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## Open Access: A Means for Social Justice and Greater Social Cohesion

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Nikos Koutras

### Abstract

This paper discusses open access and the information resources of Open Access Repositories (OARs). OARs constitute a contemporary response regarding the dissemination of information. Thus, it is important to examine theoretical arguments about the desirability of OARs in the digital age. This paper argues that OARs can be seen as a form of social justice and can strengthen social cohesion in modern societies. The argument relies on the concept of public policy as one means of achieving social justice. The discussion about OARs aligns with public policy, and social justice considerations should be examined. This paper demonstrates that public policy should focus on social cohesion, and that open access can be considered as instrument towards social cohesion. This paper is divided into three broad topics. First, this paper addresses the two main justifications for access to knowledge: a) the philosophical justification, based on the concept that knowledge is power, and it is significant that everyone has access to knowledge; and b) the pragmatic justification that it is impractical to enforce copyright in the traditional sense in this digital age. Second, this paper examines the concept of social justice and relevant theories. Third, the author analyses theories concerning connections between public policy and social justice towards social cohesion. In conclusion, this paper argues that public policy objectives ameliorate the balance between copyright owners' and end-users' competing interests through open access practice.

**Keywords:** open access, governance, social justice, social cohesion, knowledge

## I. INTRODUCTION

The idea of open access is a significant concept in the digital age. This paper argues that open access to information and knowledge is important to create a just, global society. Access to knowledge through Open Access Repositories (OARs) can be understood as a related dimension of this concept. Open access can be seen as an efficient mechanism for enabling the interaction of technical developments with copyright laws in order to legitimately disseminate information. Scholars argue that knowledge is power; therefore, open access can determine an appropriate pathway to power.<sup>1</sup> Thus, current copyright laws and policies should be examined. This examination would lead to a rigorous theoretical argument about the desirability of OARs in the digital age. Open access can also be understood as a form of social justice, which can strengthen social cohesion in modern societies. This argument relies on the concept that public policy is a means of achieving social cohesion because socially just policies cannot be created unless people participate in policy formation. Public participation can ensure that just policies are enacted<sup>2</sup> and therefore, the creation of public spaces for consensus formation is necessary.<sup>3</sup>

This paper's arguments are developed in three parts. First, it examines the justifications for open access as a means of access to knowledge. There are two main justifications for access to knowledge: 1) the philosophical justification that knowledge is power and therefore it is important that everyone has access to knowledge; and 2) The pragmatic justification that recognizes it is impractical to enforce traditional copyright laws in this digital age. The philosophical justifications rely on Foucault's views

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<sup>1</sup> See generally STUART ELDEN & JEREMY W. CRAMPTON, *SPACE, KNOWLEDGE AND POWER: FOUCAULT AND GEOGRAPHY* (Ashgate Publishing, Ltd. 2012).

<sup>2</sup> See JOHN RAWLS, *A THEORY OF JUSTICE* (Harvard U. Press 2009).

<sup>3</sup> See generally Pieter Boeder, *Habermas' heritage: The future of the public sphere in the network society*, 10 *FIRST MONDAY* (2005), <http://journals.uic.edu/ojs/index.php/fm/article/view/1280> (last visited Mar 25, 2016).

concerning the concepts of knowledge and power.<sup>4</sup> The pragmatic justifications rely examples that highlight the impracticability of copyright enforcement, which necessitates reform of the copyright regime. Both justifications for greater access to knowledge are, in turn, arguments for access to information resources like OARs.

Because of the importance of open access in the creation of a just society, the second part of this article focuses on the concept of social justice. The argument that OARs can be considered as a modern response for the dissemination of information relies on Rawls's theory of justice, which attempts to solve the issue of distributive justice.<sup>5</sup> Rawls's views point out the importance of appropriate form for social justice and the crucial role of distribution in terms of justice.<sup>6</sup>

This paper argues that open access is a way of making access to knowledge available in a fair manner. However, for OARs to exist, society will have to formulate public policies that support the existence of OARs through the use of social justice theories. These public policies are critical because, without them, OARs are unlikely to be created. Therefore, it is important to examine the related issue of how social justice and public policy are interrelated must be examined. Furthermore, this paper argues that social cohesion is enhanced when socially just public policies are the norm. Thus, OARs can be one means of creating a cohesive society, both nationally and globally.

Additionally, the third part of this paper examines the issue of generating a social consensus for making appropriate public policies. This is where the concept of public policy should be considered, as it helps argue that fairer

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<sup>4</sup> See A COMPANION TO FOUCAULT (Christopher Falzon, Timothy O'Leary & Jana Sawicki eds., 2013), [http://simsrad.net.ocs.mq.edu.au/login?url=http://www.MQU.eblib.com.AU/EBLWeb/patron/?target=patron&extendedid=P\\_1116173\\_0](http://simsrad.net.ocs.mq.edu.au/login?url=http://www.MQU.eblib.com.AU/EBLWeb/patron/?target=patron&extendedid=P_1116173_0) (last visited August 3, 2016).

<sup>5</sup> See Rawls, *supra* note 2.

<sup>6</sup> Aryeh Botwinick, *Liberal Democracy, Negative Theory, and Circularity: Plato and John Rawls*, 161 *TELOS* 29, 29–50 (2012).

regulations can be applied in order to establish OARs. In this regard, public policy is discussed as a means to apply such regulations through participatory democracy. It follows that people's motivation to participate leads to the necessity for social consensus.<sup>7</sup> Hence, an examination of Habermas's views creates the theoretical foundation for the argument that a cohesive society requires the involvement of well-informed participants in the creation of consensus. Habermas's ideas about the public sphere need to be adapted in current circumstances in view of the digital age and in view of the digital age, following the emergence of the Internet. Because the Internet is a place where everyone is or should be able to create, share, disseminate, and freely discuss ideas, it is a crucial component for the construction of social consensus. The ability to reach a social consensus through the use of the internet will enable the construction of appropriate policies for OARs.

## II. JUSTIFICATIONS FOR OPEN ACCESS

### *A. Philosophical Justification: Knowledge is Power*

The concepts of knowledge and power have a long history of association.<sup>8</sup> Plato argued that humans' attitude flows from three basic sources: desire, emotion, and knowledge.<sup>9</sup> The well-known proverb "ipsa scientia potestas est," meaning "knowledge itself is power," was coined by

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<sup>7</sup> See Jean Hillier, 'Agonizing Over Consensus: Why Habermasian Ideals cannot be 'Real,' 2 PLANNING THEORY 37, 39–59 (2003); Cecilia L. Ridgeway & Shelley J. Correll, *Consensus and the Creation of Status Beliefs*, 85 SOC. FORCES 431, 431–53 (2006).

<sup>8</sup> GEORGE HENDERSON & MARVIN WATERSTONE, *GEOGRAPHIC THOUGHT: A PRAXIS PERSPECTIVE* (Routledge 2008); ERNST B. HAAS, *WHEN KNOWLEDGE IS POWER: THREE MODELS OF CHANGE IN INTERNATIONAL ORGANIZATIONS* 169 (U.C. Press 1990); Andrew C. Inkpen & Eric W. K. Tsang, *Social Capital, Networks, and Knowledge Transfer*, 30 ACAD. MGMT. REV. 146, 158 (2005).

<sup>9</sup> I. M. CROMBIE, *AN EXAMINATION OF PLATO'S DOCTRINES: II. PLATO ON KNOWLEDGE AND REALITY* 293 (Routledge 2012).

Sir Francis Bacon.<sup>10</sup> It is also admitted that the concept of knowledge constitutes an important factor that helps people achieve great results.<sup>11</sup> Consequently, the more knowledge a person gains, the more powerful he or she becomes. Kofi Annan similarly argues that knowledge is power, information is liberating, and education is the premise of progress in every society and family.<sup>12</sup> This statement furthers the argument that well-educated people can be part of a well-developed society. In addition, the notion of well-educated people relies on Foucault's understanding of knowledge as power, and for that reason, a brief explanation of Foucault's argument follows.

This section offers a philosophical justification of why knowledge is a form of power. When there is access to informational resources, there is access to knowledge.<sup>13</sup> In addition, this section relies on Foucault's ideas regarding the concepts of knowledge and power. First, Foucault asserts that knowledge is itself an aspect of power.<sup>14</sup> Disciplinary conventions play a crucial role in determining what counts as authoritative knowledge.<sup>15</sup> Thus, universities and scholarly journals play an important role in establishing the

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<sup>10</sup> FRANCIS BACON, FRANCIS BACON: THE MAJOR WORKS 121 (B. Vickers ed., Oxford Univ. Press 1 ed. 2008); *see generally* FRANCIS BACON, COMPLETE WORKS OF FRANCIS BACON (Minerva Classics 2013).

