

# Deliberative democracy and late modernity

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## Abstract

My paper compares Habermas' and Giddens' respective attempts to delineate the potential for democratization immanent in recent social changes. At the outset, Habermas' and Giddens' conceptions of deliberative democracy were conditioned by the basic categories of their social theories and corresponding models of modernity. Describing the contemporary developments promoting deliberative democracy as part of a later reflexive stage of modernization, they also found that the discontinuity of this new phase placed in question the expectations of progress and improvement that have defined social democratic understandings of the welfare state. Subsequently, Habermas and Giddens presented contrasting and overlapping responses to this situation. But in each case their arguments that far-reaching processes of democratization can offset the detrimental consequences of globalization are paradoxical. Namely, they overlook some of the implications of their earlier interpretations of modernity and Habermas' procedural paradigm of deliberative democracy acquires greater relevance precisely due to the very changes his social theory cannot adequately explain. While Habermas' version of deliberative democracy clearly satisfies most of the requirements of a normative political theory, it largely dispenses with the historical perspective of critical theory. Alternatively, Giddens attempts to outline a way of reconciling the dynamics of expanding capitalism and social solidarity, yet the result is less a genuine synthesis than an oscillating between policy alternatives. Nevertheless, I suggest that their respective arguments for expanding democracy and raising the levels of political participation are important. Due to the foundation of deliberative democracy in the principle of dialogue, it constitutes a counterweight to the conflicts of late-modernity. Indeed, deliberative democracy could even make increasing autonomy conditional on social justice. This potential is, however, diluted in Giddens' 'third way' politics and Habermas' discourse theory curtails the prospects for change through through assimilating radical democracy to the legal principles of the constitutional state.

In contemporary social and political theory, Habermas and Giddens are somewhat distinctive in their opposition to pessimistic interpretations of the future prospects of social democracy. One of the important accomplishments of their theories is detailed accounts of the social-historical foundations of deliberative democracy. The typical grounding of deliberative democracy in a principle of dialogue is entirely consistent with their conceptions of a universalistic moral consciousness and the critical character of a post-traditional identity. (1) Habermas and Giddens are also distinctive in their constructive attempts to determine the institutional changes associated with democratic deliberation. (2) Both consider that the public deliberation of citizens is essential to the discontinuity of modernity and that the 'bourgeois legal and constitutional heritage' of democracy and rights embody principles for resisting the recent neo-liberal politics of the unregulated market. (3) A fundamental question they address then, is how the 'normative content', and even 'utopian projection', of these principles can be infused into institutions. The answers they give to this question are shaped by their ideas about how rights and democracy can be more than is suggested by liberal political philosophy, that is, means of protecting negative liberty. These answers are also meant to address how the welfare state can be continued, in Habermas' terms, at 'a higher level of reflection'. (4) In Giddens' opinion, the welfare state is a source of social progress, but, if the historical consequences of 'reflexive modernisation' are not incorporated into its rethinking, then it could become an impediment to democratisation. (5) However, his attempts to reconcile social solidarity with the extension of capitalism result in an oscillating between policy alternatives. Habermas' conception of the relationship between deliberative democracy and late-modernity encounters the exact opposite problems. It supplies convincing normative criteria and contains a compelling formal outline of a project of democratisation, yet his theory can neither adequately account for the changes in late-modernity which threaten democratic deliberation, nor entirely comprehend the conditions and dynamics of the struggles to extend democracy.

