Introduction: A theory of institutionalization of freedom

I understand Honneth's book *Das Recht der Freiheit* (Suhrkamp 2011) as an argument for human freedom and autonomy in modern society that is based on a normative interpretation of legal, moral and social institutionalization of freedom in modern societies. In this sense Honneth's book represents a re-interpretation and application of G.W.F Hegel's concept of *Freiheit als Sittlichkeit der bürgerlichen Gesellschaft*. I would argue that the central theme of the book is the description of processes of institutionalization that lead to the emergence of freedom as the most important legal, moral and social value of the modern society.

The book begins with a presentation of Honneth's method that can be characterized as a kind of normative sociology or sociological philosophy in the sense that he characterizes theory of justice as analysis of society. The method is based on "normative reconstruction" of the basis of the social institutions of liberal democracy. Here we can say that the starting point is closer to the later Habermas' idea of facticity and validity and to the later Rawls' idea of overlapping consensus than it is to the more idealist and metaphysical positions proposed by these authors in their early works (p. 21). Honneth describes the prevailing norms of justice and morality of freedom in liberal democracies of the Western world with Hegel's philosophy of rights as points of inspiration. Normative reconstruction also means reconstruction of the legal and moral legitimacy of the institutions of liberal democracy. Normative reconstruction leads to an analysis of the social reality of liberal democracies. The idea is to describe the institutionalized conditions of normativity. The premises for this are: 1) Social reproduction of a society is determined by the shared universal values of such a society; 2) Justice cannot be understood independently of these generally shared values and ideals; 3) The plurality of these values and ideas can be found in the social practices of this society that must be distilled out of the society; 4) This leads to the understanding of the *Sittlichen* institutions and practices of this society (p. 30). This concept of justice is to be considered as a post-traditional concept of *Sittlichkeit* in society.

Honneth begins by considering the historical conditions of the emergence of the values and ideals of justice of modern society (p. 35). Important for the emergence of modern society is the idea of individual autonomy and authenticity as the meaning of life. Individual freedom has replaced collective conceptions of the good. Honneth sees the focus on autonomy and self-determination as essential to modernity. In particular we can speak about a negative, a reflective and a social conception of freedom that express a differentiation of the concept due to the complexity of modern society. Negative freedom is linked to the philosophy of the social

contract coming from Hobbes. But we also find this concept of negative freedom in Jean-Paul Sartre's existentialist philosophy and finally in Nozick's his philosophy of the social contract. Honneth argues that this concept is not enough to constitute the goals for the subject, because something must be presupposed. Therefore the reflective and the social conception of freedom become important. The reflective concept implies that the free individual can determine rationally his or her actions. This is based on a distinction between heteronymous and autonomic action. Rousseau and Kant are representatives of this conception. Autonomy and self-realization according to the idea of rationality are important dimensions of this concept, which forgets however the institutional dimension of freedom that we find in the social concept of freedom. This concept of freedom goes beyond the individual concepts of freedom in Habermas and Apel and goes back to the concept of freedom in Hegel's philosophy of right. Mutual recognition in social institutions is an important part of this idea of freedom (p. 85). This is what Hegel calls the mutual institutions of mutual recognition. In this context, the central aspect of Honneth's argument is Hegel's concept of recognition of freedom as essential to the institutions of liberty in the modern society that are realized not only in the state, but also in the market and in civil society. Honneth gives a detailed account of the concepts of recognition and institutions at the basis of Hegel's concept of law and justice as emerging as a part of the social institutions of the "*Sittlichkeit* of society" (p. 85-118).

On the basis of this discussion of Hegel, Honneth is able to present his own conception of "democratic *Sittlichkeit*" as essential to the institutions of freedom in modern liberal societies (p. 199) . Here Honneth understands his theory of democratic freedom as a theory of the legitimacy of the social order. He researches into the institutionalizations of values and conceptions of justice in liberal democracies where the value of freedom and equality through recognition become integrated in the institutional spheres of action in society. In this sense the idea of freedom is essential to justice and we can use this concept of universal freedom and recognition as a defense for correction of social pathologies and deviances in relation to the generally accepted normative ideas of freedom and justice. In this, through the research on the conditions for freedom and justice, the normative ideas of the democratic *Sittlichkeit* are explained.