<sup>11</sup> *See* ZOLTAN J. ACS ET AL., THE EMERGENCE OF THE KNOWLEDGE ECONOMY: A REGIONAL PERSPECTIVE (Springer Sci. & Bus. Media 2013).

<sup>12</sup> *See generally* NELLY P. STROMQUIST, EDUCATION IN A GLOBALIZED WORLD: THE CONNECTIVITY OF ECONOMIC POWER, TECHNOLOGY, AND KNOWLEDGE (Rowman & Littlefield Publishers 2002); PAUL C. MOCOMBE, EDUCATION IN GLOBALIZATION (Upa 2007); *see also* GLOBALIZATION AND INTERNATIONALIZATION IN HIGHER EDUCATION: THEORETICAL, STRATEGIC AND MANAGEMENT PERSPECTIVE (Felix Maringe & Nick Foskett eds., 2d ed. 2012).

<sup>13</sup> J. E. ROWLEY & RICHARD J. HARTLEY, ORGANIZING KNOWLEDGE: AN INTRODUCTION TO MANAGING ACCESS TO INFORMATION (Ashgate Publishing, Ltd. 2008); Peter Johan Lor & Johannes Jacobus Britz, *Is a knowledge society possible without freedom of access to information?*, 33 J. INFO. SCI. 388 (2007).

<sup>14</sup> MICHEL FOUCAULT, THE ARCHAEOLOGY OF KNOWLEDGE (Knopf Doubleday Publishing Group 2012).

<sup>15</sup> CHARLES DESPRES & DANIELE CHAUVEL, KNOWLEDGE HORIZONS (Routledge 2012); STEVE FULLER, KNOWLEDGE MANAGEMENT FOUNDATIONS (Routledge 2012).

benchmarks of authoritative knowledge in any discipline. Access to information is a pathway to access to knowledge, and OARs are therefore an important mechanism for making such access widespread. Second, since not all information can be considered reliable, OARs can function as sources of reliable information and knowledge.<sup>16</sup>

Foucault's works extended the consideration of the concept of power from sociology to all areas of the social sciences.<sup>17</sup> He argued that knowledge and power are mutually formed. When introducing the concept of "discursive formations," Foucault argues that discourse is more than just language or things. He argues that discourse reflects reality.<sup>18</sup>

While exploring the relationship between power and discourse, Foucault uncovered the nature of power in society. In conceptualizing power as connected to discourse, Foucault challenged the prevailing orthodoxy, which viewed power as exercised from the top down and mostly referred to state power.<sup>19</sup> Foucault had been writing about the history of knowledge long before he became particularly concerned with the concept of power.<sup>20</sup> Foucault was interested in discovering when compiled bodies of knowledge within certain disciplined investigations became intelligible and authoritative.<sup>21</sup> He argued that specific investigations into bodies of knowledge were shaped by specific concepts and clarification of these concepts. These clarifications were considered "serious" when procedures

<sup>16</sup> See Thomas H. Berquist, *Open-Access Institutional Repositories: An Evolving Process?* 205 AM. J. ROENTGENOLOGY 467 (2015).

<sup>17</sup> See generally KATE NASH, *CONTEMPORARY POLITICAL SOCIOLOGY: GLOBALIZATION, POLITICS AND POWER* (John Wiley & Sons 2009).

<sup>18</sup> See HUBERT L. DREYFUS & PAUL RABINOW, *MICHEL FOUCAULT: BEYOND STRUCTURALISM AND HERMENEUTICS* (Univ. Chi. Press 2014).

<sup>19</sup> See Derek Hook, *Discourse, Knowledge, Materiality, History: Foucault and Discourse Analysis*, in FOUCAULT, *PSYCHOLOGY AND THE ANALYTICS OF POWER* 100–37, [http://link.springer.com/chapter/10.1007/978-0-230-59232-2\\_4](http://link.springer.com/chapter/10.1007/978-0-230-59232-2_4) (last visited Jun. 18, 2017).

<sup>20</sup> See generally Michael Power, *Foucault and Sociology*, 37 ANN. REV. SOC. 35–56 (2011).

<sup>21</sup> See Reiner Keller, *The Sociology of Knowledge Approach to Discourse (SKAD)*, 34 HUMAN STUD. 43 (2011).

were discussed for assessing their credibility.<sup>22</sup> Foucault calls these historically located areas of knowledge “discursive formations.”<sup>23</sup>

According to Foucault, power does not exclude, repress, censor, mask, or conceal.<sup>24</sup> He wrote that power “reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives.”<sup>25</sup> He also believed in the freedom of people,<sup>26</sup> and claimed that as individuals, people react to situations differently.<sup>27</sup> In making this argument, Foucault challenged the conventional understanding of power.<sup>28</sup> He argued that the most important aspect of power lay in the effect it had on people’s entire networks, practices, and attitudes about the world around us.<sup>29</sup> This premise is important to the forthcoming arguments. If it were accepted that, in contemporary societies, knowledge dissemination primarily happens through digital media, access to knowledge must be a significant means of accessing and exercising power. Therefore, access to informational resources lead to knowledge, and such access can happen through OARs in the digital age. Not only do OARs provide access to the process of knowledge but they also give users the opportunity to exercise such power.

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<sup>22</sup> GARY GUTTING, *THE CAMBRIDGE COMPANION TO FOUCAULT* (Cambridge Univ. Press 2005).

<sup>23</sup> See generally Jim Denison, *Planning, practice and performance: the discursive formation of coaches’ knowledge*, 15 *SPORT, EDUC. AND SOC’Y*, 461, 461–78 (2010).

<sup>24</sup> See Ben Golder, *Foucault and the Genealogy of Pastoral Power*, 10 *RADICAL PHIL. REV.* 2 (2007).

<sup>25</sup> See generally *Two Lectures*, in *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972-1977*, 39 (Colin Gordon, ed., Colin Gordon et al trans., 1977).

<sup>26</sup> Patricia Amigot & Margot Pujal, *On Power, Freedom, and Gender: A Fruitful Tension between Foucault and Feminism*, 19 *THEORY & PSYCH.* 646 (2009).

<sup>27</sup> See generally Andrew Crane, *The Conditions of Our Freedom: Foucault, Organization, and Ethics*, 18 *BUS. ETHICS QUARTERLY* 299 (2008).

<sup>28</sup> See *Power after Foucault*, in JOHN S. DRYZEK ET AL., *THE OXFORD HANDBOOK OF POLITICAL THEORY*, 65–84 (Oxford Unive. Press 2008).

<sup>29</sup> See generally Robin Nunkoo & Haywantee Ramkissoon, *Power, trust, social exchange and community support*, 39 *ANNALS OF TOURISM RES.* 997–1023 (2012).

According to Foucault, power is everywhere and not only in the sovereign.<sup>30</sup> Thus, power is a dynamic process.<sup>31</sup> Foucault clearly drafted a dynamic of power, and he also suggests a dynamic interpretation of knowledge.<sup>32</sup> Everyone should have an equal opportunity to access information. OARs increase this equal opportunity by playing dynamic role for the construction of individual background knowledge. While considering the close relationship between knowledge and power, this article examines the issue of what actually constitutes authoritative knowledge.

Simply having access to informational resources does not produce authoritative knowledge.<sup>33</sup> Foucault was interested in the epistemic context within which knowledge became authoritative.<sup>34</sup> This idea is crucial for the argument that for any particular field, several knowledge frameworks exist, some of which, by consensus, are more important than others, either because they explain the state of the world better in terms of efficacy or because they are associated with a stronger power base, and usually both.<sup>35</sup> Thus, authoritative knowledge is a way of organizing power relations for an effective social agreement. For example, an agreement among universities establishing a consistent policy for the implementation of OARs would help create the norms for managing and increasing access to digital publications.

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<sup>30</sup> See generally Brian C.J. Singer & Lorna Weir, *Politics and Sovereign Power: Considerations on Foucault*, 9 EUR. J. SOC. THEORY 443 (2006).

<sup>31</sup> See Christian Borch, *Systemic Power: Luhmann, Foucault, and Analytics of Power*, 48 ACTA SOCIOLOGICA 155–67 (2005).

<sup>32</sup> See generally WORLDGANG DETEL, *FOUCAULT AND CLASSICAL ANTIQUITY: POWER, ETHICS, AND KNOWLEDGE* (Cambridge Univ. Press 2005).

<sup>33</sup> See Michael A. Peters, *Three Forms of the Knowledge Economy: Learning, Creativity and Openness*, 58 BRIT. J. EDUC. STUD. 67 (2010); see also RICCARDO VIALE & HENRY ETZKOWITZ, *THE CAPITALIZATION OF KNOWLEDGE: A TRIPLE HELIX OF UNIVERSITY-INDUSTRY-GOVERNMENT* (Edward Elgar Publishing 2010).

