the conceptualization of the liberating power of democratic debates. Thus, both Alessandro Ferrara and María Pía Lara offer conceptions of reflective judgment in which emancipatory discourses are actuated by a great diversity of unconstrained narratives.[75] Seyla Benhabib has bridged ideal and real deliberations in her conceptualization of "democratic iterations"—unconstrained everyday "conversations of justification" through which citizens become gradually convinced of the validity of universal moral norms.[76] In his treatment of political justice and human rights, Rainer Forst relies on a single idealizing presupposition—the concept of the "basic right to justification" as a ground for the discursive justification of moral norms and substantive principles of justice.[77]

Contributing to this movement away from ideal theory, my goal is to articulate a model of discursive judgment that can respond to Critical Theory's

original concern with the sociostructural sources of injustice. In other words, the question that drives my investigation into the power of democratic debates to validate critically social norms and political rules is this: How can public deliberations do the work of ideology critique, if we deprive them of the transcendental vantage point of an ideal speech situation that gives access to the moral point of view? My method is to entirely replace the idealizing presuppositions of validity with an account of the social hermeneutics of deliberative judgment. In searching for elements of such an account, I next turn to another story of paradigmatic renewal. While the communicative turn in Critical Theory marked a transition from pragmatism, historicism, and conceptualism to moral universalism, another powerful tradition of theorizing uses the communicative turn to undertake the reverse transformation—from moral universalism to pragmatism. This is a transition that Anglo-American Philosophical Liberalism underwent with the work of John Rawls. I next investigate the logic of this transformation. My perspective of inquiry is the way and the extent to which the pragmatic shift that Rawls effects in liberal philosophy enables the critical validation of norms and rules, thus solving the judgment paradox.

CHAPTER 3

Philosophical Liberalism

Reasonable Judgment

Transformation as a Point of Départure

IN THE PREVIOUS CHAPTER, WE SAW THAT EFFORTS within Critical Theory to solve the tension between the political relevance and normative vigor of the critical enterprise (the "judgment paradox") entailed the communicative turn initiated by Jürgen Habermas. This brought about a shift from the historically situated sociocultural analysis of capitalism typical of the first generation of the Frankfurt School, toward Kantian moral universalism. In contrast, the communicative turn that John Rawls introduced in Philosophical Liberalism[1] triggered a transformation in the opposite direction: from moral universalism to the practice of political debate.

In the search for a politically relevant normative theory, an analysis of the way John Rawls effects the turn to a deliberative process of judgment is useful for three reasons of different order. First, his writing has come to be considered as quintessentially representative of Anglo-American Philosophical Liberalism. To a considerable extent, his doctrine of justice owes its authority and popularity to the fact that it expresses largely shared moral intuitions