Despite significant differences, Habermas and Giddens broadly agree that the liberal interpretation of democracy and rights, as the protection of 'negative freedoms', is an inadequate approach to contemporary social developments. They argue that

contemporary changes, like globalisation, welfare reforms, 'manufactured uncertainty', the ecological crisis, and cultural diasporas, require the participatory approach of the 'positive freedoms' to shape institutions. On Habermas' and Giddens' analyses, political praxis is no longer even the privileged locus of the practices of radical change today. It would be fair to suggest that they find that informal interaction most clearly exhibits the democratic and dialogical principles of communicative rationalisation and reflexivity. (6) Habermas' account of the making a part of the former background horizon of the lifeworld a theme of communication and hence of its explicit evaluation, depicts a spiral of change which is similar to Giddens' interpretation of the alterations in practices ensuing from institutional reflexivity and detraditionalization. Social movements, in the view of both theorists, and also, especially according to Giddens, therapeutic self-help groups, are new agencies of change, unified around the questions of the conditions of life and identity. Significantly, the communicative organisation of informal social relations takes on a particular importance in translating into various types of prepolitical and parapolitical experiments in democracy. Although they recognise that it is countered by other trends, Habermas and Giddens believe that such democratisation introduces more exacting conditions of legitimation and it has substantially undermined the legitimation of hierarchical structures of authority by reference to tradition. This latter analysis influences their view that the dialogical mediation of social relations, which underpins such contemporary democratisation, is superior in its implications to the tenets of a communitarian position. However, they partly accept the validity of the communitarian critique of the limits of liberal interpretations of democracy. The theme of social solidarity is integral to their determination of the prospects for a reorganisation of the institutions of modernity.

According to Habermas, 'solidarity and the orientation to the common good appear as a third source of social integration', alongside the functional coordination of the systemic steering media of money and power, in modern societies. (7) Habermas rectifies some of the difficulties associated with his distinction between system and lifeworld in arguing for the mobilisation of solidarity and the actualising of the legal institution of democratic principles. (8) By contrast, the 'structural pluralism' of Giddens' 'third way' political position exposes the normative inadequacy of his approach. (9) Indeed, this inadequacy leads to his oscillating between policy alternatives. Nevertheless, Giddens not only argues that solidarity is compatible with 'modernizing' reforms but that social solidarity is a condition of a balanced relation between markets, governments and the 'civil order'. (10) In his opinion, the parameters of community and trust change in a post-traditional and cosmopolitan society, the principles of autonomy and democracy should apply across a spectrum from personal relations to the global order. (11) Now, the extent to which Giddens believes that this democratizing is continuous with existing developments is

perhaps surprising, given his earlier accounts of power and domination. He argued that the modern state is defined in part by the provision of welfare, precisely because it is a system of administration. (12) The different forms of the state regulation of social welfare were therefore intimately associated with the increased surveillance in modernity. As we will see, these arguments can illuminate difficulties in Habermas' conception of democratic law. Habermas aims to rectify the paradox of the way legally and bureaucratically implemented programs intended to enhance autonomy may sometimes transform citizens into passive clients of welfare institutions.

In Giddens' opinion, the phase of reflexive modernisation involves the dissolution of certain types of solidarity and the reconstitution of social solidarity, in new versions of older and other forms. Civil commitments are therefore not necessarily in decline, rather an 'increasingly reflexive society is also one marked by high levels of self-organization'. (13) Still, arguments that social bonds are under strain and that there is widespread disillusionment with the political process have considerable justification. Both Giddens and Habermas perceive that associated with the demands for democratisation are trends related to dissatisfaction with liberal-democratic political institutions. Habermas considers that this dissatisfaction supports his position that legitimacy depends on processes of public communication and a principle of democracy grounded in the possibility of discursively achieved agreement. (14) He argues it also points to the fact that radical democracy is actually required by the normative principles of modern law and the constitutional state. Yet, Habermas' understanding of radical democracy is unusual in its supposing that radical democracy is continuous with the democratic-constitutional state. That is, he suggests that the constitution of the democratic state should be the foundation of a historical project intended to elaborate and fully realise the system of rights it embodies. Radical democracy is not at all a utopian aspiration, but, rather, an immanent principle of modernity. Habermas bases these suggestions on the claim that his discourse theory demonstrates 'that there is a conceptual or internal relation, and not simply a historically contingent association, between the rule of law and democracy'. (15) In this way, discourse theory gives new vitality to 'the old promise of a self-organizing community of free and equal and citizens'. (16) According to Habermas, the project of realising through discourse the normative principles of the constitutional state would appropriately actualise the communicative ethic of a post-traditional social identity, as it translates into explicit political institutions a procedural conception of democracy founded on the structures of communication.