<sup>34</sup> Johanna Oksala, *Foucault's Politicization of Ontology*, 43 CONTINENTAL PHIL. REV. 445, 446 (2010).

<sup>35</sup> See generally Brigitte Jordan, *Technology and social interaction: Notes on the achievement of authoritative knowledge in complex settings*, 6 TALENT DEV. & EXCELLENCE 95 (2014).

A pragmatic aspect for wider access to information exists and such discussion follows below.<sup>36</sup>

### III. SOCIAL JUSTICE REQUIRES EQUAL ACCESS TO INFORMATION

#### A. *John Rawls's Theory*

John Rawls's theory of social justice hinges on the idea that a society cannot be just until there is equality. This section analyses Rawls's theories to show that there cannot be equality in a society until there is equal access to information. John Rawls's theory of social justice is commonly referred to as "justice as fairness."<sup>37</sup> Rawls set out to draft a theory of social justice that answers two questions. First, what principles are most necessary to a democratic society once we view society as a just system of social cooperation of citizens that are considered free and equal? Second, which principles are most suitable for a democratic society that not only professes but also takes seriously the idea that citizens should be free and equal and works to realize this notion in its main institutions?<sup>38</sup> To Rawls, social justice is about satisfying the protection of equal access to liberties, rights, and opportunities, as well as taking care of the least-benefited members of society.<sup>39</sup> Thus, whether something is just or unjust depends on whether it promotes or hinders equal access to civil liberties, human rights, and opportunities for healthy and fulfilling lives, as well as whether it allocates a fair share of benefits to the least-benefited members of society.<sup>40</sup>

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<sup>36</sup> See THE SAGE HANDBOOK OF ACTION RESEARCH: PARTICIPATIVE INQUIRY AND PRACTICE (Peter Reason & Hilary Bradbury eds., 2d ed. 2013).

<sup>37</sup> See EQUALITY AND LIBERTY: ANALYZING RAWLS AND NOZICK (J. Angelo Corlett 1st ed., 2016).

<sup>38</sup> See generally *A Theory of Justice*, in BERNARD WILLIAMS, ESSAYS AND REVIEWS: 1959–2002, 83 (Princeton Univ. Press 2014).

<sup>39</sup> See Richard Marens, *Returning to Rawls: Social Contracting, Social Justice, and Transcending the Limitations of Locke*, 75 J. BUS. ETHICS 68 (2007).

<sup>40</sup> See PETER CORNING, THE FAIR SOCIETY: THE SCIENCE OF HUMAN NATURE AND THE PURSUIT OF SOCIAL JUSTICE (Univ. Chi. Press 2011).

Rawls's ideas of social justice are developed around the notion of a social contract.<sup>41</sup> For Rawls, the central issue is explaining why free and autonomous individuals voluntarily agree to curtail their freedoms in the form of a social contract in order to form political authority.<sup>42</sup> Rawls posits that rational and free people will agree to abide by the law under fair conditions. One of these conditions is for everyone to play by the rules. This condition is necessary to ensure social justice.<sup>43</sup> Further, Rawls clarifies that the main political and social institutions of a society create rules and principles that specify the basic rights and duties of its citizens. Additionally, these institutions regulate the division of benefits arising from the citizens' social cooperation and allot the burdens necessary to sustain it. In sum, these social and political institutions are critical in the maintenance of a just society.<sup>44</sup>

Rawls's theory, being a part of the liberal political conception, provides a framework for the legal use of political power. He views justice as fairness. Rawls bases this understanding of justice on the liberal notion that citizens should be free and equal.<sup>45</sup> The guiding views of justice as fairness are expressed through the principles of justice mentioned above. Rawls's first principle of social justice is that each person has an equal, inalienable claim to the same basic liberties.<sup>46</sup>

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<sup>41</sup> See generally THE SOCIAL CONTRACT FROM HOBBS TO RAWLS 8 (David Boucher & Paul Kelly eds., 2003).

<sup>42</sup> See JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT (CreateSpace Independent Publishing Platform 2013).

<sup>43</sup> SAMUEL FREEMAN, RAWLS (Routledge 2007).

<sup>44</sup> See generally, ORGANIZING KNOWLEDGE: AN INTRODUCTION TO MANAGING ACCESS TO INFORMATION (J. E. Rowley & Richard J. Hartley eds., 4th ed. 2008).

<sup>45</sup> *John Rawls*, STAN. ENCYCLOPEDIA PHILO., (Mar. 25, 2008), <http://plato.stanford.edu/archives/win2013/entries/rawls/> (last visited Aug. 2, 2016).

<sup>46</sup> The social and economic inequalities satisfy these conditions when they are attached to offices and positions open to all under conditions of fair equality of opportunity, and they are of the greatest benefit to the least-advantaged members of society (the difference principle). See also JOHN RAWLS, JUSTICE AS FAIRNESS: A RESTATEMENT, 42–3 (Erin Kelly Harv. Univ. Press 2001).

Rawls's second principle states that if social and economic inequalities are allowed to exist, they must satisfy specific conditions.<sup>47</sup> These conditions are concerned with any inequality that is a part of or produced by the social structure.<sup>48</sup> Rawls's second principle states that if social and economic inequalities are allowed to exist, they must satisfy specific conditions. These conditions are concerned with any inequality that is a part of or produced by the social structure. The first condition is that equality is just only if it serves a public good. As a result, this condition requires that social institutions be arranged so that any inequalities of wealth and income work beneficially for those who will be the worst off. It also requires that economic inequalities benefit everyone, particularly the least advantaged.

Additionally, Rawls argues that to be just, advantaged positions within an unequal system should be equally accessible to all members of that system. Therefore, the second condition is that everyone in a society must have an equal educational and economic opportunity to use his or her skills or talents, regardless of his or her economic background<sup>49</sup>

Rawls's two principles of social justice follow a four-phase procedure for implementation. First, in order to regulate society, the political and social institutions must adopt all of the principles of justice.<sup>50</sup> Second, there must be a constitutional convention that sets forth the institutions and basic processes of governance.<sup>51</sup> Third, there must be a legislative stage, where

<sup>47</sup> See JÜRGEN HABERMAS, *INCLUSION OF THE OTHER: STUDIES IN POLITICAL THEORY* (Ciaran Cronin & Pablo De Greiff eds., John Wiley & Sons 2015).

<sup>48</sup> Graham Scambler, *Social Structure and the Production, Reproduction and Durability of Health Inequalities*, 5 *SOC. THEORY & HEALTH* 297, 310 (2007); Herman G. Van de Werfhorst & Jonathan J. B. Mijis, *Achievement Inequality and the Institutional Structure of Educational Systems: A Comparative Perspective*, 36 *ANN. REV. SOC.* 407, 417 (2010).

<sup>49</sup> See *HANDBOOK OF INCOME INEQUALITY MEASUREMENT* (Jacques Silber ed., Springer Science & Business Media 2012).

<sup>50</sup> See generally F. A. HAYEK, *LAW, LEGISLATION AND LIBERTY: A NEW STATEMENT OF THE LIBERAL PRINCIPLES OF JUSTICE AND POLITICAL ECONOMY* (Routledge 5<sup>th</sup> ed. 2013).

<sup>51</sup> Mark Bevir, *Democratic Governance: Systems and Radical Perspectives*, 66 *PUB. ADMIN. REV.* 426, 432 (2006).

just laws are enacted.<sup>52</sup> Finally, regulations must be enforced by those who govern and rule. In sum, in order to have a just and fair society, laws must be created using principles of fairness and these laws must be followed by its citizens.<sup>53</sup>

Rawls's theory that the dissemination of wealth in a society has to be to everyone's advantage can be extended and applied to the issue of society's access to knowledge.<sup>54</sup> When applying Rawls' theories of wealth dissemination to the idea of access to knowledge, it becomes evident that access to knowledge is a crucial element in creating conditions of social justice. Aligned with Rawls's argument, scholars argue that knowledge has been a crucial component of both economic development and the gradual rise of social wealth since time immemorial.<sup>55</sup> Additionally, the ability to produce new ideas and knowledge has always benefited the wealth in a society.<sup>56</sup> Thus, open access can be a means for social justice that gives opportunities to everybody. Moreover, because open access is an essential resource for gaining knowledge, creating the opportunity for equal access to information would be a reasonable step in creating a just society.<sup>57</sup>

Rawls's theory helps determine whether a procedure or outcome is consistent with social justice.<sup>58</sup> Any procedure or outcome is inconsistent

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<sup>52</sup> William D. Anderson et al., *The Keys to Legislative Success in the U.S. House of Representatives*, 28 LEGIS. STUD. Q. 357, 367 (2003).

