

Ideal Theory, Real Rationality: Habermas Versus Foucault and Nietzsche

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*Perhaps there has never before been a more dangerous ideology .
 . . than this will to good*
 Friedrich Nietzsche

Abstract

Understanding rationality and power are key to understanding actual political and administrative behavior. Political and administrative theory that ignores this fact stand in danger of being at best irrelevant or, at worst, part of the problem it wishes to solve. The paper presents Jürgen Habermas as an example of a political philosopher who fails to recognize that actual political and administrative rationality largely disrupts the relevance of his ideal prescriptions. Michel Foucault is proposed as an antidote to Habermas in a comparative study of the two. Machiavellian *verita effettuale* (effective truth) and Nietzschean *wirkliche Historie* (real history) are seen as more effective means to understand and limit rationalization and power than Habermasian *Diskursetik* (discourse ethics).

Introduction

The works of Habermas and Foucault highlight an essential tension in thinking about political and administrative rationality. This is the tension between consensus and conflict, ideals and reality. With a point of departure in Kant, Habermas is the philosopher of *Moralität* (morality) based on consensus. Foucault, following Nietzsche, is the philosopher of *wirkliche Historie* (real history) told in terms of conflict and power. This paper presents a comparative analysis of the central ideas of Habermas and Foucault as they pertain to issues of political and administrative rationality. We will ask whether solutions to problems of political and administrative rationality are best understood in terms of consensus and ideal theory, or whether conflict and real history work better as frame of reference. To answer this question we need to understand the ideas behind the “discourse ethics” of Habermas and the “power analytics” and ethics of Foucault, contrasting the two and evaluating their merit for people interested in understanding political and administrative rationality and its role in social change.¹

It should be emphasized at the outset that the juxtaposition of Habermas and Foucault is not an attempt to artificially combine two intellectual traditions. Habermas and Foucault are so profoundly

different that it would be futile to envision any sort of theoretical or metatheoretical perspective within which these differences could be integrated into a common framework. Yet Habermas and Foucault are not simply opposites of each other; they are each other's shadows in their efforts to both understand and limit rationalization and the misuse of power. It is just such limitation, which both thinkers see as among the most important tasks of our time.

Habermas's *Homo Democraticus*

"With Kant, the modern age is inaugurated," says Habermas, who cites the importance of Kant's attempt to develop a universal rational foundation for democratic institutions.² Habermas agrees with Kant as to the need to develop such a foundation for democracy and its institutions, but he points out that Kant failed to achieve his goal. According to Habermas, this was because Kant's thinking was based upon a subject-centered rationality.³ Moreover, Habermas points out that the later philosophers, from Hegel and Marx to contemporary thinkers, have also been unable to develop the much sought-after rational and universal foundation for such social and political institutions. According to Habermas, this is because they have all worked within the tradition of "the philosophy of the subject."⁴

Most contemporary philosophers and social scientists have accepted the consequences of more than two millennia of failed attempts to establish a universal constitution of philosophy, social science, and social organization, having concluded that such a foundation does not seem feasible. Not Habermas, however, who thinks that his own work can provide this constitution, and that the consequences of abandoning it are unacceptable. Without a universally constituted philosophy, science, and democracy, says Habermas, the result would be contextualism, relativism, and nihilism; all of which Habermas sees as dangerous.

According to Habermas, the problem with Kant and with subsequent thinkers on modernity is not that they were mistaken in their goal of constituting society rationally, but that they had the wrong ideas of how to achieve the goal. For Habermas, the path toward a rational constitution and the establishment of a bulwark against rationalization, power, and relativism is a reorientation from earlier philosophers' focus on subjectivity, within which Habermas classifies both Hegel's "world spirit" and Marx's "working class," to a focus on intersubjectivity. And Habermas's own work, particularly his theory of communicative action and discourse ethics (*Diskursetik*), is located in the intersubjective approach to the problematic of modernity.⁵

The goal of Habermas's theory of communicative action is that of "clarifying the presuppositions of the rationality of processes of reaching understanding, which may be presumed to be universal because they are unavoidable."⁶ In his *Philosophical Discourse of Modernity*, Habermas develops his intersubjective approach using the concept of "communicative rationality."⁷

The communicative rationality recalls older ideas of logos, inasmuch as it brings along with it the connotations of a noncoercively unifying, consensus-building force of a discourse in which the participants overcome their at first subjectively based views in favor of a rationally motivated agreement.⁸

Although Habermas sees communicative rationality as being threatened by rationalization and power in actual modern society, he nevertheless argues that the core of communicative rationality, "the unconstrained, unifying, consensus-bringing force of argumentative speech," is a "central experience" in the life of a human being.⁹ According to Habermas, this central experience is inherent in human social life: "Communicative reason is directly implicated in social life processes insofar as acts of mutual understanding take on the role of a mechanism for coordinating action."¹⁰ Habermas leaves no doubt that by

“inherent” he means *universally* inherent. The universality derives from the fact that for Habermas human social life is based upon processes for establishing reciprocal understanding. These processes are assumed to be “universal because they are unavoidable.”¹¹ In an earlier formulation, Habermas states this view even more clearly:

In action oriented to reaching understanding, validity claims are “always already” implicitly raised. These universal claims . . . are set in the general structures of possible communication. In these validity claims communication theory can locate a gentle, but obstinate, a never silent although seldom redeemed claim to reason, a claim that must be recognized *de facto* whenever and wherever there is to be consensual action.¹²

The consequence, for Habermas, is that human beings are defined as democratic beings, as *homo democraticus*.

As for the validity claims, Habermas explains that validity is defined as consensus without force: “a contested norm cannot meet with the consent of the participants in a practical discourse unless . . . all affected can *freely* [*zwanglos*] accept the consequences and the side effects that the *general* observance of a controversial norm can be expected to have for the satisfaction of the interests of *each individual*” (italics in original).¹³ This principle of validity, Habermas calls “(U),” the “universalization principle” of discourse ethics.¹⁴ Similarly, in a key passage on truth, Habermas states: “Argumentation insures that all concerned in principle take part, freely and equally, in a cooperative search for truth, where nothing coerces anyone except the force of the better argument.”¹⁵ The only form of power which is active in the ideal speech situation and in communicative rationality is thus this “force of the better argument,” which consequently obtains a critical place in Habermas’s work.

Validity and truth are ensured where the participants in a given discourse respect five key processual requirements of discourse ethics: (1) no party affected by what is being discussed should be excluded from the discourse (the requirement of generality); (2) all participants should have equal possibility to present and criticize validity claims in the process of discourse (autonomy); (3) participants must be willing and able to empathize with each other’s validity claims (ideal role taking); (4) existing power differences between participants must be neutralized such that these differences have no effect on the creation of consensus (power neutrality); and (5) participants must openly explain their goals and intentions and in this connection desist from strategic action (transparency).¹⁶ Finally, given the implications of the first five requirements, we could add a sixth: unlimited time.

In a society following this model, politics and citizenship would be defined in terms of taking part in public debate. Participation is *discursive* participation. And participation is *detached* participation, inasmuch as communicative rationality requires ideal role taking, power neutrality, etc. Habermas’s model, that is, discourse ethics, should not be confused with contingent types of bargaining or with models of strategically negotiated compromises among conflicting particular interests. What is missing in strategic pursuits and rational-choice models is the recourse to ultimate normative justification that Habermas claims to give us.¹⁷ Empirically, Habermas sees the new social movements as agents of communicative rationality and of change in the public sphere.

Habermas’s definitions of discourse ethics and communicative rationality make it clear that we are talking about procedural as opposed to substantive rationality: “Discourse ethics does not set up substantive orientations. Instead it establishes a *procedure* based on presuppositions and designed to guarantee the impartiality of the process of judging.”¹⁸ Habermas is a universalistic, “top-down” moralist as concerns process: the rules for correct process are normatively given in advance, in the form of the requirements for the ideal speech situation. Conversely, as regards content, Habermas is a “bottom-up”

situationalist: what is right and true in a given communicative process is determined solely by the participants in that process.