Habermas admits that the recent cultural transformation founded on communicative practices has not shaped the contemporary phase of modernization in a way, and to a degree, comparable to that effected by the structural changes in the capitalist economy and

the political system. As we have seen, Giddens likewise recognises changes similar to those of the communicative rationalisation of the lifeworld, but due to a generic notion of practice he does not distinguish in the manner of Habermas' theory between the cultural and systemic modernizing developments. For instance, Giddens argues that conservative thought is contradictory because the market is a major force in the undermining of tradition. (17) The contrast between his emphasis on historicity of the dynamics of change and Habermas' grounding of the rationality of deliberative politics probably discloses a decisive difference. Habermas' grounding entails a relatively inflexible understanding of social development and political transformation. In *The Theory of Communicative Action*, this restriction is especially due to an anchoring of social change in principles of structural differentiation and the quasi-functionalist implications of the lifeworld's role in its cultural programming. (18) Arnason and Joas have convincingly pointed to how this framework differs from Neo-Marxist conceptions of social creativity and the rather narrow range of possible future development it permits. (19) Despite the validity of this criticism, what I want to suggest here is that such inflexibility could be considered a virtue in the context of my comparison. Habermas' logical grounding of values precludes the types of oscillations which characterise Giddens' writings, like those ensuing from the disparity between a necessity of responding to recent modernising processes and their alleged promotion of agency. (20) In my opinion, Habermas' theory provides a stronger basis for resisting neo-liberal reforms and grounds for ascertaining both the appropriateness of the market and the needs which are not satisfied through exchange. He is able to show that the welfare state has a basis in the intersubjective relations of social solidarity and proposes democratic procedures by which the project of the welfare state could transcend its limitations in the direction of promoting greater autonomy. Similar intentions, to be sure, orient Giddens' recent writings on the welfare state and he notes that different models of the welfare state reflect the 'historical and cultural' background of respective nation-states. (21) Yet, the most consequential sense in which his position would be an alternative to Habermas' lie in his potentially making greater concessions to the neo-liberal critiques of the welfare state. In other respects, Giddens' positions are basically complementary to Habermas' arguments on citizenship rights and democracy. Indeed, I want to suggest that Habermas' grounding of rights in a dual conception of public and private autonomy could provide Giddens' 'third way' policy contributions with a buttress against unwarranted concessions to the neo-liberal and conservative agendas. (22)

A comparison with Giddens' most recent proposals reveals further instances of the paradox of substantially flawed aspects of Habermas' theory acquiring a new degree of validity and practical relevance. On balance, Giddens tends towards the position that globalization is a vehicle of democratisation, whereas Habermas' theory entails a more detailed appreciation of the threats to democracy. (23) Giddens' introduction of time and

space as central considerations of his social theory meant that it is particularly well suited to theorising globalisation. The theory of structuration contains possibilities for breaking new ground in relation to the topic of globalization which have not been fully explored. (24) One need not agree with all of Giddens' argument to appreciate that his analysis offers insights into globalisation that go beyond the typical emphases on economic integration. By contrast, Habermas' discussion of all forms of intersocietal relations was fairly limited until relatively recently. Besides more general reflections on the future of European integration, he has recently sought to clarify the capacity of international law to regulate globalization and he has provided substantial discussions of such phenomena as the national identity and immigration policies. (25) Significantly, Habermas' discourse theory foregrounds human rights and suggests that political legitimacy derives from their actualisation. In my opinion, the incipient universalism Giddens perceives in diverse processes of globalisation need to be channelled by democratic procedures and he has provided only general sketches. (26) Habermas' more detailed communicative model of participation and the institutional 'sluices' of democratic will-formation is highly relevant to the problem of the mediation of universal principles and particular identities. (27) Ironically, in this way, globalization provides a superior justification for his movement away from democratic-participatory models of workers' self-organization of production than the one he advanced using the systems theory informed category of complexity. (28) In fact, Habermas' perspective on identity could become a basis for framing discussions over the regulation of markets and even the democratic control of production. (29) This could be a rather different way of understanding the implications of Giddens' account of the limits of 'cybernetic model' of economic control. He argues that the dispersal of information in late-modernity means that actors in the market are able to anticipate the intended effects of state intervention and for this reason state planning does not possess the degree of directing power it had during earlier phases of modernization. New means of influencing economic decision-making are required, yet this conclusion may support the view that a 'third way' analysis cannot but fall prey to the neo-liberal agenda it criticises. (30)