On this basis Honneth discusses the possibility of freedom (p. 129) in relation to law and ethics. He begins with the presentation of the concept of legal freedom. This freedom is the condition of collective autonomy in civil society's cooperation and also for democratic decision-making based on collective autonomy. The ethical idea of legal freedom is the effort to ensure private autonomy. In this sense legal freedom is understood as individual freedom. Honneth defines legal freedom on the basis of Hegel's concept of personal rights (p. 134). Hegel proposed a system of positive rights in modernity. With Hannah Arendt we can refer to legal personhood as "protective mask" of the individual. The law of freedom implies this development of the legal rights of the subject. Subjective and negative rights are essential for the freedom of individual action, as suggested by Mill in his defense of the rights of belief, opinion and freedom of expression. This category of subjective rights

includes rights of freedom and of participatory rights as the foundation of democratic communication and decision-making. However, it is also a limit to this idea of freedom that it is built on private autonomy and rights defined by its negative character. It is true that the law shall protect personal autonomy and freedom, but this is not enough – behind this lies the development of a society built on communal practices and cooperation in civil society (p. 156).

Indeed, Honneth is well aware of the social pathologies of legal freedom in modern society. Social pathology is defined as something that emerges when people don't understand the meaning of social norms of freedom and law and here we can speak about social pathologies. These pathologies can be people who misuse the system and ignore the rationality of subjective rights. They use the law to promote their own interest. This happens for example in the increasing tendency of legalization of the human life world and of life communities. This dynamics of the social pathology can for example be found in the movie with Dustin Hoffman Kramer vs. Kramer, where a divorce ends in a bitter fight about the custody of the child in court. The pathology is that the life world is ignored and the legalization of human affairs becomes an end in itself and we experience alienation and misunderstanding of the significance of moral freedom (p. 172).

Honneth describes the institutionalization of moral freedom in modern society as closely related to the institutionalization of legal freedom. Originally morality was the regulation of desire and a sort of rationalization of life in nature. Morality can be said to constitute the intersubjective limitations on actions. Moral autonomy comes from the idea of self-determination, as discussed in Rousseau and Kant. The Kantian idea of moral freedom is built on the concept of moral autonomy. This implies that human beings should strive to be moral persons and valued by others as moral persons. Respect and recognition of human dignity in the social life world is an essential dimension of this concept of morality (p. 181). To have dignity is not only due to intrinsic dignity as being created in the image of God, but indeed also a social dignity to which the individual him- or herself is important. Dignity can be defined as linked to the moral self-definition and self- creation of individuals with good moral identity. Kirstine Korsgaard has in this context defined the Kantian approach as an approach to the building and construction of one's own practical identity. What are important are not only the categorical imperatives but indeed also the practical identity of the subject. To have a moral identity is to have a moral aim with your own life where you take responsibility for your own humanity. Self-legislation and moral autonomy in the Kantian sense means to take responsibility for your own life as the moral self-legislator of your life.

Habermas contributes to this discussion by emphasizing the importance of the moral socialization process. Legal freedom is interpreted through social freedom. Here we have the institutionalization of moral freedom in

modern societies. We can refer to a cultural idea of moral in post-traditional societies where the cultural institutionalization of freedom is a part of this institutionalization of recognition. This process is a communicative and dialogical process where there is an on-going public discussion about conceptions of dignity and appropriate intersubjective moral norms in civil society.

Like his description of the legal social pathologies Honneth also describes the social pathologies of morality. Here we can observe a focus on personal absolute morality in contrast to intersubjective norms. The pathologies of morality could for example be the moralism of personal autonomy, where the duty to follow a certain kind of universalism means that the individual fails to take into account the social context (p. 209). This kind of focus on personal autonomy leads to rigid morals where the moral conception can lead to personal moral self-destruction. This is for example described in the novels of Henry James where the will to do good is in danger of leading to self-destruction (p. 212). Here personal autonomy leads to bad moralism and ignorance of social conditions of recognition and dignity. A similar pathology can be found in the moralist political extremism of terrorism, for example in the position of Ulrike Meinhof, who adopted a personal leftist moralism as the justification of her terrorist actions.

On the basis of this reconstruction of the foundations of freedom Honneth goes on to describe the reality of freedom in democratic liberal democracies. The reconstruction of the social life practice as based on recognition and personal autonomy in moral decision-making has to be demonstrated as being institutionalized as patterns of social action in different aspects of society. Honneth distinguishes between three important spheres of institutionalization of the norms of freedom and moral autonomy: 1) friends, love and family relations; 2) market relations; 3) relations in the political community. The intersubjective dimensions in these different groups illustrate different determinations of decisions based on freedom in the different institutions of society.