As a consequence, the study of processes for dealing with rationality and power by establishing consensus, and the validity claims on which the processes are built, stands at the center of Habermas's work. Habermas's view of politics and democratic process is directly linked to judicial institutionalization. "I wish to conceive of the democratic procedure as the legal institutionalization of those forms of communication necessary for rational political will formation," Habermas says.¹⁹ On the relationship between law and power in this process, Habermas states that "*authorization of power by law and the sanctioning of law by power must both occur uno acto*" (emphasis in original).²⁰ Habermas thus makes it clear that he operates within a perspective of law and sovereignty in his understanding of power. As we will see below, this is a perspective, which contrasts with Foucault, who finds this conception of power "by no means adequate."²¹ Foucault says about his own "analytics of power" that it "can be constituted only if it frees itself completely from [this] representation of power that I would term . . . 'juridico-discursive' . . . a certain image of power-law, of power-sovereignty."²² It is in this connection that Foucault made his famous argument to "cut off the head of the king" in political analysis and replace it by a decentered understanding of power.²³ For Foucault, Habermas still has the head of the king very much on, in the sense that sovereignty is a prerequisite for the regulation of power by law.

Habermas is substantially more optimistic and uncritical about modernity than both Max Weber and members of the Frankfurt School, such as Max Horkheimer and Theodor Adorno. Habermas's main "methods of progress," for instance for curbing rationalization and power, are the writing of constitutions and institutional and legal development, which thereby become central elements in, and endpoints for, Habermas's project. It is hard to over-emphasize the importance of this point. Habermas quite simply sees constitutions as the main device for uniting citizens and regulating power in a pluralist society:

What unites the citizens of a society shaped by social, cultural, and philosophical [*weltanschaulich*] pluralism are first of all the abstract principles of an artificial republican order, created through the medium of law.²⁴

If Habermas is right about the importance of constitution writing and institutional reforms, the prospects look good indeed for regulating rationality and power and changing government in a more democratic direction by means of discourse ethics and the theory of communicative rationality. The problem, however, as pointed out by Robert Putnam, is that "[t]wo centuries of constitution-writing around the world warn us . . . that designers of new institutions are often writing on water . . . That institutional reforms alter behavior is an hypothesis, not an axiom."²⁵ The problem with Habermas is that he has the axiom and the hypothesis reversed: he takes for granted that which should be subjected to empirical and historical test.

The basic weakness of Habermas's project is its lack of agreement between ideal theory and real rationality, between intentions and their implementation. This incongruity pervades both the most general as well as the most concrete phenomena of modernity, and it is rooted in an insufficient conception of power. Habermas himself observes that discourse cannot by itself ensure that the conditions for discourse ethics and democracy are met.²⁶ But discourse about discourse ethics is all Habermas has to offer. This is the fundamental dilemma in Habermas's thinking: he describes to us the utopia of communicative rationality but not how to get closer to it. Habermas himself mentions lack of "crucial institutions," lack of "crucial socialization" and "poverty, abuse, and degradation" as barriers to discursive decision-making.²⁷ But he has little to say about the relations of power that create these barriers and how rationality and power may be changed in order to begin the kinds of institutional and educational change, improvements in welfare, and enforcement of basic human rights that could help lower the barriers. In short, Habermas lacks the kind of concrete understanding of relations of power, which is needed for political change.

With his characteristically comprehensive approach, Habermas lets us know that his theory of communicative action opens him to criticism as an idealist: “It is not so simple to counter the suspicion that with the concept of action oriented to validity claims, the idealism of a pure, nonsituated reason slips in again.”²⁸ I will argue here that not only is it difficult to counter this suspicion, it is impossible. And this impossibility constitutes a fundamental problem in Habermas’s work.

"All Men Are Wicked:" Machiavelli Versus Habermas

“There is a point in every philosophy,” writes Nietzsche, “when the philosopher’s ‘conviction’ appears on the stage.”²⁹ For Habermas that point is the foundation of his ideal speech situation and universal validity claims upon a Kirkegaardian “leap of faith.”³⁰ Habermas, as mentioned, states that consensus seeking and freedom from domination are universally inherent as forces in human conversation, and he emphasizes these particular aspects. Other important philosophers and social thinkers have tended to emphasize the exact opposite. Machiavelli, whom Bernard Crick and others have called a “most worthy humanist” and “distinctly modern,” and whom, like Habermas, is concerned with “the business of good government,”³¹ states: “One can make this generalization about men: they are ungrateful, fickle, liars, and deceivers.”³² Less radically, but still in contrast to Habermas, are statements by Nietzsche, Foucault, Derrida, and many others that communication is at all times already penetrated by power. “Power is always present,” says Foucault.³³ It is therefore meaningless, according to these thinkers, to operate with a concept of communication in which power is absent. This holds for empirical studies, but also for normative ones, and no degree of Habermasian “reconstruction” is likely to change this state of affairs.

For students of power, communication is more typically characterized by rhetoric and maintenance of interests than by freedom from domination and consensus seeking. In rhetoric, “validity” is established via the mode of communication—for example, eloquence, hidden control, rationalization, charisma, and using dependency relations between participants—rather than through rational arguments concerning the matter at hand. Seen from this perspective Habermas seems overly naive and idealistic when he contrasts “successful” with “distorted” utterance in human conversation, because success in rhetoric is associated precisely with distortion.³⁴

Whether the communicative or the rhetorical position is “correct” is not important here. What is decisive, rather, is that a non-utopian point of departure must take account of the fact that both positions are possible, and even simultaneously possible. In an empirical-scientific context, which Habermas elsewhere says should be the touchstone of philosophy, the question of communicative rationality versus rhetoric must therefore remain open. The question must be settled by concrete examination of the case at hand. The researcher must ask how communication takes place, and how power operates. Is communication characterized by consensus seeking and absence of power? Or is communication the exercise of power and rhetoric? How do consensus seeking and rhetoric, freedom from domination, and the exercise of power, eventually come together in individual acts of communication?

The basic question being raised here is whether one can meaningfully distinguish rationality and power from each other in communication, as does Habermas. To assume an answer to this question *a priori* is just as invalid as presuming that one can ultimately answer the biblical question of whether humans are basically good or basically evil.³⁵ And to assume either position *ex ante*, to universalize it, and build a theory upon it, as Habermas does, makes for problematic philosophy and speculative social science.³⁶ This is one reason we have to be cautious when using the theory of communicative rationality to understand and act in relation to government.

Constituting rationality and democracy on a leap of faith is hardly sustainable. Habermas here seems to forget his own axiom that philosophical questions ought to be subject to empirical verification. And it is precisely in this sense that Habermas must be seen as utopian. Richard Rorty does not use these

exact words, but it is nevertheless the same issues which impel Rorty to criticize communicative rationality for having religious status in Habermas's thinking, and for being "a healing and unifying power which will do the work once done by God."³⁷ As Rorty says, "We no longer need [that]."³⁸

There may be a substantial element of truth in the benefits of constitution writing á la Habermas. And Habermas's home country, Germany, clearly needed new constitutional principles after World War II, a fact that seems to have been formative for Habermas's thinking.³⁹ But Habermas relies on something as weak as *Verfassungspatriotismus* (constitutional patriotism) as the main means to have constitutional principles take root and gain practical importance in a society:

[C]onstitutional principles can only take root in the hearts of citizens once they have had good experiences with democratic institutions and have accustomed themselves to conditions of political freedom. In so doing, they also learn, within the prevailing national context, to comprehend the republic and its Constitution as an attainment. Without a historical, consciously formed vision of this kind, patriotic ties deriving from and relating to the Constitution cannot come about. For such ties are connected, for example, with pride in a successful civil rights movement.⁴⁰

Studies of struggles over the actual writing, implementation, and modification of real constitutions in real societies prove this account--with its emphasis on conflict-free phenomena like "good experiences," "vision," and "pride"--to be far from sufficient.⁴¹ Something infinitely more complex is at work in real life situations, perhaps because humans are more complex than Habermas's *homo democraticus*. People know how to be, at the same time, tribal and democratic, dissidents and patriots, experts at judging how far a democratic constitution can be bent and used in non-democratic ways for personal and group advantage.⁴²

Machiavelli is a more enlightened guide to social and political change than Habermas when it comes to constitution writing. In *The Discourses* Machiavelli recapitulates that "[a]ll writers on politics have pointed out . . . that in constituting and legislating for a commonwealth it must be taken for granted that all men are wicked and that they will always give vent to the malignity that is in their minds when opportunity offers."⁴³ If Machiavelli and other writers are right in this "worst-case" thinking, then we might clearly end up in trouble if we rely on Habermas's discourse ethics as a basis for regulating power and organizing our society, as Habermas advocates we do, since discourse ethics contains no checks and balances--other than an abstract appeal to reason--to control the wickedness which Machiavelli talks about. Such wickedness is assumed away by Habermas's leap of faith for the good. History teaches us, however, that assuming evil away may give free reign to evil. This is why Nietzsche emphatically says, "Perhaps there has never before been a more dangerous ideology . . . than this will to good."⁴⁴ Thus, the lesson to be learnt from Machiavelli and Nietzsche is not so much that all moralism is hypocrisy. The lesson is that the first step to becoming moral is realizing we are not. The next step is establishing checks and balances that adequately reflect this.