Habermas' discourse theory of law and democracy is potentially a corrective to the inadequacies of Giddens' arguments on the cosmopolitan polity created by globalization. In particular, the very normative positions Giddens seeks to uphold can be reinforced by grounding them in discourse theory. Of course, the paradox is that Habermas' approach acquires greater relevance precisely through the occurrence of processes, like globalization, which the major statement of his theory is incapable of satisfactorily explaining. He concedes that it 'was still guided by the implicit assumption that that national societies, societies framed by a nation-state, provided the model for societies in general. That view has rightly been challenged.' (31) By contrast, Giddens far more

successfully captures the '*action at a distance*' of contemporary processes of globalization. (32) One of his major points is that globalization is not distinct from individuals' actions and lifestyle decisions. In this way, it intersects with the 'post-material' values of 'life-politics'. (33) For Giddens, this intersection is decisive, because it underscores the different layers of democratisation and why the experience of contingency in late-modernity could promote democracy. In respect of the latter experience, he argues that the 'intentional' reconstructing of identity is necessitated by actors' engagement with 'abstract systems' and modern forms of expertise. These systems and expertise transcend local contexts and they are 'disembedding mechanisms' reorganising time and space. Moreover, they facilitate the elaboration of post-material values by contributing to the dissolution of tradition. The 'gearing' of actors to such globalizing processes, Giddens supposes, requires 'active trust' and reflexivity. Because it is constituted through the dialogical explication of social relations, active trust presumes a positing of autonomy in a refusal to violate the autonomy of the other and it is democratising in its opposition to the authoritarian hold of tradition. Trust and reflexivity enable the 'democratisation of democracy', that is, the extension of the democratic principles of post-traditional social relations to a myriad of deliberative forums. This analysis suggests that democratisation is occurring both below the liberal-democratic state and across the borders of nation-states through the mediation of globalizing mechanisms and supranational agencies. Like Habermas, Giddens suggests that these democratising tendencies represent a resource for the development of types of solidarity which are opposed to fundamentalism and neo-nationalism. In his opinion, the latter have arisen as a response to the experience of uncertainty and the probability in late-modernity of encountering difference within former local contexts. But they are no real alternative, as fundamentalism 'is a refusal of dialogue in circumstances where such dialogue is the only mode of mutual accommodation'. (34)

The framework of this analysis may undermine the otherwise valuable 'third way' arguments for increasing participation in civil society. Specifically, the centrality of choice and motivation to it may exacerbate the problems critics have seen in Giddens' conceptions of social structure and constraint. (35) It is by no means as straightforward, as he seems to assume, that the ideal of autonomy in self-help literature is the same as that which has guided the critique of the heteronomy of systems of domination. Although the dialogical principles of active trust utilised in overcoming compulsions have important implications for democratisation, the injustices of inequality and subordination have systematic characteristics which transcend individual action. Despite Giddens' various qualifications, the idea of behavioural change may be misleading in relation to the structural problems of unemployment and poverty. Of course, his aim is precisely to disclose contemporary liberation without real autonomy, yet it is possible to imagine a scenario where the moral agencies of the state and civil society apply the demands for