<sup>53</sup> Barbara Muraca, *Towards a fair degrowth-society: Justice and the right to a "good life" beyond growth*, 44 FUTURES 535, 540 (2012).

<sup>54</sup> David Lametti, *The Concept of Property: Relations through Objects of Social Wealth*, 53 UNIV. TORONTO L. J. 325, 345 (2003).

<sup>55</sup> See Paul A. David & Dominique Foray, *An Introduction to the Economy of the Knowledge Society*, 54 INT'L SOC. SCI. J. 9 (2002).

<sup>56</sup> Kenneth Carlaw et al., *Beyond the Hype: Intellectual Property and the Knowledge Society/Knowledge Economy*, 20 J. ECON. SURV. 633, 658 (2006).

<sup>57</sup> DIGITAL LIBRARIES: UNIVERSAL AND UBIQUITOUS ACCESS TO INFORMATION: 11TH INTERNATIONAL CONFERENCE ON ASIAN DIGITAL LIBRARIES, ICADL 2008, BALI, INDONESIA, DECEMBER 2-5, 2008, PROCEEDINGS (George Buchanan et al. eds., Springer Science & Business Media 2008) <http://www.springer.com/la/book/9783540895329> (last visited Aug 3, 2017).

<sup>58</sup> See AMARTYA SEN, *THE IDEA OF JUSTICE* (Harv. Univ. Press 2011).

with social justice if it interferes with an individual's claims to equal liberties.<sup>59</sup> Justice as fairness requires that any inequality be justified by reference to Rawls's principles of justice.<sup>60</sup> Therefore, public policy that ensures the participation of all citizens enables the creation of socially just rules and laws.

However, the possibility of participation in rule formation and public policy formulation depends on people having the capacity for meaningful participation.<sup>61</sup> Scholars argue that, for instance, youth should participate in public policy at the municipal level.<sup>62</sup> But, according to mass media, social scientists, and professional practitioners, who all highlight the deficiencies and disengagement of youth, in order for youths to take on roles as active citizens, there needs to be more knowledge and informational resources.<sup>63</sup> Rawls's theory helps justify that social justice requires equal access to information.<sup>64</sup> Rawls's theory helps justify the idea that social justice requires equal access to information. However, in order for equal access to occur, regulations demanding the creation of OARs need to be introduced. However, unless citizens participate, and society adopts stronger public policies in support of OARs and citizen participation, these regulations are unlikely to be created.

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<sup>59</sup> See generally JOEL FEINBERG, RIGHTS, JUSTICE, AND THE BOUNDS OF LIBERTY: ESSAYS IN SOCIAL PHILOSOPHY (Princeton Univ. Press 2014).

<sup>60</sup> Rawls, *supra* note 45, at 47.

<sup>61</sup> See LAWRENCE R. JACOBS ET AL., TALKING TOGETHER: PUBLIC DELIBERATION AND POLITICAL PARTICIPATION IN AMERICA (Univ. Chi. Press 2009).

<sup>62</sup> Katie Richards-Schuster & Barry Checkoway, *Youth Participation in Public Policy at the Local Level: New Lessons from Michigan Municipalities*, 98 NAT'L CIVIC REV. 26, 30 (2009).

<sup>63</sup> Barry Checkoway et al., *Youth Participation in Public Policy at the Municipal Level*, 27 CHILD. & YOUTH SERV. REV. 1149, 1150 (2005).

<sup>64</sup> See generally Gladys Loewen & William Pollard, *The Social Justice Perspective*, 23 J. POSTSECONDARY EDU. & DISABILITY 5 (2010).

#### IV. FAIRER REGULATIONS THROUGH PUBLIC POLICY AND PEOPLE'S PARTICIPATION

Public policy, in terms of both processes and substantive content, requires that people have a voice in its formation.<sup>65</sup> Another aspect of public policy is that access to information is critical for enabling citizens to exercise their voice, hold the government accountable, and enter into an informed dialogue about decisions that affect their lives.<sup>66</sup> Citizens can improve their living standards and better their lives when they have access to knowledge.<sup>67</sup>

Strong public policy should solve problems efficiently, serve justice, support governmental institutions and policies, and encourage active citizenship.<sup>68</sup> Public policy is directly related to creating a solid social infrastructure and promoting active citizenship.<sup>69</sup> Because both public policy and governance require fairness to the citizens, the two are interrelated. In order to have fair governance and public policy, both must adhere to the principles of social justice. In the broader sense, the concept of social justice is about the links between citizens, institutions, and governments.<sup>70</sup>

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<sup>65</sup> See THE ARGUMENTATIVE TURN REVISITED: PUBLIC POLICY AS COMMUNICATIVE PRACTICE (Frank Fischer & Herbert Gottweis eds., Duke University Press 2012) [hereinafter Fischer & Gottweis].

<sup>66</sup> TAKING PART? ACTIVE LEARNING FOR ACTIVE CITIZENSHIP, AND BEYOND (M. C. Mayo & J. Annette ed., NIACE 2010), <http://research.gold.ac.uk/1819/> (last visited Oct. 24, 2017).

<sup>67</sup> See generally Richard Calland & Kristina A. Bentley, *The Impact and Effectiveness of Transparency and Accountability Initiatives: Freedom of Information* 31 DEV. POL'Y REV. 69 (2013).

<sup>68</sup> See MICHAEL HILL & FREDERIC VARONE, THE PUBLIC POLICY PROCESS (Routledge 2014).

<sup>69</sup> MARIAN BARNES ET AL., POWER, PARTICIPATION AND POLITICAL RENEWAL: CASE STUDIES IN PUBLIC PARTICIPATION (Policy Press 2007); Gene Rowe & Lynn J. Frewer, *Public Participation Methods: A Framework for Evaluation*, 25 SCI., TECH. & HUM. VALUES 3, 18 (2000).

<sup>70</sup> See generally Kelly Buettner-Schmidt & Marie L. Lobo, *Social Justice: A Concept Analysis*, 68 J. ADVANCED NURSING 948 (2012).

Furthermore, there are differing views about how public policy is formed.<sup>71</sup> For example, there are advocates who claim that public policy can be made by leaders of religious and cultural institutions for the benefit of the congregation and participants.<sup>72</sup> Another argument is that policy makers should be guided by core principles such as transparency, accessibility, and openness concerning bureaucratic and decision-making processes. Moreover, politicians and public servants are accountable to the public. This accountability illustrates the importance of citizen participation in the creation of public policy in achieving the desired solutions for social concerns.<sup>73</sup> Therefore, public policy and its formulation should stem from the will of the public. It is often argued that one challenge for governments is finding a way to engage the public in the policy making process.<sup>74</sup> This common challenge shows that citizen participation is fundamental and that public administration is increasingly concerned with placing citizen opinions at the core of policymakers' decisions.<sup>75</sup> Not only is citizens' participation crucial in terms of the scope of public policy but it is also influential for governmental decisions.<sup>76</sup> Additionally, the issue of citizen participation has long been a component of the democratic decision-making process. Further, public discourse is often incorporated into scholarly

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<sup>71</sup> See William Dunn, *Public Policy Analysis: An Introduction, Third Edition* (Prentice Hall 2003), <http://www.amazon.ca/exec/obidos/redirect?tag=citeulike09-20&path=ASIN/0130976393> (last visited Aug. 3, 2017).

<sup>72</sup> See David Hesmondhalgh, *Media and cultural policy as public policy: The case of the British Labour government*, 11 INT'L J. CULTURAL POL'Y 95 (2005); See also Dan M. Kahan & Donald Braman, *Cultural Cognition and Public Policy* 24 YALE L. & POL'Y REV. 147 (2005).

<sup>73</sup> See generally CARROTS, STICKS, AND SERMONS: POLICY INSTRUMENTS AND THEIR EVALUATION (Marie-Louise Bemelmans-Videc et al. eds., Transaction Publishers 2011).

<sup>74</sup> See LARRY N. GERSTON, *PUBLIC POLICY MAKING: PROCESS AND PRINCIPLES* (Routledge, 2014) e

<sup>75</sup> Evelyn Ersanilli & Ruud Koopmans, *Rewarding Integration? Citizenship Regulations and the Socio-Cultural Integration of Immigrants in the Netherlands, France and Germany*, 36 J. ETHNIC & MIGRATION STUD. 773–91 (2010).