Habermas's Critics

By determining validity, truth, justice, etc., as an outcome of "the better argument," Habermas moves the problems of determination from the former concepts to the latter. As Richard Bernstein correctly points out, "the better argument," and with it communicative rationality, is an empirically empty concept: "Abstractly, there is something enormously attractive about Habermas's appeal to the 'force of the better argument' until we ask ourselves what this means and presupposes."⁴⁵ The problem here is that in non-trivial situations there are few clear criteria for determining what is considered an argument, how good it is, and how different arguments are to be evaluated against each other. This does not mean that we should not attempt to identify arguments and evaluate them. Yet as Bernstein says, any society must have some

procedures for dealing with conflicts that cannot be resolved by argumentation, “even when all parties are committed to rational argumentation.”⁴⁶ In real democracies--as opposed to Habermas’s ideal types--it is precisely these kinds of conflicts, which are of interest, both empirically and normatively.

Agnes Heller, Albrecht Wellmer, Herman Lübbe, and Niklas Luhmann have expressed similar criticisms of discourse ethics. In commenting upon Habermas’s universalization principle (U) mentioned earlier, Heller simply rejects the value of Habermas’s approach: “Put bluntly, if we look to moral philosophy for guidance in our actions here and now, we cannot obtain any positive guidance from the Habermasian reformulation of the categorical imperative.”⁴⁷ Wellmer is equally harsh when he writes that adhering to the universalization principle in moral judgment “would make justified moral judgment an impossibility [*einem Ding der Unmöglichkeit*].”⁴⁸ At the level of institutional analysis, Lübbe and Luhmann comment that upholding any concrete institutions to the demands of discourse ethics would paralyze institutional life to the point of a breakdown.⁴⁹

Even Habermas’s most sympathetic interpreters, such as Seyla Benhabib and Alessandro Ferrara, have begun to criticize Habermas for his formalism, idealism, and insensitivity to context. They are trying to provide a corrective to Habermas’s thinking on precisely these weak points and to introduce an element of *phronesis* into critical theory.⁵⁰ I would argue that critical theory and Habermas’s work also need to bring in the element of power. In his *Between Facts and Norms* and other recent works Habermas has attempted to do just that, and he has, at the same time, developed a deeper analysis of democracy and civil society.⁵¹ Despite these efforts, however, Habermas’s approach remains as strongly procedural and normative as ever, paying scant attention to the preconditions of actual discourse, to substantive ethical values, and to the problem of how communicative rationality gets a foothold in society in the face of the massive non-communicative forces whose existence Habermas duly recognizes. Habermas also continues to disregard the particular problems relating to identity and cultural divisions and the nondiscursive ways of safeguarding reason that have been developed by so-called minority groups and new social movements.

Habermas’s universalization of the democracy problematic, besides being unsustainable, may also be unnecessary. For instance, the groups in civil society which worked for changing relations of power by the expansion of suffrage from property-owning men to include all adult men, did not necessarily have any ultimate democratic vision that voting rights should also include women. Nevertheless, their efforts unwittingly laid the groundwork for the subsequent enfranchisement of women. Similarly, those civil rights groups who worked for the right to vote for adult women did not necessarily envision a situation where suffrage would also include 18-year-olds, even though this later came to pass in many countries. The struggle was carried out from case to case and utilized the arguments and means which worked in the specific socio-historical context. This mode of action is also pertinent to today’s social movements, where we still do not know what will be meant by democracy in the future; we know only that, as democrats, we would like to have more of it.

Rorty is correct in noting that the “cash value” of Habermas’s notions of discourse ethics and communicative rationality consists of the familiar political freedoms of modern pluralist democracies.⁵² But such notions are not “foundations” or “defenses” of free institutions; they *are* those institutions, says Rorty: “We did not learn about the importance of these institutions . . . by thinking through the nature of Reason or Man or Society; we learned about this the hard way, by watching what happened when those institutions were set aside.”⁵³

To be absolutely modern, writes Milan Kundera, means never to question the content of modernity.⁵⁴ It means to be forever hopeful about the utopian ideals of modernity and to avoid looking at modernity as it is lived in actual detail, that is, the kind of detail where modern ideals meet the realities of power. Habermas seems absolutely modern in this sense. The vocabulary of Enlightenment rationalism, although it was essential to the beginning of liberal democracy, has become an impediment to the preservation and progress of democratic societies.⁵⁵ One reason for this is that Enlightenment rationalism

has little to offer in understanding power and in understanding the related discrepancy between formal rationality and *Realrationalität* (real rationality) in modern democracies.⁵⁶ In staying close to the Enlightenment vocabulary Habermas has developed little understanding of power and thus tends to become part of the problem he wishes to solve. Habermas's efforts to achieve more rationality and democracy, however laudable, draw attention away from critical relations of power. The neglect of power is unfortunate, because it is precisely by paying attention to power relations that we may achieve more democracy. If our goal is to move toward Habermas's ideal--freedom from domination, more democracy, a strong civil society--then our first task is not to understand the utopia of communicative rationality, but to understand the realities of power. Here we turn to the work of Michel Foucault, who has tried to develop such an understanding.

Foucault: Is Contextualism Relativism?

Both Foucault and Habermas are political thinkers. Habermas's thinking is well developed as concerns political ideals, but weak in its understanding of actual political processes. Foucault's thinking, conversely, is weak with reference to generalized ideals--Foucault is a declared opponent of ideals, understood as definitive answers to Kant's question, "What ought I to do?" or Lenin's "What is to be done?"--but his work reflects a sophisticated understanding of *Realpolitik*. Both Foucault and Habermas agree that in politics one must "side with reason." Referring to Habermas and similar thinkers, however, Foucault warns that "to respect rationalism as an ideal should never constitute a blackmail to prevent the analysis of the rationalities really at work."⁵⁷ In the following comparison of Foucault and Habermas, emphasis will be placed on what Vincent Descombes has called the "American Foucault," the Foucault who saw liberal democracy as a promising social experiment, and who regarded himself as a citizen in a democratic society working on the project of human liberty.⁵⁸

Foucault was familiar with the work of Habermas and the Frankfurt School, just as Habermas is familiar with the work of Foucault. Foucault occasionally even built upon the work of Habermas, which is a fact of some significance for someone who rarely made reference to contemporary philosophers. In an interview, Foucault said he was "completely in agreement" with Habermas regarding the importance of Kant. "If one abandons the work of Kant," explained Foucault, "one runs the risk of lapsing into irrationality."⁵⁹ And, like Habermas, Foucault was unequivocal in his evaluation of the significance of rationality as an object of study. Foucault suggests, however, that the work of Kant might have been too narrowly interpreted by Habermas and his followers. "[I]f the Kantian question was that of knowing what limits knowledge has to renounce transgressing," says Foucault, "it seems to me that the critical question today has to be turned back into a positive one . . . The point, in brief, is to transform the critique conducted in the form of necessary limitation into a practical critique that takes the form of a possible transgression."⁶⁰ This entails an obvious consequence, according to Foucault, namely that "criticism is no longer going to be practiced in the search for formal structures with universal value, but rather as a historical investigation."⁶¹

Habermas's main complaint about Foucault is what Habermas sees as Foucault's relativism. Thus Habermas has harshly dismissed Foucault's genealogical historiographies as "*relativistic, cryptonormative* illusory science" (emphasis in original).⁶² Such critique for relativism is correct, if by relativistic we mean unfounded in norms that can be rationally and universally grounded; and this is what Habermas means when he criticizes Foucault for not giving an "account of the normative foundations" for his thinking.⁶³ By this standard, however, Habermas's own work is also relativistic. As we have seen, Habermas has not, so far, been able to demonstrate that rational and universal grounding of his discourse ethics is possible, he has only postulated such grounding.⁶⁴ And Habermas is not alone with this problem. Despite more than two

thousand years of attempts by rationalistic philosophers, no one has been able so far to live up to Plato's injunction that to avoid relativism our thinking must be rationally and universally grounded.