Honneth emphasizes that personal relations between friends and love relations in personal relations and in the family are based on freedom rather than on paternalism or pre-established social norms and hierarchies. Although it is considered informal, friendship may be conceived as social institution today. There is a difference between the ancient and modern concept of friendship, because friendship today is build on mutual affection without interest. Friendship is based on the romantic concept of the free encounter between friends. As an institution friendship can be said to illustrate the institutionalization of common ideas of community in a common normative structure. Even though it is based on freedom and mutual affection we can now say that friendship based on freedom has become an important institution in modern society.

With regard to love and intimacy, freedom is also considered an essential concept. Honneth argues that we can perceive the institutionalization of the principle of romantic love as the basis for intimate encounters. We are free to make our intimate connections and these are built on our own moral responsibility. Autonomous morality and freedom are proposed as the basis for sexual relations. The relations are based on love and freedom and the emergence of all kinds of couples or singles show this principle of freedom as essential in modernity.

The principle of free sexual relations has had an impact on the concept of the family where the encounter of man and women is also based on social freedom and the family as such is today becoming a place of social freedom. The family is now a place for individual self-realization. We see the emergence of different forms of constructed families that to a large extent are built on principles of free self-realization. Equality rather than authority is an important principle for organizing the family. Equality in families is indicated by the fact that the relation between man and woman is built on partnership between father and mother. Also recognition plays a much bigger role in the relations between children and parents in a situation where people live longer and mutual recognition between generations is emerging. In this sense moral autonomy plays a great importance in the social roles of family members. We see the institutionalization of a much more democratic family built on freedom and moral responsibility. This is a family based on mutual cooperation, love and recognition in contrast to a family based on authoritarianism and paternalism.

We can, according to Honneth, also see the emergence of the new law and morality of freedom if we look at the economic market. Honneth argues that the economic market also contributes to the institutionalization of social freedom in the capitalist economy. Honneth wants to provide a normative reconstruction of the contribution to social freedom of the market economy. He goes back to Adam Smith and takes up his problem about the morality of the market. The problem is how the market can be said to mediate social action. Here we can consider the market freedom as an extension of social freedom in the spheres of consumption and production. However, the question is whether this is an error in capitalism – a subversive doctrine that leads to the dissolution of capitalism.

Honneth defines capitalism and its markets as free economic exchange of goods and services. Historically speaking it was the legal subject (most of the time a man with property) who had the right to exchange in the market. The basis for behavior in the market was strategic utility maximization and calculation of cost/benefits. According to Honneth, both Hegel and Durkheim tried to investigate the normative dimensions

of the capitalist system in order to go beyond that system and propose a new economic order with another value-orientation of the economic institutions. Honneth finds a paradox in this line of question that ask the questions about why the market should refer to pre-market norms when the market is about individual utility and utility maximization. The answer of Honneth is that intersubjective norms govern the market when we consider the market from the point of view of normative institutionalism, where morality is considered to be a part of the economic exchange. Honneth refers to Polanyi and Parsons to explain this dimension of the market economy. The question is "What is the *Sittlichkeit* of the Market System?" (p. 343) Such question have occupied the communitarian philosopher Etizioni and the German economist Hirsch and they search for the capacity of coordinating social action within the economy itself and contribute to legitimacy of the market system in society. With the focus on the principles of social cooperation it the market, Honneth wants to overcome Marx's negative concept of capitalism and give a normative reconstruction of the concept of freedom within the market economy in liberal society.

Honneth focuses on the sphere of consumption and in particular the development of consumer culture where the market receives legitimation from the norms of the consumers. In fact, the culture of consumption can be seen as a medium for recognition, whilst the moral reaction of the consumers to corporations has an impact on the corporations. Honneth emphasizes that today the capitalist system requires its legitimacy from the consumer and these new conditions of consumption and production contribute to the legitimacy of the market through the consumer. We see how globalization of the market is realized through mass consumption and we see the emergence of morally and legally responsible critical consumers, what we can call "the consumer citizen" (p. 377). This critical consumer is aware of the necessity of having respect for human dignity (p. 377). At the same time reference to consumer citizens may be able to incorporate the critique of consumer society, since there is a struggle for recognition and a possible mutual recognition implied in the moral economy between seller and consumer where they struggle for the realization of the mutual legitimate recognition (p. 381). So Honneth emphasizes that the principles of legitimation are implicit in the consumer market. There is a search for ideal perfectibility regarding consumption built into the individual and corporations have to respond to this in order to get legitimacy. Moreover the consumer citizen takes up the criticism of mass consumption (Adorno, Arendt) and act critically in relation to this. In contributing to establishment of international institutions the consumer citizen also pushes for the establishment of national and international institutions that contribute to the moralization the economy.