<sup>76</sup> See DOUGLAS R. HOLMES, *INTEGRAL EUROPE: FAST-CAPITALISM, MULTICULTURALISM, NEOFASCISM* (Princeton Univ. Press 2010).

debates on the appropriate course of governmental action. Because these scholarly debates influence government decisions, and public discourse is a key component of these debates, public discourse is capable of both directly and indirectly influencing government decisions.<sup>77</sup>

In order to increase equality in society, citizens must increasingly participate in the creation of public policy.<sup>78</sup> Accordingly, authorities responsible for formulating public policy should focus on accommodating and addressing social needs.<sup>79</sup> Moreover, the process of formulating social policy is as important as the argument that social justice requires that everyone's interests be represented fairly.<sup>80</sup>

As part of its role in promoting citizen participation in the creation of public policy, the government should assist in providing its citizens with relevant information. Democracy is a system of government with four key elements;<sup>81</sup> specifically, it is (i) a political system for choosing and replacing the government through free and fair elections; (ii) the active participation of the people, as citizens, in politics and civic life; (iii) protection of the human rights of all citizens; and (iv) a rule of law, in which laws and procedures apply equally to all citizens.<sup>82</sup> Given these elements, it is evident that governments ought to provide services that support access to information in order to better protect its citizens' equality and human rights. Moreover, the government should help influence public

<sup>77</sup> See W. ROBERT LOVAN ET AL., *PARTICIPATORY GOVERNANCE: PLANNING, CONFLICT MEDIATION AND PUBLIC DECISION-MAKING IN CIVIL SOCIETY* (Routledge 2017).

<sup>78</sup> See generally ANTHONY J. CORTESE, *WALLS AND BRIDGES: SOCIAL JUSTICE AND PUBLIC POLICY* (SUNY Press 2003).

<sup>79</sup> See generally JEAN ANYON, *RADICAL POSSIBILITIES: PUBLIC POLICY, URBAN EDUCATION, AND A NEW SOCIAL MOVEMENT* (Routledge 2014).

<sup>80</sup> See generally STELLA Z. THEODOLOU & MATTHEW A. CAHN, *PUBLIC POLICY: THE ESSENTIAL READINGS* (Pearson 2d ed. 2012).

<sup>81</sup> Shuifa Han, *The Concept of Democracy*, 3 *FRONTIERS PHIL. IN CHINA* 622, 630 (2008).

<sup>82</sup> *What is Democracy? Lecture at Hilla University for Humanistic Studies* (2004), <https://web.stanford.edu/~ldiamond/iraq/WhaIsDemocracy012004.htm> (last visited Nov 10, 2014)

policy to increase support for freely accessible sources of information. Therefore, the relationship between the government and citizens illustrates the importance of proper public policy. In sum, open access should be adopted for two reasons: first, it is an effective response to intellectual rights protection in the digital age, and second, it broadens access to informational resources, thus increasing social justice and increased social cohesion.

During the formulation of public policy there are actions that should not be considered from this perspective.<sup>83</sup> Following this rationale, if public policy is understood in broader terms as incorporating social circumstances, it would be easier to see that public policy and governance pursue similar goals of fairness as inclusiveness, which is an important aspect of social justice.<sup>84</sup> While fairness and inclusiveness are both very important aspects of social justice, a society cannot become just without social cohesion.

#### A. *Social Cohesion Requires Public Policy that Creates Social Justice*

Social cohesion is defined as the willingness of members of a society to collaborate with each other in order to prosper.<sup>85</sup> Another definition argues that social cohesion is a cohesive society that works toward the well-being of all its members, promotes trust, and provides equal opportunities to its members the opportunity to improve the social status.<sup>86</sup> Rousseau and

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<sup>83</sup> See LARRY N. GERSTON, *PUBLIC POLICY-MAKING IN DEMOCRATIC SOCIETY: A GUIDE TO CIVIC ENGAGEMENT* (2<sup>nd</sup> ed., M.E. Sharpe, 2008)

<sup>84</sup> See Valerio Rosset et.al., *A DRM Architecture to Distribute and Protect Digital Contents Using Digital Licenses*, ADVANCED INDUS. CONF. TELECOMM./SERV. ASSURANCE WITH PARTIAL AND INTERMITTENT RESOURCES CONF./E-LEARNING TELECOMM. WORKSHOP (2005), <http://ieeexplore.ieee.org.proxy.seattleu.edu/stamp/stamp.jsp?arnumber=1517665>.

<sup>85</sup> See generally John Bruhn, *The Concept of Social Cohesion*, in GROUP EFFECT 31, (2009).

<sup>86</sup> Juan Laiglesia *Perspectives on Global Development 2012 Social Cohesion in a Shifting World?*, MAASTRICHT SCH. MGMT, <http://www.msm.nl/resources/uploads/2014/02/MSM-WP2012-26.pdf> (last visited Jun. 19, 2017).

Habermas are the two foremost philosophers when it comes to the interplay between social contracts and social cohesion. A social contract is necessary to Rousseau, as it assumes that human nature is more collective rather than competitive.<sup>87</sup> Rousseau claims that legitimate political authority rights rely on a social contract forged between the members of that society.<sup>88</sup> He rejects the idea that legitimate political authority rights are founded in nature or by force.<sup>89</sup> It is through the concept of social contract that Rousseau seeks to determine whether there can be legitimate political authority rights.<sup>90</sup> Furthermore, Rousseau argues that social contracts are necessary to support notions of liberty and to deal with the inequalities that have emerged from the creation of private property.<sup>91</sup>

It is widely accepted that Rousseau's social contract theory only partially conceptualizes the idea of social cohesion.<sup>92</sup> Habermas views Rousseau's theory of social contract as an uncritical and undeliberate general will.<sup>93</sup> Habermas views Rousseau's theory of social contract, not as a deliberate action, but as an uncritical and undeliberate general will of "follow-the-leader". In other words, Habermas claims that Rousseau is simply repurposing the apolitical version of the eighteenth-century concept of "public opinion" in order to make an argument on how to strengthen

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<sup>87</sup> See LORETTA CAPEHEART & DRAGAN MILOVANOVIC, *SOCIAL JUSTICE: THEORIES, ISSUES, AND MOVEMENTS* (Rutgers University Press 2007).

<sup>88</sup> Katrin Froese, *Beyond Liberalism: The Moral Community of Rousseau's Social Contract*, 34 CAN. J. POL. SCI. 579, 586 (2001).

<sup>89</sup> JEAN-JACQUES ROUSSEAU, *DISCOURSE ON POLITICAL ECONOMY AND THE SOCIAL CONTRACT*, 78 (Oxford Univ. Press 2008).

<sup>90</sup> See generally JEAN-JACQUES ROUSSEAU, *THE BASIC POLITICAL WRITINGS* (Donald A. Cress, 2d. ed., Hackett Publishing 2010).

<sup>91</sup> Guy J. Carrin, *Rousseau's "social contract": contracting ahead of its time?* 84 BULL. WORLD HEALTH ORG. 916 (2006).

<sup>92</sup> Fathali M. Moghaddam, *The Psychological Citizen and the Two Concepts of Social Contract: A Preliminary Analysis*, 29 POL. PSYCH. 881, 882 (2008).

<sup>93</sup> Jürgen Habermas & William Rehg, *Constitutional Democracy: A Paradoxical Union of Contradictory Principles?* 29 POL. THEORY 766, 769 (2001).

democracy.<sup>94</sup> In addition, Habermas describes Rousseau as using the prefix “public” to highlight the people’s presence during the election process rather than to amplify the openness of their opinions.<sup>95</sup>

The main task of Habermas’ discourse theory of deliberative democracy is to provide a definition of legitimate law.<sup>96</sup> Habermas primarily argues that in modern societies, citizens do not participate in a meaningful way in the matters of governance and forming collective opinions.<sup>97</sup> Deliberative democracy is dependent on the availability of a discursive space in the public sphere where individuals can gather freely to discuss ideas and come to a consensus on important issues. As argued in the previous section, citizen participation in the creation of public policy is required to establish social justice. It is also a fundamental part of participatory or deliberative democracy.

The concept of deliberative democracy is a response to the shortcomings of past democracies. Moreover, a core set of provisions characterize the deliberative model of democracy and distinguish it from opponents.<sup>98</sup> Habermas develops an argument that in civil society, as the sphere between political and personal spheres, conditions of genuine participation by everyone can and should be created.<sup>99</sup> A brief overview of Habermas’s theory regarding the public sphere is necessary to appreciate how various parts of his argument fit together and helps us comprehend how a consensus can be formed. It is important to emphasise that Habermas aims for a

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<sup>94</sup> See Lincoln Dahlberg, *The Habermasian Public Sphere: Taking Difference Seriously?* 34 THEORY & SOC’Y 111, 112 (2005).