The reason may be that Plato was wrong. Perhaps the polarity relativism-foundationalism is just another artificial dualism that makes it easy to think but hard to understand. Such dualisms simplify things conceptually but with little reference to actual phenomena. Perhaps the horns of the dualism can be avoided by contextualism. This is the strategy of Foucault. As we will see, it is clearly wrong to criticize Foucault for being a relativist if we by relativistic mean "without norms" or "anything goes." "I do not conclude," says Foucault, "that one may say just anything within the order of theory."⁶⁵

Foucault resolves the question of relativism versus foundationalism by following Nietzsche who says about "historians of morality" that

[t]heir usual mistaken premise is that they affirm some consensus of the nations . . . concerning certain principles of morals, and then they infer from this that these principles must be unconditionally binding also for you and me; or conversely, they see the truth that among different nations moral valuations are *necessarily* different and then infer from this that *no* morality is at all binding. Both procedures are equally childish (emphasis in original).⁶⁶

Employing this line of reasoning, Foucault rejects both relativism and foundationalism and replaces them by situational ethics, that is, by context; Foucault's norms are contextually grounded.

Paul Veyne has rightly observed about Foucault's contextualism, that anyone who equates contextualism with relativism's "anything goes" should imagine trying to ask the Romans to abolish slavery or to think about an international equilibrium.⁶⁷ The present effectively limits the possible preferences; humans cannot think or do just anything at any time.

The Normative in Foucault

With explicit reference to Kant and Habermas, Foucault says that unlike these two thinkers he "is not seeking to make possible a metaphysics that has finally become a science."⁶⁸ Distancing himself from foundationalism and metaphysics does not leave Foucault normless, however. His norms are expressed in a desire to challenge "every abuse of power, whoever the author, whoever the victims"⁶⁹ and in this way "to give new impetus, as far and wide as possible, to the undefined work of freedom."⁷⁰ Foucault here is the Nietzschean democrat, for whom any form of government--pluralist or totalitarian--must be subjected to analysis and critique based on a will not to be dominated, voicing concerns in public, and withholding consent about anything that appears to be unacceptable.⁷¹ Foucault's norms are based on historical and personal context, and they are shared with many people around the world. The norms cannot be given a universal grounding independent of those people and that context, according to Foucault. Nor would such grounding be desirable, since it would entail an ethical uniformity with the kind of utopian-totalitarian implications that Foucault would warn against in any context, be it that of Marx, Rousseau, or Habermas: "The search for a form of morality acceptable by everyone in the sense that everyone would have to submit to it, seems catastrophic to me."⁷² In a Foucauldian interpretation, such a morality would endanger democracy, not empower it. Instead, Foucault focuses on the analysis of evils and shows restraint in matters of commitment to ideas and systems of thought about what is good for humans, given the historical experience that few things have produced more suffering among humankind than strong commitments to implementing utopian visions of the good.

Foucault's view of the value of universals in philosophy and social science stands in diametrical opposition to that of Habermas. "Nothing is fundamental," says Foucault, "That is what is interesting in the analysis of society."⁷³ Compare this with Foucault's remark that "nothing in man--not even his body--

is sufficiently stable to serve as the basis for self-recognition or for understanding other men.”⁷⁴ Therefore, Foucault’s analysis of the “rationalities really at work” begins with the assumption that because no one has yet demonstrated the existence of universals in philosophy and social science, we must operate as if the universals do not exist; that is, we should not waste our time searching in vain for universals. Where universals are said to exist, or where people tacitly assume they exist, universals must be questioned, according to Foucault. For Foucault, our history endows us with the possibility to become aware of those social arrangements, which create problems--oppressive political and administrative systems, for instance--and those, which create satisfaction--strong democracy, for instance. It follows that we have the possibility to either oppose or promote these arrangements. This, and not global moral norms, is Foucault’s point of departure for social and political change.⁷⁵

The basis for understanding and acting is the attitude among those who understand and act, and this attitude is not based on idiosyncratic moral or personal preferences, but on a context-dependent common world view and interests among a reference group, well aware that different groups typically have different world views and different interests, and that there exists no general principle--including the “force of the better argument”--by which all differences can be resolved. For Foucault the socially and historically conditioned context, and not fictive universals, constitutes the most effective bulwark against relativism and nihilism, and the best basis for action. Our sociality and history, according to Foucault, is the only foundation we have, the only solid ground under our feet. And this socio-historical foundation is fully adequate.

According to Foucault, Habermas’s “authorization of power by law” is inadequate.⁷⁶ “[The juridical system] is utterly incongruous with the new methods of power,” says Foucault, “methods that are employed on all levels and in forms that go beyond the state and its apparatus . . . Our historical gradient carries us further and further away from a reign of law.”⁷⁷ The law, institutions--or administrative procedures--provide no guarantee of freedom, equality, or democracy. Not even entire institutional systems, according to Foucault, can ensure freedom, even where they are established with that purpose. Nor is freedom likely to be achieved by imposing abstract theoretical systems or “correct” thinking. On the contrary, history has demonstrated--says Foucault--horrifying examples that it is precisely those social systems which have turned freedom into theoretical formulas and treated practice as political-administrative engineering, that is, as an epistemically derived *techne*, that become most repressive. “[People] reproach me for not presenting an overall theory,” says Foucault, “I am attempting, to the contrary, apart from any *totalization*--which would be at once *abstract* and *limiting*--to *open up* problems that are as *concrete* and *general* as possible” (emphasis in original).⁷⁸

Given this background, theory-based writing of constitutions does not occupy a central place in Foucault’s work as it does for Habermas, and constitution writing would not be seen as an effective way of empowering democracy in a Foucauldian interpretation. This is not because the writing of constitutions is without significance, but because Foucault views it as more important--both for understanding and for practice--to focus on the concrete struggle over a constitution in a specific society: how the constitution is interpreted, how it is practiced in actual institutions, and especially, how interpretations and practices may be changed. In other words, Foucault’s thinking as concerns laws, constitutions, and democracy focuses more on how existing constitutions and their associated institutions can be utilized more democratically, whereas Habermas’s project is to establish more democratic constitutions and institutions as such, where “democracy” is defined by Habermas’s discourse ethics.

In this sense, what Foucault calls “the political task” is

to criticize the working of institutions which appear to be both neutral and independent; to criticize them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them.⁷⁹

This is what, in a Foucauldian interpretation, would be seen as an effective approach to institutional change and to power. With direct reference to Habermas, Foucault adds:

The problem is not of trying to dissolve [relations of power] in the utopia of a perfectly transparent communication, but to give . . . the rules of law, the techniques of management, and also the ethics . . . which would allow these games of power to be played with a minimum of domination.⁸⁰

Here Foucault overestimates his differences with Habermas, for Habermas also believes that the ideal speech situation cannot be established as a conventional reality in actual communication. Both thinkers see the regulation of actual relations of dominance as crucial, but whereas Habermas approaches regulation from a universalistic theory of discourse, Foucault seeks out a genealogical understanding of actual power relations in specific contexts. For Foucault praxis and freedom are derived not from universals or theories. Freedom *is* a practice, and its ideal is not a utopian absence of power. Resistance, struggle, and conflict, in contrast to consensus, are for Foucault the most solid bases for the practice of freedom.

It is precisely on the issue of power and freedom that we find the most crucial difference between Foucault and Habermas, a difference reflected in Foucault's labeling of Habermas as "utopian," while Habermas responds in kind by terming Foucault a "cynic" and "relativist."⁸¹ This kind of mudslinging is unproductive for concrete political and administrative studies, however, since nothing remains to be discovered if everything is power or if nothing is power, but instead ideal utopia.

Rationality and Difference

Whereas Habermas emphasizes procedural macropolitics, Foucault stresses substantive micropolitics, though with the important shared feature that neither Foucault nor Habermas venture to define the actual content of political action. This is defined by the participants. Thus, both Habermas and Foucault are "bottom-up" thinkers as concerns the content of politics, but where Habermas thinks in a "top-down" moralist fashion as regards procedural rationality--having sketched out the procedures to be followed with his communicative rationality--Foucault is a "bottom-up" thinker as regards both process and content. In this interpretation, Habermas would want to tell individuals and groups in a society how to go about their affairs as regards procedure for discourse. He would not want, however, to say anything about the outcome of this procedure. Foucault would prescribe neither process nor outcome; he would only recommend a focus on conflict and on power relations as the most effective point of departure for the fight against domination. It is because of his double "bottom-up" thinking that Foucault has been described as non-action oriented. Foucault says about such criticism:

It's true that certain people, such as those who work in the institutional setting of the prison . . . are not likely to find advice or instructions in my books to tell them 'what is to be done.' But my project is precisely to bring it about that they no longer know what to do, so that the acts, gestures, discourses that up until then had seemed to go without saying become problematic, difficult, dangerous.⁸²

The depiction of Foucault as non-action oriented is correct to the extent that Foucault hesitates to give directives for action, and he directly distances himself from the kinds of universal formulas which characterize procedure in Habermas's communicative rationality. Foucault believes that "solutions" of this type are themselves part of the problem.