After this normative reconstruction of market mediated consumption Honneth looks at the labor market. He reminds us that work was important for Hegel in his *Philosophy of Right*. Honneth also considers work and the labor market as central for the emergence of a moral economy. The capitalist organization of work has historically implied manipulation and oppression of the workers. Then they organized themselves in workers movement and organized struggle for recognition and social freedom on the labor market. This fight for social

freedom implies a struggle for cooperation and recognition in the labor market (p. 431). The organization of workers in trade unions is an important dimension for establishing freedom in the capitalist system. It is important to humanize the work in this world. In particular, democratic organization of the economy and of business can contribute to this. Honneth argues that social freedom in the organizational sphere of corporations and business is dependent on the struggle for recognition by the workers. It is important to contribute to this humanization of work. Since the 1970s there has however been a neoliberal rationalization and technification of the capitalist system and workers have more to fight for in order to achieve freedom in the organized capitalism of the Western world. Here, all kinds of organizations, for example trade unions or welfare organizations, can contribute to the mutual recognition. In particular transnational unions in times of globalization are important for creating freedom in a civilization of capitalism.

The final section of the book presents the reality of democratic will formation in liberal democracies in a historical perspective. Honneth focuses on democratic public spheres, the democratic legal state and political culture. He begins by emphasizing that the potentiality of public deliberation in a free public sphere is essential to understand the reality of freedom in a modern society. Since the French revolution and the enlightenment this has been essential for creating social freedom in the public sphere. Deliberative decision making in a public sphere is an essential legitimation principle of a liberal democracy. We can say that we have experienced the social institutionalization of principles of democracy through the emergence of the free public sphere in Western democracies. Here equality of citizens and liberal rights of freedom based on the constitution are essential for creating a democratic public sphere. The morality of citizens is created through the institutionalization of social and democratic public spheres and debates. The normative idea of social freedom is a result of a democratic public sphere (p. 500). Public exchange of opinion is essential for this democratic public sphere in modern society. As Arendt and Habermas have shown, the media are important for democratic politics. Communicative freedom and the deliberative public sphere contribute to exchange of opinion and different points of view. With Habermas we can emphasize the importance of having both a national and international public sphere. With the new media and digital divide and the development of the internet we face, however, both possibilities and possible limitations of democratic freedom in open and free public spheres.

The democratic legal state built on the rule of law implies the realization of social liberty. The rule of law is a reflexive dimension of the state. The state is a reflexive notion and the democratic state was conceived as the opposite of National Socialism. This state is based on the legitimation by the people’s sovereignty in democratic legislation processes. Constitutional states follow specific norms of *Sittlichkeit* with a reflexive distance to the democratic legal state. The normative self-understanding of the European states implies a reaction against totalitarianism and in particular the rule of law against Hitler. In particular, we can talk about totalitarianism as the opposite to democracy. The universal declaration of human rights that was very modern

even for modern democracy was established as a counter-reaction to the totalitarian regimes of the Second World War. We can also talk about the tension between nationalism and the rule of law in the *Rechtsstaat* or the tension between nationalism and people's democracy. The concept by Habermas about *Verfassungspatriotismus* has been proposed to deal with this topic.

Finally Honneth discusses the concept of political culture as essential to the reality of the *Rechtsstaat*. Political culture is the reality of the realization of freedom in a democratic society. This institutionalization of the rule of law of the *Rechtsstaat* today also has an international dimension in the sense that the political public sphere, for example in the EU goes beyond the national borders towards the international community.

Some critical remarks to Honneth's theory of the liberal state follow.

How should we evaluate his approach to the institutionalization of freedom in modern society? I will now propose three critical remarks for discussion.