<sup>95</sup> See generally ETHAN PUTTERMAN, *ROUSSEAU, LAW AND THE SOVEREIGNTY OF THE PEOPLE* (Cambridge Univ. Press 2010).

<sup>96</sup> See generally KENNETH BAYNES, *HABERMAS* (Routledge 2015).

<sup>97</sup> See Douglas Kellner, *Habermas, the Public Sphere, and Democracy*, in RE-IMAGINING PUBLIC SPACE 19, 32 (2014).

<sup>98</sup> See T. S. Graham, *What’s Wife Swap got to do with it? Talking politics in the net-based public sphere*, (2009), <http://dare.uva.nl/record/1/317838> (last visited Nov 9, 2015)

<sup>99</sup> See Peter Dahlgren, *The Internet, Public Spheres, and Political Communication: Dispersion and Deliberation*, 22 POL. COMM. 147, 152 (2005).

rational and empirical consensus, and he assumes that most of the existing procedures needed to form a consensus are empirical.<sup>100</sup>

According to Habermas, a person's life is made up of two distinct spheres, the public and the private. The public sphere is a composite concept of "institutional criteria." These institutional criteria, in turn, are made up of preconditions that allow for the emergence of the public sphere.<sup>101</sup> In his work *The Structural Transformation of the Public Sphere*, Habermas describes these criteria and develops the concept of the public sphere. Habermas argues that the public sphere includes the political sphere because any political decision made is relevant to all citizens.<sup>102</sup> On the other hand, the private sphere is divided into two of separate categories, the personal sphere and the sphere of civil society. The personal sphere is focused on how emotions and relationship govern a person's behavior.<sup>103</sup> Conversely, it is in civil society that we come together with relative strangers in order to find ways of operating in an efficient manner.<sup>104</sup> Interestingly, market relationship are also a part of the private sphere.<sup>105</sup> Habermas seeks to refine the concept of private market relations by explaining that in civil society we come together in various capacities, not just as market actors.<sup>106</sup> Therefore, clubs, press, the market for cultural

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<sup>100</sup> See generally EDUARDO MENDIETA, *THE ADVENTURES OF TRANSCENDENTAL PHILOSOPHY: KARL-OTTO APEL'S SEMIOTICS AND DISCOURSE ETHICS* (Rowman & Littlefield 2002).

<sup>101</sup> Kellner, *supra* note 97.

<sup>102</sup> See John W. Delicath & Kevin Michael DeLuca, *Image Events, the Public Sphere, and Argumentative Practice: The Case of Radical Environmental Groups*, 17 ARGUMENTATION 315, 323 (2003).

<sup>103</sup> See generally ZIZI PAPACHARISSI, *A PRIVATE SPHERE: DEMOCRACY IN A DIGITAL AGE* (John Wiley & Sons 2010).

<sup>104</sup> See Ronaldo Munck, *Global Civil Society*, in *THIRD SECTOR RESEARCH* 317, 320, [http://link.springer.com/chapter/10.1007/978-1-4419-5707-8\\_22](http://link.springer.com/chapter/10.1007/978-1-4419-5707-8_22) (last visited Jun 19, 2017).

<sup>105</sup> See John Downey & Natalie Fenton, *New Media, Counter Publicity and the Public Sphere*, 5 NEW MEDIA & SOC'Y 185, 190 (2003).

<sup>106</sup> See Andreas Georg Scherer et al., *Global Rules and Private Actors: Toward a New Role of the Transnational Corporation in Global Governance*, 16 BUS. ETHICS Q. 505, 520 (2006).

products, social concerns, and circumstances are various layers of civil society associations.<sup>107</sup>

Habermas considers that the ideal form of civil society includes an area of social life where the dissemination and exchange of information, statements, and views regarding common concerns or goods occurs and eventually shapes public opinion.<sup>108</sup> This, in turn, affects the conduct of the political system and those who rule or govern. In other words, a sphere that operates as an intermediary between citizens and state emerged, and significantly, this sphere created a new, legitimizing source of power.<sup>109</sup>

The mere coming together and forming of opinions is not enough to create true deliberative democracy. That is why deliberative democracy emphasizes the conditions in which true or uncoerced discourse can develop.<sup>110</sup> To Habermas, the core element of discourse stems from the communication among people.<sup>111</sup> However, Habermas's theory of communicative action relies on the notion that what happens in society depends on the capacity of those who govern to comprehend and cooperate efficiently with social groups in order to improve general social wealth.<sup>112</sup> To conceptualize social cooperation, Habermas highlights that social cooperation can be rationalized by citizens because they presume good reasons, such as general social need, exist that justifies their cooperation.<sup>113</sup>

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<sup>107</sup> See generally NICK CROSSLEY & JOHN MICHAEL ROBERTS, *AFTER HABERMAS: NEW PERSPECTIVES ON THE PUBLIC SPHERE* (Wiley 2004).

<sup>108</sup> See generally JUDE HOWELL & JENNY PEARCE, *CIVIL SOCIETY AND DEVELOPMENT: A CRITICAL EXPLORATION* (Lynne Rienner Publishers 2002).

<sup>109</sup> Dahlberg, *supra* note 94.

<sup>110</sup> See Kellner D. (2014) *Habermas, the Public Sphere, and Democracy*. In: Boros D., Glass J.M. (eds) *Re-Imagining Public Space*. Palgrave Macmillan, New York (p. 19-43)

<sup>111</sup> See generally ERIK ODDVAR ERIKSEN & JARLE WEIGARD, *UNDERSTANDING HABERMAS: COMMUNICATING ACTION AND DELIBERATIVE DEMOCRACY* (Bloomsbury Academic 2004).

<sup>112</sup> See Ernst Fehr & Herbert Gintis, *Human Motivation and Social Cooperation: Experimental and Analytical Foundations*, 33 ANN. REV. SOC. 43, 48 (2007).

<sup>113</sup> See generally PATRICK BAERT & FILIPE CARREIRA DA SILVA, *SOCIAL THEORY IN THE TWENTIETH CENTURY AND BEYOND* (Polity 2d. 2010).

Thus, what Habermas refers to as the “reflective form” justifies the theory of communicative action.<sup>114</sup>

Habermas’s theory of communicative action assumes that the specific type of social claim that someone aims to justify determines the specific argumentative practices necessary for such justification.<sup>115</sup> Thus, the theory of communicative action calls for a pragmatic analysis of argumentation as a social practice. Such analysis aims to reformulate the normative presuppositions that structure the debate of competent theorists. Following contemporary argumentation theorists, Habermas assumes one cannot fully articulate these normative presuppositions solely in terms of the logical properties of arguments.<sup>116</sup> Rather, he distinguishes three aspects of argument-making practices: argument as product, as procedure, and as process, which he loosely aligns with the traditional perspectives on argument evaluation of logic, dialectic, and rhetoric.<sup>117</sup>

Habermas discovered that the first reference to the public sphere was introduced in the eighteenth century after the development of new infrastructure for social communication (publishing houses and press) and corresponded with the growth of communicative public spaces (coffee houses, table societies, voluntary associations and salons).<sup>118</sup> Habermas’s concept of the public sphere is focused on its relationship to deliberative democracy. This is because deliberative democracy is concerned with how the public’s views are shaped within the public sphere and the way such

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<sup>114</sup> See generally JÜRGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION: REASON AND THE RATIONALIZATION OF SOCIETY*, VOLUME 1 (Polity 2015).

<sup>115</sup> Fischer & Gottweis, *supra* note 65.

<sup>116</sup> James Bohman & William Rehg, *Jürgen Habermas*, STAN ENCYCLOPEDIA PHIL. (2007), <https://stanford.library.sydney.edu.au/archives/spr2012/entries/habermas/> (last visited Jun. 20, 2017).

<sup>117</sup> BAYNES, *supra* note 102.

<sup>118</sup> See generally RONAN DEAZLEY ET AL., *PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT* (Open Book Publishers 2010).

views influence the governance process.<sup>119</sup> In addition, deliberative democracy defines the conditions that are necessary to create a social contract.<sup>120</sup> Habermas's interest in political theory and rationality come together in his theory for discourse ethics in civil society.<sup>121</sup> In that context, argumentation appears in the form of public discussion and debate over practical questions that governmental bodies encounter.<sup>122</sup> Hence, the challenge is to indicate whether an idealized form of practical discussion connects with real, institutional contexts of decision making.<sup>123</sup>

To Habermas, newspapers, magazines, radio broadcasts, and television broadcasts are the media of the public sphere.<sup>124</sup> In contemporary times, we can also include the Internet as part of this media.<sup>125</sup> However, Habermas's concept of the public sphere and social space should be slightly modified or adapted to the current circumstances of the digital age. Therefore, the modern "public sphere" and relevant "social space" are available on the Internet. As mentioned above, the Internet is a platform where users can freely discuss ideas, consider issues, create content, share, disseminate, and exchange information through a variety of platforms, including social networks. Thus, the Internet could form a substantial part of the platform for social consensus. Support for this is available in the parallel discussions about the Internet. Additionally, these discussions are prime examples of

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<sup>119</sup> Manuel Castells, *The New Public Sphere: Global Civil Society, Communication Networks, and Global Governance*, 616 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 82 (2008).