Seeing Foucault as non-action oriented would be misleading, however, insofar as Foucault's genealogical studies are carried out in order to show how things can be done differently to "separate out, from the contingency that has made us what we are, the possibility of no longer being, doing, or thinking what we are, do, or think."⁸³ Thus Foucault was openly pleased when during a revolt in some of the French prisons the prisoners in their cells read his book *Discipline and Punish*. "They shouted the text to other prisoners," Foucault told an interviewer.⁸⁴ "I know it's pretentious to say," Foucault said, "but that's a proof of a truth--a political and actual truth--which started after the book was written." This is the type of situated action Foucault would endorse, and as a genealogist, Foucault saw himself as highly action oriented, as "a dealer in instruments, a recipe maker, an indicator of objectives, a cartographer, a sketcher of plans, a gunsmith."⁸⁵

The establishment of a concrete genealogy opens possibilities for action by describing the genesis of a given situation and showing that this particular genesis is not connected to absolute historical necessity. Foucault's genealogical studies of the rationality of prisons, hospitals, and sexuality demonstrate that social practices may always take an alternative form, even where there is no basis for voluntarism or idealism. Combined with Foucault's focus on domination, it is easy to understand why this insight has been embraced by feminists and so-called minority groups. Elaborating genealogies of, for instance, gender and race leads to an understanding of how relations of domination between women and men, and between different peoples, can be changed.⁸⁶

Foucault's emphasis on marginality and domination makes his thinking sensitive to difference, diversity, and the politics of identity, something which today is crucial for understanding power and affecting social and political change. Historically the very idea of democracy contains a gender bias. Feminists have found that overall Foucault is more helpful than Habermas in rooting out this bias, and progress has been slow in developing the theory of communicative rationality in ways that would be sensitive to gender. Even a sympathetic observer like Jean Cohen criticizes Habermas for his "peculiar blindness to gender issues."⁸⁷ Other feminists have been skeptical about Habermas's "confidence in abstract rationality" as the general cure to social and political ailments, and researchers working on race, ethnicity, and sexuality have received Habermas in a similar manner.⁸⁸ When Habermas was asked directly by Nancy Fraser in a conference on the occasion of the publication of the English translation of his *The Structural Transformation of the Public Sphere*, whether the "condition for the possibility of a public sphere," that is, the basic condition for communicative rationality, is not a utopian society with "economic equality--the end of class structure and the end of gender inequality,"⁸⁹ Habermas replied that he would "have to get over the shock to answer such a question," and then proceeded not to answer the question at all.⁹⁰ It is understandable that Habermas is reluctant to answer Fraser's critical question because it expresses a suspicion that Habermas's ideas on communicative rationality and democracy may be so abstract that we will never see them working in the affairs of real life. And Habermas's thinking contains little that may help counter such suspicion.

Habermas has acknowledged that his analysis does not include "gender, ethnicity, class, popular culture."⁹¹ But Habermas insists, wrongly in my analysis, that "the critique of that which has been excluded from the public sphere," and from Habermas's analysis of it, can be carried out "only in the light of the declared standards and the manifest self-understanding of the proponents and participants of these very same public spheres." How could you "critically assess the inconspicuous repression of ethnic, cultural, national, gender, and identity differences," asks Habermas, "if not in the light of this *one* basic standard ['the force of more or less good reason'], however interpreted, of procedures that *all* parties presume will provide the most rational solution at hand, at a given time, in a given context?" (emphasis added).⁹² Thus Habermas sees the struggle over access to the public sphere as a matter of rational discourse. But Habermas's analysis does not stand up to historical-empirical test. With the demarcations established by his use of the terms "only," "one," and "all" the analysis is too categorical.

For example, the critical assessment of the exclusion of certain groups from the public sphere Habermas talks about can be and has been carried out unilaterally by the very groups that have been excluded, and without regard to following the “declared standards” and “manifest self-understanding” of this sphere. As a matter of fact, such standards and self-understanding have often been seen as what was in need of change; they were the objects of critical assessment, not its basis.⁹³ Even where the standards and self-understanding were not seen as a problem, they may not have been viewed by excluded groups as the most efficient means for gaining access to the public sphere. Groups may therefore choose to use other, nondiscursive means to gain such access, the politics of activism or power politics, for instance. Feminist and environmental initiatives, today central to the structure and functioning of many societies, got their issues on the public agenda not primarily by rational consensus but through the power struggles and conflicts characteristic of activism and social change.⁹⁴ Moreover, as Geoff Eley and Mary Ryan have demonstrated, historically the very constitution of the public sphere took place, not solely from rational discourse and consensus, but “from a field of conflict, contested meanings, and exclusion.”⁹⁵ In Eley’s analysis, the claim to reason implied by the constitution of the public sphere was simultaneously a claim to power in Foucault’s sense. Dankwart Rustow has similarly argued that democracy has generally come into existence not because people wanted this form of government or because they had achieved a wide consensus on “basic values,” but because various groups had been fighting for so long they finally came to recognize their mutual inability to gain dominance and the need for some accommodation.⁹⁶

Morality By Immoral Means: Democracy At Gunpoint

In arguing that exclusion of ethnic, cultural, national, and gender groups from the public sphere needs to be assessed by the discursive standards of the public sphere, Habermas uses the conduct of court cases as a model for such assessment. “Court cases,” says Habermas, “are meant to settle practical conflicts in terms of mutual understanding and intended agreement.”⁹⁷ And agreement is arrived at, according to Habermas, by use of the “force of more or less good reason,” that is, the force of the better argument, as “the *only* alternative to overt or covert violence” (emphasis added).⁹⁸ It is correct that courts are meant to settle conflicts and that arguments, rational or not, are used for this purpose. Yet such settlement is not dependent in the individual case on mutual understanding or agreement between the parties involved in the court case, as Habermas says it is. It is, instead, dependent on an understanding by the parties that once the arguments have been heard and the judge has ruled they will have to live by this ruling, whether they like it or not. If they choose not to respect the ruling, the judge is backed by an elaborate system of sanctions, and ultimately by police force and prisons. Thus court cases are typically settled by power, not by mutual understanding and agreement. Courts in pluralist democracies secure the type of conflict-resolution Richard Bernstein talked about above when he said that any society must have some procedures for dealing with conflicts that cannot be resolved by argumentation, even when all parties are committed to rational argumentation. If courts relied on Habermas’s understanding of litigation, the court system would break down because many cases would never come to an end. While morally admirable and politically provocative, Habermas’s thinking about rational argument here seems not only utopian but also sociologically naive both empirically and normatively.

If Habermas’s discourse ethics were to be constituted as reality this would not signify an end to power, it would be a way to regulate power. And to the extent that actual implementation of discourse ethics would run counter to the interests of influential social, political, and administrative actors--which is bound to be the case for societies and decisions of any complexity--discourse ethics will be opposed, whether such opposition can be rationally justified or not. The basic contradiction here is that coercion would be needed to arrive at Habermas’s non-coercive communication. Agreement would, in this sense, be forced. So even if one could imagine the existence of what Habermas calls a “political public sphere

unsubverted by power,”⁹⁹ such a sphere could not be said to be free of power since it was established through a claim to power, just as democracy in Habermas’s native Germany was not implemented by public discourse but at the point of guns. The Nietzschean insight that historically morality has typically been established by immoral means would hold true for Habermas’s morality, too. Power is needed to limit power. Even to understand how publicness can be established we need to think in terms of conflict and power. There is no way around it. It is a basic condition for understanding issues of exclusion and inclusion in a democracy.

Assent and Dissent With Foucault and Habermas

In sum, Foucault and Habermas agree that rationalization and the misuse of power are among the most important problems of our time. They disagree as to how one can best understand and act in relation to these problems. Habermas’s approach is oriented toward universals, context-independence, and control via constitution writing and institutional development. Foucault focuses his efforts on the local and context-dependent and toward the analysis of strategies and tactics as basis for power struggle.

The value of Habermas’s approach is that it contains a clear picture of what Habermas understands by “democratic process,” and what preconditions must be fulfilled for a decision to be termed “democratic.” His scheme can be used as a rough and abstract ideal for justification and application in relation to macro-issues in politics and administration, such as legislation, institutional reform, and procedural planning. The problem, however, is that Habermas is idealistic and even utopian. His work contains little understanding of how power functions in actual politics and administration or of those strategies and tactics which can ensure more of the sought after democracy. It is easy to point to constitution writing and institutional reform as a solution to political and administrative problems; it is something else to implement specific constitutional and institutional changes. Aside from his general prescriptions regarding communicative rationality, Habermas provides us with little guidance as to how such implementation could take place.