The first remark concerns Honneth's method of analysis. This method is very promising and I think that this constitutes the real novelty of the book. The focus on institutions and institutionalization is very important to make the bridge between philosophy and the social sciences. Moreover, I agree that this approach is very important for the definition of the relation between ethics and law in modern democratic states. However, it may be argued that this approach has already been worked out before. This is for example the case in Ricoeur's work *One-Self-as-Another* from 2002, where the concept of institution as inspired by Hegel is a central concept. Ricoeur has an advantage with regard to Honneth because Ricoeur is able to introduce the concept of the good life that is not really there in Honneth's approach. Ricoeur talks about "the good life for and with the other in just institutions". Moreover there is no reference to the whole tradition of institutional theory within the social sciences in Honneth's book. This is sad because then we don't really have the dialogue between philosophical institutionalism and other kinds of institutionalisms. Moreover, it may be argued that the kind of combination of normative and descriptive analysis that Honneth proposes makes it difficult to advance any real argument of normative ethical, legal or political theory. In fact, this book is not so much a normative argument as a presentation of some lines of development in modern society. As such the book is confronted with competing arguments, as for example the Danish professor of political science Ove Kaj Petersen with his book about the recent developments of the state from welfare state to competition state in the book *Konkurencestaten* (the competition state). Why is the story that Honneth presents more compelling than the more negative story that is presented by Ove Kaj Pedersen? Here we need better and more advanced argument.

The proposal of the theory of law and morals may be conceived as the strongest part of the book. However, we can also propose some critical questions to this theory. In particular, we can address the substance of the theory that focuses so much on individual rights. I may be argued that it is not individual rights that are so important in the *Rechtsstaat* but rather democracy as community. It is not clear how this focus on individual rights makes the move from negative freedom to positive freedom. Indeed, it may be argued that the concept of rights may destroy the possibility of really founding a political community based on shared interests in the good. What Honneth seems to propose seems to be a very liberal theory that does not really correspond with his Hegelian starting point. Moreover, we may criticize his use of Kant to define the basis of his approach to the morality of freedom. It seems very idealistic to presuppose that people today act according to the moral law when they create their identity. Rather, we may refer to existentialist or postmodern concepts of identity, which seem much closer to the reality of life in the modern state and correspond to the elimination of politics in favor of individual rights. I cannot see that Honneth really achieves his point by reintroducing the Kantian concept of morality as a case of identity. In fact, Honneth's position also becomes nearly neo-liberal, because so much emphasis is laid on individual rights rather to present the common good in the Res Publica as important. Here I also think that Ricoeur's concept of the good life with and for the other in just institutions gives the communitarian elements of analysis that we really need to make Honneth's argument convincing.

When we deal with the reality of freedom in modern society there are many problems in the book. The analysis of the spheres of recognition in the family seem to forget all the power relations that still persist in society and a Foucauldian approach to the family would be able to show many contradictions of the freedom of individuals in the family. Moreover, there are many critical questions to ask in relation to Honneth's analysis of romantic love as the basis of intimacy. There may also be the manipulation of individual through forcing them to be free. As Rousseau says "L'homme est libre mais partout il est en fer".

Moreover, the analysis of economic life and freedom in the market is far from convincing, although the general intention of moralizing the economy is very important. Honneth has understood the necessity of rethinking the capitalist economy in the perspective of virtues and ethics, but his Marxist basis of analysis and the prejudices of critical theory make it impossible for him to take the final step and understand the real emancipator elements of the idea of the moral economy. Here we should look at the whole basis for ethical interaction in the economy and, taking the Weberian perspective of looking at the ideal values of economic exchange, make it possible to understand much more of the functions of the moral economy. Honneth mentions the work of Etizioni on this point but he does not get into deeper analysis of much more recent literature on business ethics and corporate social responsibility and this makes his analysis rather general and not very innovative in relation to the recent debates in business ethics and management ethics.

Honneth has a good argument for the political consumer and legitimacy of consumption but he does not include recent literature in business ethics and institutions and therefore he does not really contribute something new or relevant. To propose unions as the basis for political freedom in the workplace also seems to be not very new in today's discussions. Much more detailed analysis is needed here. For example of the interactions between unions and top management and how they contribute to develop stakeholder management in large corporations.

Indeed, in his final discussions of the deliberative politics and the importance of critical public space as essential for a democratic political culture, I can hardly see that Honneth presents anything new in comparison with Habermas. In fact we may argue that Honneth is much too positive to the reality of this political culture and that he does not take into account the many recent distortions of that culture. However, the critical remarks on the internet and the digital divide and democracy show a certain awareness of the important contradiction of democracy in the present context of society.

Reference

Axel Honneth: *Das Recht der Freiheit*. Suhrkamp Verlag, Frankfurt am Main, 2011.