<sup>120</sup> See generally Donatella Porta, *Democracy and Social Movements*, in THE WILEY-BLACKWELL ENCYCLOPEDIA SOC. AND POL. MOVEMENTS (2013).

<sup>121</sup> See Jürgen Habermas, *Notes on Post-Secular Society*, 25 NEW PERSP. Q. 17, 22 (2008).

<sup>122</sup> See generally STEPHEN BELL & ANDREW HINDMOOR, *RETHINKING GOVERNANCE: THE CENTRALITY OF THE STATE IN MODERN SOCIETY* (Cambridge Univ. Press 2009).

<sup>123</sup> Simone Chambers, *Rhetoric and the Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy?* 37 POL. THEORY 326 (2009).

<sup>124</sup> See John Mingers & Geoff Walsham, *Toward Ethical Information Systems: The Contribution of Discourse Ethics*, 34 MIS Q. 833, 840 (2010).

<sup>125</sup> ASA BRIGGS & PETER BURKE, *SOCIAL HISTORY OF THE MEDIA: FROM GUTENBERG TO THE INTERNET* (Polity Press 3d. 2010).

how the Internet can be used as a public sphere.<sup>126</sup> Certainly, online software for exchanging and preserving data, such as Google Drive and Dropbox, as well as the social networks Facebook, Twitter, LinkedIn, and Academia, are notable examples that illustrate the contemporary social need to exchange and transmit information in the digital age.

The social need to share and spread information has changed through the centuries.<sup>127</sup> Two centuries ago, there was the rise of the Industrial Revolution, a fundamental change in commerce that created immense wealth for those able to take advantage of it.<sup>128</sup> This great shift away from craft and artisan-led businesses was characterized by significant mechanization, mass production, and the birth of scientific management.<sup>129</sup> More recently, the information revolution was propelled by the development and subsequent ubiquity of the digital computer.<sup>130</sup> In this context, the Internet is introduced to this otherwise heavily commercialized theater of mass communication.<sup>131</sup> Scholars claim that the Internet needs to fulfill six fundamental criteria in order to be considered a public sphere. Specifically, it should (i) have autonomy from state and economic power; (ii) critique and exchange criticized moral-practical validity claims; (iii) have reflexivity; (iv) include ideal role-taking; (v) involve sincerity; and

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<sup>126</sup> See Zizi Papacharissi, *The Virtual Sphere 2.0*, in ROUTLEDGE HANDBOOK OF INTERNET POLITICS 234 (2009).

<sup>127</sup> See generally Edward Lee, *Freedom of the Press 2.0*, OHIO ST. U. MORITZ C. LAW (2007).

<sup>128</sup> CHRIS FREEMAN & FRANCISCO LOUÇÃ, *AS TIME GOES BY: FROM THE INDUSTRIAL REVOLUTIONS TO THE INFORMATION REVOLUTION* (Oxford Univ. Press 2001).

<sup>129</sup> See Denise M. Rousseau et al., *11 Evidence in Management and Organizational Science: Assembling the Field's Full Weight of Scientific Knowledge Through Syntheses*, 2 ACAD. MGMT. ANN. 475, 503 (2008).

<sup>130</sup> James Lee, *Knowledge management: The intellectual revolution*, 32 IIE SOLUTIONS 34 (2000).

<sup>131</sup> See Kasun Ubayasiri, *Internet and the Public Sphere: A glimpse of - eJournalist* YUMPU.COM, <https://www.yumpu.com/en/document/view/11531755/internet-and-the-public-sphere-a-glimpse-of-ejournalist> (last visited Nov 17, 2015).

(vi) comprise discursive inclusion and equality.<sup>132</sup> Through the Internet, a reinvigoration of the concept of the public sphere can take place. This reinvigoration can be supported through the development of OARs as a means for dissemination of information, which in turn can increase social cohesion.<sup>133</sup> More specifically, the Internet could be an efficient political tool if it were part of a democracy in which free and open discussion through a vital public sphere plays a decisive role.<sup>134</sup>

There is extensive literature on participatory democracies, and not every scholar has the same understanding of the concept.<sup>135</sup> For instance, some argue that participatory democracy is direct democracy, in the sense that all citizens are actively involved in all important decisions.<sup>136</sup> The concept of participatory democracy commonly refers to movements, such as the Civil Rights Movement or the Women's Suffrage Movement, that gather a group of people who democratically make decisions about the direction of the group.<sup>137</sup> Generally, participatory democracy is a concept that points to political consideration as motivation for improving collective decision-making.<sup>138</sup> Participatory democracy emphasizes the right of everyone to

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<sup>132</sup> Lincoln Dahlberg, *The Internet and Democratic Discourse: Exploring The Prospects of Online Deliberative Forums Extending the Public Sphere*, 4 INFO., COMM. & SOC. 615–33 (2001)

<sup>133</sup> See also Antje Gimmler, *Deliberative democracy, the public sphere and the internet*, 27 PHIL. & SOC. CRITICISM 21, 28 (2001).

<sup>134</sup> See Dahlgren, *supra* note 99, at 24; Jacob A. Benfield & William J. Szlemko, *Internet-Based Data Collection: Promises and Realities*, 2 J. RES. PRAC. 1 (2006).

<sup>135</sup> See Antonio Florida *Participatory Democracy versus Deliberative Democracy: Elements for a Possible Theoretical Genealogy. Two Histories, Some Intersections.*, 7<sup>TH</sup> GENERAL CONF. (Sept. 7, 2013), <https://ecpr.eu/Filestore/PaperProposal/71d7f83c-3fe4-4b11-82a2-c151cd3769f4.pdf>.

<sup>136</sup> See BENJAMIN R. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* (U.C. Press 2003).

<sup>137</sup> James Brown, *What is participatory democracy? It means you get involved*, GLASGOW DAILY TIMES, [http://www.glasgowdailytimes.com/opinion/what-is-participatory-democracy-it-means-you-get-involved/article\\_d0e062df-de30-502e-94bd-7cfd00a5130.html](http://www.glasgowdailytimes.com/opinion/what-is-participatory-democracy-it-means-you-get-involved/article_d0e062df-de30-502e-94bd-7cfd00a5130.html) (last visited Jan. 14, 2016).

<sup>138</sup> DELIBERATIVE DEMOCRACY AND ITS DISCONTENTS (Samantha Besson & José Luis Martí eds., Ashgate Publishing, Ltd. 2006).

participate in the decision-making process. For participatory democracy to be successful, it is crucial that everyone has the opportunity to participate in the collective decision making. Additionally, once a decision is made, everyone must be equally subjected to that decision.<sup>139</sup>

Taking everything into account, Habermas defined the importance of social cohesion, deliberative democracy, and the public sphere. Because the Internet has become the new public sphere in our society, it makes sense that OARs will become the best place to access information.

## V. THE ISSUES WITH COPYRIGHT

The problems of enforcing conventional conceptions of copyright are three-fold. First, intellectual property is intangible.<sup>140</sup> Second, managing informational resources is difficult because of the great speed of information transmission and how copyrighted works are exchanged in the digital age.<sup>141</sup> The last issue lies in the concept of digital publishing and the ease of copying digital publications.<sup>142</sup>

The framework of US copyright law is relevant because it illustrates the difficulties enforcing intellectual property rights. Copyright's complexity and associated expenses for artists are impediments to the enforcement of a copyright holder's rights.<sup>143</sup> The official purpose of US copyright law is to motivate artistic production, restrict the ability to copy and reproduce, and

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<sup>139</sup> See Carolyn M. Hendriks, *Integrated Deliberation: Reconciling Civil Society's Dual Role in Deliberative Democracy*, 54 POL. STUD.S 486, 492 (2006).

<sup>140</sup> Gregorio Martín-de-Castro et al., *Towards "An Intellectual Capital-Based View of the Firm": Origins and Nature*, 98 J. BUS. ETHICS 649, 655 (2011).

<sup>141</sup> See generally MANUEL CASTELLS, *THE RISE OF THE NETWORK SOCIETY: THE INFORMATION AGE: ECONOMY, SOCIETY, AND CULTURE* (John Wiley & Sons 2011).