The value of Foucault’s approach is his emphasis on the dynamics of power. Understanding how power works is the first prerequisite for action, because action is the exercise of power, says Foucault. And such an understanding can best be achieved by focusing on the concrete. Foucault can help us with a materialist understanding of *Realpolitik* and *Realrationalität* (real rationality), and how these might be influenced and changed in a specific political or administrative context. The problem with Foucault, acknowledged by Foucault himself, is that because understanding and action have their points of departure in the particular and the local, we may come to overlook more generalized conditions concerning, for example, institutions, constitutions, and structural issues.

From the perspective of the history of philosophy and political theory, the difference between Foucault and Habermas lies in the fact that Foucault works within a particularistic and contextualist tradition that focuses on conflict and has its roots with Aristotle via Machiavelli and Nietzsche.¹⁰⁰ Foucault is one of the more important twentieth century exponents of this tradition. Habermas is a prominent exponent of a universalistic and theorizing tradition that focuses on consensus and derives via Kant from Plato. In power terms, we are speaking of “strategic” versus “constitution” thinking, about struggle versus control, conflict versus consensus.

Wider and Wilder Territory: Tying Habermas to Foucault and Nietzsche

Generally, conflicts have been viewed as dangerous, corrosive, and potentially destructive of political and administrative order and therefore in need of being contained and resolved. This view seems to cover Habermas’s outlook on conflict, which is understandable given Germany’s, and Habermas’s, experience

with Nazism, World War II, and their aftereffects through half a century. There is mounting evidence, however, that social and political conflicts produce themselves the valuable ties that hold modern democratic societies together and provide them with the strength and cohesion they need; that social and political conflicts are the true pillars of democratic society and its political and administrative institutions.¹⁰¹

Governments and societies that suppress conflict do so at their own peril. A basic reason for the deterioration and loss of vitality of the Communist-dominated societies may be in their success in suppressing overt social and political conflict. In this interpretation, a society's constant honing of its capacity for allowing and dealing with conflict is what ensures the type of flexibility in the social and political order needed for long-term viability. In a Foucauldian interpretation, suppressing conflict is suppressing freedom, because the privilege to engage in conflict and power struggle is part of freedom.

If societies that suppress conflict are oppressive, perhaps social, political, and administrative theories that ignore or marginalize conflict are potentially oppressive, too. And if conflict sustains society, there is good reason to caution against an idealism that ignores conflict and power. In real social, political, and administrative life self-interest and conflict will not give way to some all-embracing communal ideal like Habermas's. Indeed, the more democratic a society, the more it allows groups to define their own specific ways of life and legitimates the inevitable conflicts of interest that arise between them. Consensus cannot be expected to neutralize particular group obligations, commitments, and interests. To think that it can be, is to repeat the fallacy of Rousseau's belief in the General Will as distinct from the actual will of particular individuals and groups.¹⁰² A more differentiated conception of political culture than Habermas's is needed, one that will be more tolerant of conflict and difference, and more compatible with the pluralization of interests.

As pointed out by Mary Ryan, because everyday politics inevitably falls short of the standards of communicative rationality, which was a chimera even in the heyday of the bourgeois public sphere, the goal of publicness might best be allowed to navigate through "wider and wilder territory."¹⁰³ Such territory is imbued with conflict. Politics is best cultivated, not in an ideal sphere that assumes away power, but in "many democratic spaces where obstinate differences in power, material status, and hence interest can find expression."¹⁰⁴ With the plurality that a contemporary concept for democracy must contain, conflict becomes an inevitable part of this concept. And such plurality and conflict, with associated divisions, permeate administrative systems as well as political ones. In strong democracies, distrust and criticism of authoritative action are omnipresent. Moral outrage is continuous, because actual political and administrative authorities inevitably violate whatever ideal norms civil society has for justice. Democracy guarantees only the existence of a public, not public consensus.¹⁰⁵ A strong democracy guarantees the existence of conflict. A strong understanding of democracy, and of politics and administration, must therefore be based on thought that places conflict and power at its center, as Foucault and Nietzsche do and Habermas does not.

This is not to reject the importance of the public sphere as a bulwark of freedom. Nor is it to deny that Habermas's work has value, especially in a time when most political theorists have given up on the high ambitions for philosophy and social science that Habermas still pursues, for instance regarding universal grounding of our thoughts and actions. Even if such ambitions cannot be fulfilled, the history of philosophy and science shows that we have much to learn from attempts at doing so. It must be said, however, that political and administrative theory which is practical, committed, and ready for conflict—and which conceive of politics and administration in those terms—provide a superior paradigm for understanding and shaping politics and administration than do forms of political and administrative theory that are discursive, detached, and consensus-dependent. For those who see things this way, in order to enable political and administrative theory to make a serious contribution to genuine democratic participation, one

would have to tie it back to precisely what it cannot accept in Habermas's interpretation: Foucault's and Nietzsche's focus on conflict, power, and partisanship.¹⁰⁶

¹ For more on the theoretical considerations in this paper, see Bent Flyvbjerg, *Making Social Science Matter: Why Social Inquiry Fails and How It Can Succeed Again* (Cambridge: Cambridge University Press, forthcoming). For an empirical study of political and administrative rationality in line with the argument in the paper, see Bent Flyvbjerg, *Rationality and Power: Democracy in Practice* (Chicago: The University of Chicago Press, 1998).

² Jürgen Habermas, *The Philosophical Discourse of modernity* (Cambridge, MA: MIT Press, 1987), p. 260. The following evaluation of Habermas's work concentrates on his concept for democracy. Other aspects of his authorship are not covered.

³ *Ibid.*, pp. 18-21, 302.

⁴ *Ibid.*, p. 294.

⁵ Jürgen Habermas, *The Theory of Communicative Action*, vols. 1 and 2 (Boston: Beacon Press, 1984, 1987); *The Philosophical Discourse of Modernity; Moral Consciousness and Communicative Action* (Cambridge, MA: MIT Press, 1990); and *Justification and Application: Remarks on Discourse Ethics* (Cambridge, MA: MIT Press, 1993).

⁶ Jürgen Habermas, "Questions and Counterquestions," in Richard J. Bernstein, ed., *Habermas and Modernity* (Cambridge, MA: MIT Press, 1985), p. 196.

⁷ Habermas, *The Philosophical Discourse of Modernity*, p. 294.

⁸ *Ibid.*, p. 315.

⁹ Habermas, *The Theory of Communicative Action*, vol. 1, p. 10.

¹⁰ *Ibid.*, p. 316.

¹¹ Habermas, "Questions and Counterquestions," p. 196.

¹² Jürgen Habermas, *Communication and the Evolution of Society* (London: Heinemann, 1979), p. 97.

¹³ Habermas, *Moral Consciousness and Communicative Action*, p. 93.

¹⁴ *Ibid.*, pp. 120-1. See also Franklin I. Gamwell, "Habermas and Apel on Communicative Ethics," *Philosophy and Social Criticism*, vol. 23, no. 2, 1997.

¹⁵ *Ibid.*, p. 198.

¹⁶ Habermas, *Justification and Application*, p. 31; Habermas, *Moral Consciousness and Communicative Action*, pp. 65-6. See also Matthias Kettner, "Scientific Knowledge, Discourse Ethics and Consensus Formation in the Public Domain," in Earl R. Winkler and Jerrold R. Coombs, eds., *Applied Ethics: A Reader* (Oxford: Basil Blackwell, 1993).

¹⁷ See also Fred Dallmayr, "Introduction," in Seyla Benhabib and Fred Dallmayr, eds., *The Communicative Ethics Controversy* (Cambridge, MA: MIT Press, 1990), p. 5.

¹⁸ Habermas, *Moral Consciousness and Communicative Action*, p. 122.

¹⁹ Jürgen Habermas, *On the Relationship of Politics, Law and Morality* (Frankfurt: University of Frankfurt, Department of Philosophy, undated), p. 15. See also Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996); and "Reconciliation through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," *Journal of Philosophy*, vol. 92, no. 3, 1995, with reply from John Rawls.

²⁰ Habermas, *On the Relationship of Politics, Law and Morality*, p. 8. For further discussion of the role of law in Habermas's theory of communicative action, see also Bill Scheuerman, "Neuman v. Habermas: The Frankfurt School and the Case of the Rule of Law," *Praxis International*, vol. 13, no. 1, 1993 and Mathieu Deflem, ed., "Habermas, Modernity, and Law," special edition of *Philosophy and Social Criticism*, vol. 20, no. 4, 1994, with contributions from Peter Bal, Mathieu Deflem, Pierre Guibentif, Jürgen Habermas, Bernhard Peters, and David M. Rasmussen.