<sup>142</sup> See David Nicholas et al., *Digital repositories ten years on: what do scientific researchers think of them and how do they use them?*, 25 LEARNED PUB. 195, 198 (2012).

<sup>143</sup> Jane C. Ginsburg, *U.S. Experience with Mandatory Copyright Formalities: A Love/Hate Relationship*, *The*, 33 COLUM. J. L. & ARTS 311, 313 (2009).

to get value from creative works in order to serve the public good.<sup>144</sup> ] Today, without access rights, Congress may not be able to validly secure a copyright owner's exclusive rights to their own creations.<sup>145</sup>

The speed and ease with which copyrighted works can be digitally distributed constrain the copyright holder's ability to stop others from copying the protected work.<sup>146</sup> Popular social network use, such as posting on Facebook, "tweeting" on Twitter, and uploading videos on YouTube, demonstrates how quickly and easy it is to distribute information. In turn, this type of information sharing shows just how fast information can be copied and shared.<sup>147</sup> indicate the impact of its great speed that should do with the second issue for discussion. Therefore, while copyright law should continue to acknowledge an unrestricted right to access digital copies in one's possession, it should remove some of the restrictions on a user's right to share a copy of that information For example, it is argued that is difficult to determine what makes a great song or great sound.<sup>148</sup> Yet, several record creators and authors do not think they are breaching another's rights if they only use a small portion of a copyrighted work.<sup>149</sup> The question remains, should one artist's creation rights stall the creation of others? Additionally,

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<sup>144</sup> See generally Jane C. Ginsburg, *The (New?) Right of Making Available to the Public* INTELLECTUAL PROPERTY IN THE NEW MILLENIUM, ESSAYS IN HONOUR OF WILLIAM R. CORNISH I (2004), <http://papers.ssrn.com/abstract=602623>.

<sup>145</sup> See Jane C. Ginsburg, *Essay: From Having Copies to Experiencing Works: The Development of an Access Right in U.S. Copyright Law*, 50 J. COPYRIGHT SOC'Y U.S.A. 113, 115 (2002).

<sup>146</sup> Qiong Liu et. al., *Digital Rights Management for Content Distribution*, in 21 PROC. AUSTRALASIAN INFO. SECURITY WORKSHOP CONF. ACSW FRONTIERS 2003 49, 53 <http://dl.acm.org/citation.cfm?id=827987.827994> (last visited Apr 27, 2015).

<sup>147</sup> Gueorgi Kossinets, *Effects of Missing Data in Social Networks*, 28 SOC. NETWORKS 247, 252 (2006).

<sup>148</sup> See generally LEE MARSHALL & SIMON FRITH, *MUSIC AND COPYRIGHT* (Routledge 2013).

<sup>149</sup> Jeffrey R. Houle, *Digital Audio Sampling, Copyright Law and the American Music Industry: Piracy or Just a Bad Rap*, 37 LOYOLA L. REV. 879, 880 (1991); T. Kalker et al., *Music2Share – Copyright-Compliant Music Sharing in P2P Systems*, 92 PROC. IEEE, 961, 965 (2004).

is it possible to effectively restrict sharing without a universal copyright law?

Without universally adopted copyright laws, it is difficult to enforce a copyright holder's rights and the examples of Germany and China illustrate such circumstances. A study on behalf of the German Federal Association of the Music Producing Industry shows that the number of illegal music album downloads in Germany increased in 2011 by 35 percent compared to 2010.<sup>150</sup> At the same time, there is a new philosophy regarding the pros and cons of contemporary German copyright laws.<sup>151</sup> The German economic historian Eckhard Höffner argues that Germany's rapid technological expansion and superiority by the late 1800s and at the turn of the nineteenth century was due directly to Germany's relaxed copyright laws.<sup>152</sup> Therefore, based on Germany's case study, if copyright laws' overarching objective is to better serve the public good, it should be as flexible and fluid as possible. A possible option in this regard would be legally regulating the exchange and transfer of digital information.

The sheer scale of piracy in China's business structure illustrates another difficulty in the enforcement of copyright law.<sup>153</sup> Scholars argue that businesses, especially those engaged in manufacturing and information distribution, are susceptible to piracy.<sup>154</sup> The previous business model,

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<sup>150</sup> See Ingo Bader & Albert Scharenberg, *The Sound of Berlin: Subculture and the Global Music Industry*, 34 *NT'L J. URB. & REGIONAL RES.* 76, 80 (2010).

<sup>151</sup> See Valentina, *Moscon Open Access to Scientific Articles: Comparing Italian with German Law*, KLUWER COPYRIGHT BLOG, (Dec. 3, 2013), <http://kluwercopyrightblog.com/2013/12/03/open-access-to-scientific-articles-comparing-italian-with-german-law/> (last visited Apr. 21, 2016).

<sup>152</sup> Frank Thadeusz, *No Copyright Law: The Real Reason for Germany's Industrial Expansion?* SPIEGEL ONLINE, <http://www.spiegel.de/international/zeitgeist/no-copyright-law-the-real-reason-for-germany-s-industrial-expansion-a-710976.html> (last visited Aug. 30, 2016).

<sup>153</sup> See generally NARI LEE BRUUN NIKLAS & MINGDE LI, *GOVERNANCE OF INTELLECTUAL PROPERTY RIGHTS IN CHINA AND EUROPE* (Edward Elgar Publishing 2016).

<sup>154</sup> See Shujen Wang & Jonathan J. H. Zhu, *Mapping Film Piracy in China*, 20 *THEORY, CULTURE & SOC'Y* 97–125 (2003).

which was focused on paying for copyrighted materials in order to be able to reproduce and distribute them, is becoming something akin to the Maginot line; useless, and bypassed by the dawn of the Internet.<sup>155</sup> People have spent hundreds of years establishing a business model in the music industry relying on copyright, that is, a copyright pays for the reproductions of its content.<sup>156</sup> Copyright law was initially designed to compensate the creator of content for the time and effort spent developing ideas and products by giving the copyright owner protection against unauthorized reproduction of the copyrighted work.<sup>157</sup> However, with the arrival of digital technology and the Internet, it is now relatively easy to reproduce and communicate ideas and content.<sup>158</sup> Consequently, protecting creative works through copyright law has become inadequate in the digital age.

At this moment, the protections afforded by Chinese copyright law are faced with new challenges.<sup>159</sup> Currently, the key protections of copy right law in China, as in most other countries, is the right to reproduce and the right to distribute a copy righted work.<sup>160</sup> Advances in technology have made reproduction simpler, so that anyone can reproduce and distribute what is on the Internet.<sup>161</sup> Therefore, when almost everyone breaches copyright law, is the law of any use? In contemporary times, the copyright

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<sup>155</sup> See Tim Berners-Lee et al., *World-wide web: the information universe*, 20 INTERNET RES. 461, 465 (2010).

<sup>156</sup> See Leonhard Dobusch & Elke Schübler, *Copyright reform and business model innovation: Regulatory propaganda at German music industry conferences*, 83 TECHNOLOGICAL FORECASTING & SOC. CHANGE 24, 32 (2014).

<sup>157</sup> See Miriam Bitton, *Modernizing Copyright Law*, 20 TEX. INTELL. PROP. L. J. 65, 66 (2011).

<sup>158</sup> BRIGGS & BURKE, *supra* note 125, at 24

<sup>159</sup> You, Yunting, *What are the Difficulties in the Online Copyright Enforcement in China?* BRIDGE IP LAW COMMENTARY, (Apr. 22, 2014), <http://www.chinaiplawyer.com/difficulties-online-copyright-enforcement-china/> (last visited Aug. 30, 2016).

<sup>160</sup> See Daniel Gervais, *China - Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, 103 AM. J. INT'L L. 549, 551 (2009).

<sup>161</sup> See Andrew Leyshon et al., *On the reproduction of the musical economy after the Internet*, 27 MEDIA, CULTURE & SOC'Y 177, 191 (2005).

holder may have legal rights, but it is becoming more and more difficult to enforce them.

#### VI. CONCLUSION

The idea that knowledge is power helps establish that access to information is crucial for the creation of a more socially just society. Part of creating a socially just society involves increasing equality. When power distribution is more equal, society is more equal.

In conclusion, open access simultaneously constitutes a contemporary response to failing copyright law and is mainstream in regard to sharing and distributing information. As a contemporary response, open access characterizes the digital age and should be integrated into current copyright regulations to equally increase access opportunities. OARs also offer protection for creative content that is not protected under traditional copyright law. In this paper, the theoretical framework regarding the interplay of open access and public policy objectives focused on social cohesion has been illustrated. Based on this discussion, it is clear that public policy objectives are aligned with open access practices and can ameliorate the balance between copyright owners' and end-users' interests.