²¹ Michel Foucault, *The History of Sexuality*, vol. 1 (New York: Vintage, 1980), pp. 87-8.

²² Ibid., pp. 82, 90.

²³ Ibid., p. 89.

²⁴ Jürgen Habermas, "Burdens of the Double Past," *Dissent*, vol. 41, no. 4, 1994, p. 514.

²⁵ Robert D. Putnam with Robert Leonardi and Raffaella Y. Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993).

²⁶ Habermas, *Moral Consciousness and Communicative Action*, p. 209.

²⁷ Ibid.

²⁸ Habermas, *The Philosophical Discourse of Modernity*, p. 322.

²⁹ Friedrich Nietzsche, *Beyond Good and Evil* (New York: Vintage Books, 1966), p. 15 (§8). Nietzsche adds elsewhere that to the extent that the philosopher's "conviction" is the basis of a "system" of thinking it corrupts the system. *The Anti-Christ* (Harmondsworth: Penguin, 1968), p. 188 (Appendix A).

³⁰ Some might argue that my claim that Habermas's universalism involves a leap of faith is misconstrued, since his fallibilistically conceived transcendental argument is subject to forms of indirect confirmation as Habermas illustrates through his concern with Lawrence Kohlberg and developmental psychology. To this I would answer that not only is this type of confirmation indirect, it is also partial and insufficient. As I will argue below, Habermas's emphasis of aspects of human development that confirm the transcendental argument, when seen in relation to aspects that do not, is unsustainable. For more on this point, and on the problematic character of Habermas's reformulation of Kantian critique, see also Kimberley Hutchings, *Kant, Critique and Politics* (London: Routledge, 1996) and Mitchell Dean, *Critical and Effective Histories: Foucault's Methods and Historical Sociology* (London: Routledge, 1994).

³¹ Bernard Crick, "Preface" and "Introduction" to Niccolò Machiavelli, *The Discourses* (Harmondsworth: Penguin, 1983), pp. 12, 17.

³² Niccolò Machiavelli, *The Prince* (Harmondsworth: Penguin, 1984), p. 96.

³³ Michel Foucault, "The Ethic of Care for the Self as a Practice of Freedom," in James Bernauer and David Rasmussen, eds., *The Final Foucault* (Cambridge, MA: MIT Press, 1988), pp. 11 and 18.

³⁴ Habermas, *The Philosophical Discourse of Modernity*, pp. 297-8.

³⁵ The inseparableness of good and evil has been succinctly paraphrased by Nietzsche: "[I]t was God himself who at the end of his days' work lay down as a serpent under the tree of knowledge: thus he recuperated from being God.--He had made everything too beautiful.--The devil is merely the leisure of God on that seventh day." *Ecce Homo* (New York: Vintage Books, 1969), p. 311 (§2).

³⁶ See also Joseph Heath, "The Problem of Foundationalism in Habermas's Discourse Ethics," *Philosophy and Social Criticism*, vol. 21, no. 1, 1995.

³⁷ Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989), p. 68.

³⁸ Ibid.

³⁹ Habermas, "Burdens of the Double Past" and "The Limits of Neo-Historicism," interview by Jean-Marc Ferry, *Philosophy and Social Criticism*, vol. 22, no. 3, 1996.

⁴⁰ Habermas, "Burdens of the Double Past," pp. 513, 514.

⁴¹ Putnam et al., *Making Democracy Work*; Flyvbjerg, *Rationality and Power*.

⁴² For empirical evidence backing this statement, see Flyvbjerg, *Rationality and Power*.

⁴³ Machiavelli, *The Discourses*, pp. 111-2 (§I.3); text corrected for misprint.

⁴⁴ Friedrich Nietzsche, *The Will to Power* (New York: Vintage Books, 1968), pp. 192-3 (§351).

⁴⁵ Richard J. Bernstein, *The New Constellation: The Ethical-Political Horizons of Modernity/Postmodernity* (Cambridge, MA: MIT Press, 1992), p. 220.

⁴⁶ Ibid., p. 221.

⁴⁷ Agnes Heller, "The Discourse Ethics of Habermas: Critique and Appraisal," *Thesis Eleven*, no. 10/11, 1984-85, p. 7.

⁴⁸ Albrecht Wellmer, *Ethik und Dialog: Elemente des moralischen Urteils bei Kant und in der Diskursethik* (Frankfurt: Suhrkamp, 1986), p. 63, my translation.

⁴⁹ Hermann Lübbe, "Are Norms Methodically Justifiable? A Reconstruction of Max Weber's Reply," in Benhabib and Dallmayr, eds., *The Communicative Ethics Controversy*; Benhabib, "Afterword," in Benhabib and Dallmayr, eds., *The Communicative Ethics Controversy*, pp. 352-3.

⁵⁰ Alessandro Ferrara, "Critical Theory and Its Discontents: On Wellmer's Critique of Habermas," *Praxis International*, vol. 8, no. 3, 1989. See also Richard J. Bernstein's debates with Richard Rorty and Fred Dallmayr in the journal *Political Theory*: Bernstein, "One Step Forward, Two Steps Backward: Richard Rorty on Liberal Democracy and Philosophy," and Rorty's rejoinder in "Thugs and Theorists: a Reply to Bernstein," (both in vol. 15, no. 4, 1987); Bernstein's "Fred Dallmayr's Critique of Habermas" and Dallmayr's reply, "Habermas and Rationality" (both in vol. 16, no. 4, 1988). See also Dallmayr, "The Discourse of Modernity: Hegel, Nietzsche, Heidegger (and Habermas)," *Praxis International*, vol. 8, no. 4, 1989. In these debates, Bernstein defends Habermas's thinking.

⁵¹ See the following works by Habermas: *Between Facts and Norms*, esp. Chapter 8; *Die Einbeziehung des Anderen: Studien zur politischen Theorie* (Frankfurt: Suhrkamp, 1996); and *Die Normalität einer Berliner Republik* (Frankfurt: Suhrkamp, 1995). See also Mikael Carleheden and Gabriels Rene, "An Interview with Jürgen Habermas," *Theory, Culture and Society*, vol. 13, no. 3, August 1996, pp. 1-18.

⁵² Richard Rorty, "Unger, Castoriadis, and the Romance of a National Future," in *Philosophical Papers*, vol. 2 (Cambridge: Cambridge University Press, 1991), p. 190.

⁵³ *Ibid.*

⁵⁴ Milan Kundera, *Immortality* (London: Faber and Faber, 1991), pp. 155-6.

⁵⁵ Rorty, *Contingency, Irony, and Solidarity*, p. 44.

⁵⁶ For more on the concept of *Realrationalität*, see Flyvbjerg, *Rationality and Power*, Chapter 1.

⁵⁷ Michel Foucault, *L'impossible Prison* (Paris: Seuil, 1980), p. 317; here quoted from John Rajchman, "Habermas's Complaint," in *New German Critique*, no. 45, 1988, p. 170. See also David Ingram, "Foucault and Habermas on the Subject of Reason," in Gary Gutting, ed., *The Cambridge Companion to Foucault* (Cambridge: Cambridge University Press, 1994).

⁵⁸ Vincent Descombes, "Je m'en Foucault," review of David Couzens Hoy, ed., *Foucault: A Critical Reader* (Oxford: Blackwell, 1986), in *London Review of Books*, March 5, 1987. For a good collection of articles in what has become known as the "Foucault/Habermas debate," see Michael Kelly, ed., *Critique and Power: Recasting the Foucault/Habermas Debate* (Cambridge, MA: MIT Press, 1994). See also Axel Honneth, *The Critique of Power: Reflective Stages in a Critical Social Theory* (Cambridge, MA: MIT Press, 1991), pp. 99 ff. and Samantha Ashenden and David Owen, eds., *Foucault contra Habermas: Recasting the Dialogue between Genealogy and Critical Theory* (Thousand Oaks: Sage, 1999).

⁵⁹ Michel Foucault, "Space, Knowledge, and Power," in Paul Rabinow, ed., *The Foucault Reader* (New York: Pantheon, 1984), p. 248. See also Foucault, "What is Enlightenment?" in Rabinow, ed., *The Foucault Reader* and Foucault, "Kant on Enlightenment and Revolution," *Economy and Society*, vol. 15, no. 1, 1986.

⁶⁰ Michel Foucault, "What is Enlightenment?" and "Space, Knowledge, and Power," in Rabinow, ed., *The Foucault Reader*, p. 45.

⁶¹ *Ibid.*, pp. 45-6.

⁶² Habermas, *The Philosophical Discourse of Modernity*, p. 276.

⁶³ *Ibid.*, p. 294.

⁶⁴ Habermas, "Questions and Counterquestions," p. 196; Habermas, *Communication and the Evolution of Society*, p. 97.

⁶⁵ Michel Foucault, "Politics and Ethics: An Interview," in Rabinow, ed., *The Foucault Reader*, p. 374.

⁶⁶ Friedrich Nietzsche, *The Gay Science* (Vintage Books: New York, 1974), pp. 284-5.

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- ⁶⁷ Paul Veyne, "The Final Foucault and His Ethics," in Arnold I. Davidson, ed., *Foucault and His Interlocutors* (Chicago: The University of Chicago Press, 1997), p. 230.
- ⁶⁸ Foucault, "What is Enlightenment?" p. 46.
- ⁶⁹ Michel Foucault, "Face aux gouvernements, les droits de l'Homme," a document written and read by Foucault at a press conference in June, 1981, on the plight of the Vietnamese boat people; first printed in *Libération* (June 30-July 1, 1984); here quoted from James Miller, *The Passion of Michel Foucault* (New York: Simon and Schuster, 1993), p. 316.
- ⁷⁰ Foucault, "What is Enlightenment?" p. 46.
- ⁷¹ See also Mark Warren, *Nietzsche and Political Thought* (Cambridge, MA: MIT Press, 1988); and Richard Rorty, "Nietzsche, Socrates and Pragmatism," *South African Journal of Philosophy*, vol. 10, no. 3, 1991.
- ⁷² Michel Foucault, interview in "Le Retour de la morale," *Les Nouvelles* (June 28, 1984), p. 37; here quoted from Hubert Dreyfus and Paul Rabinow, "What is Maturity," in Hoy, ed., *Foucault: A Critical Reader*, p. 119. See also Foucault, "What is Enlightenment?" and "Space, Knowledge, and Power."
- ⁷³ Foucault, "Space, Knowledge, and Power," p. 247.
- ⁷⁴ Michel Foucault, "Nietzsche, Genealogy, History," in Rabinow, ed., *The Foucault Reader*, pp. 87-8.
- ⁷⁵ For more on this point, see Dean, *Critical and Effective Histories*.
- ⁷⁶ Habermas, *On the Relationship of Politics, Law and Morality*, p. 8, emphasis deleted.
- ⁷⁷ Michel Foucault, *The History of Sexuality*, vol. 1 (New York: Vintage, 1980), p. 89.
- ⁷⁸ Foucault, "Politics and Ethics," pp. 375-6.
- ⁷⁹ Noam Chomsky and Michel Foucault, "Human Nature: Justice versus Power," in Fons Elders, ed., *Reflexive Water: The Basic Concerns of Mankind* (Souvenir: London, 1974), p. 171.
- ⁸⁰ Foucault, "The Ethic of Care for the Self," p. 18.
- ⁸¹ Ibid. and Habermas, *The Philosophical Discourse of Modernity*, pp. 253, 294.
- ⁸² Michel Foucault, *Colloqui con Foucault* (Salerno, 1981); here quoted from Miller, *The Passion of Michel Foucault*, p. 235.
- ⁸³ Foucault, "What is Enlightenment?" pp. 45-7.
- ⁸⁴ Millicent Dillon, "Conversation With Michel Foucault," *The Threepenny Review*, Winter/Spring 1980, p. 5. For more on Foucault and prison reform, see Michel Foucault and Gilles Deleuze, "Intellectuals and Power: A Conversation Between Michel Foucault and Gilles Deleuze," in Donald F. Bouchard, ed., *Language, Counter-Memory, Practice: Selected Essays and Interviews* (Oxford: Basil Blackwell, 1977); Michel Foucault, "Michel Foucault on Attica: An Interview," *Telos*, no. 19, 1974; and Gilles Deleuze, "Foucault and the Prison," interview in *History of the Present*, no. 2, Spring 1986.
- ⁸⁵ Jean-Louis Ezine, "An Interview with Michel Foucault," *History of the Present*, February 1985, p. 14. The interview first appeared in *Les Nouvelles Littéraires* in March 1975, just after the publication of Foucault's *Discipline and Punish*.
- ⁸⁶ Lois McNay, *Foucault and Feminism: Power, Gender, and the Self* (Boston: Northeastern University Press, 1992); S. Bordo and Alison Jaggar, eds., *Gender/Body/Knowledge* (New Brunswick: Rutgers University Press, 1990); Nancy Fraser, *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (Cambridge: Polity Press, 1989); Seyla Benhabib and Drucilla Cornell, eds., *Feminism as Critique: Essays on the Politics of Gender in Late Capitalist Societies* (Cambridge: Polity Press, 1987).
- ⁸⁷ Jean L. Cohen, "Critical Social Theory and Feminist Critiques: The Debate with Jürgen Habermas," in Johanna Meehan, ed., *Feminists Read Habermas: Gendering the Subject of Discourse* (New York: Routledge, 1995), p. 57.
- ⁸⁸ Mary P. Ryan, "Gender and Public Access: Women's Politics in Nineteenth-Century America," in Calhoun, ed., *Habermas and the Public Sphere*, p. 262. See also Nancy Fraser, "What's Critical About Critical Theory? The Case of Habermas and Gender," in Benhabib and Cornell, eds., *Feminism as Critique*; Geoff Eley, "Nations, Publics, and Political Cultures: Placing Habermas in the Nineteenth Century," in Craig Calhoun, ed., *Habermas and the*

Public Sphere (Cambridge, MA: MIT Press, 1992); Lorenzo C. Simpson, "On Habermas and Particularity: Is There Room for Race and Gender on the Glassy Plains of Ideal Discourse?" *Praxis International*, vol. 6, no. 3, 1986.

⁸⁹ Question by Nancy Fraser to Jürgen Habermas in Habermas, "Concluding Remarks," in Calhoun, ed., *Habermas and the Public Sphere*, p. 466.

⁹⁰ Habermas, "Concluding Remarks," p. 469.

⁹¹ *Ibid.*, p. 466.

⁹² *Ibid.*, pp. 466-7.

⁹³ Eley, "Nations, Publics, and Political Cultures" and Ryan, "Gender and Public Access."

⁹⁴ Paul Wapner, "Environmental Activism and Global Civil Society," *Dissent*, vol. 41, no. 23, 1994 and Charles Spinosa, Fernando Flores, and Hubert Dreyfus, *Disclosing New Worlds: Entrepreneurship, Democratic Action, and the Cultivation of Solidarity*, (Cambridge, MA.: MIT Press, 1997).

⁹⁵ Eley, "Nations, Publics, and Political Cultures," p. 307.

⁹⁶ Dankwart Rustow, "Transitions to Democracy: Toward a Dynamic Model," *Comparative Politics* 2, April 1970; Albert O. Hirschman, "Social Conflicts as Pillars of Democratic Market Society," *Political Theory*, vol. 22, no. 2, May 1994, p. 208.

⁹⁷ Habermas, "Concluding Remarks," p. 467.

⁹⁸ *Ibid.*

⁹⁹ Jürgen Habermas, "Further Reflections on the Public Sphere," in Calhoun, ed., *Habermas and the Public Sphere*, p. 453.

¹⁰⁰ For more on the view that Aristotle is one of the first philosophers to see political life as a conflict-ridden reality, see Bernard Yack, *Problems of a Political Animal: Community, Justice, and Conflict in Aristotelian Political Thought* (Berkeley: University of California Press, 1993). On the relationship between Aristotle and Machiavelli, see Eugene Garver, *Machiavelli and the History of Prudence* (Madison: The University of Wisconsin Press, 1987).

¹⁰¹ For a more full development of this argument, see Hirschman, "Social Conflicts as Pillars of Democratic Market Society," pp. 206 ff.

¹⁰² Jeffrey C. Alexander, "Bringing Democracy Back In. Universalistic Solidarity and the Civil Sphere," in Charles C. Lemert, ed., *Intellectuals and Politics: Social Theory in a Changing World* (Newbury Park: Sage, 1991).

¹⁰³ Ryan, "Gender and Public Access," p. 286.

¹⁰⁴ *Ibid.*

¹⁰⁵ Alexander, "Bringing Democracy Back In."

¹⁰⁶ See also Spinosa et al. "Disclosing New Worlds."