active citizenry in a way that it turns 'mutual obligations' into a type of surveillance. In sum, the new social and political agenda, he conceives, deriving from the intersection between globalization and a restructuring of personal life exacerbates both the voluntarism of the individual and the power of the large-scale processes of globalisation to require changes in intermediary agencies, including the welfare state. A telling instance of how much Giddens underestimates the problems of democratic determination is his view of the infiltrating of expertise into everyday life and the control this supposedly endows agents with. (36) In my opinion, Habermas' conception of the fragmentation of consciousness and the cultural impoverishment resulting from the detachment of expertise seem to better define the actual situation. (37) There is some justification to Giddens' argument that to address inequality in late-modernity it is necessary to tackle the social and psychological consequences of exclusion. However, the commitment of third way politics to social justice has recurrently been questioned. Giddens' position is more complex. He rejects the neo-liberal interpretation of the market as autonomous determinant of material rewards and he comments that 'widening economic inequalities within society are not, certainly not necessarily, the condition of increasing overall prosperity.' (38) Still, this commitment to social justice has proven difficult to reconcile with his arguments opposing the restraints social democrats placed on capitalist innovation through the intervention of the state. Although Giddens recognises that there is a critical need to regulate global capital flows, he seems to oscillate between seeing this need as amongst the reasons for a decline in neo-liberalism and asserting that the regulatory structure of the 'social market' economy requires substantial liberalising reform. (39)

It is therefore too simplistic to argue that Giddens' contributions to the third way politics are basically an appropriating and repackaging of a neo-liberal policy agenda. Still, there is undoubtedly some justification to scepticism concerning the commitments behind his redefinition of social democracy. On my analysis, Giddens' attempt to 'combine social solidarity with a dynamic economy' is illusive, rather than an illusion. (40) His program is far from exhausting the potential of deliberative democracy to be coupled to a project of the transformation of the institutions of late-modernity. In the remainder of this paper, I shall seek to demonstrate that Habermas' procedural model of democracy and deliberative politics constitute, as he suggests, a program for continuing the welfare-state project at a higher level of reflection. Indeed, his specification of how actors can understand themselves to be the authors of the laws to which they are themselves subject as addressees is probably an unsurpassed clarification of how the normative principles of existing institutions can best be practically realised. At the same time, these arguments presuppose that discourse theory overcomes at least some of the serious immanent problems of Habermas' social theory, especially those relating to its distancing form

practice. It is certainly a considerable achievement of his discourse theory of democracy to have restored the priority of the participant's perspective in critical theory and presented from this angle a formal but still affirmative image of a reorganised contemporary society. On the other hand, it has already been conclusively argued that processes of globalisation cannot be adequately addressed from within his social theory and that amendments are necessary to conceptualise transformations beyond the nation-state. The contrast between Habermas' theory's achievements and deficiencies suggest that his version of deliberative democracy is most constructively understood as a contribution to normative political philosophy. The criticisms reviewed later will reinforce the validity of this claim and its implications.

Habermas' later discourse theory argument that there is an 'internal connection' between law and democracy reverses the pessimistic conclusions of his original account of the colonization of the lifeworld. The limiting practical-political implications of his binary model of society have been thoroughly explored by critics. (41) Habermas explicitly employed the metaphor of 'siege' to describe how public discourses and 'social solidarity transmitted into rational will formation' encircle the political system and can only exert influence from the outside. (42) How much his model reinforced the dilemmas it diagnosed is apparent from the role it assigned to law. The law both institutionally embeds the system in the lifeworld and defines its boundaries from it. So, although the conditions for reversing the process of 'inner colonisation' lie in the lifeworld, and would presumably be channelled in part through the law, the stronger constitutive significance law has for systemically integrated domains undermines the degree of feasible change. The relationship between the system and the lifeworld could be realigned but not really reconstituted. Whilst his general theory of communicative action need not inevitably entail these conclusions, his arguments concerning the democratising potential of the modern legitimating principles of popular sovereignty and rights were underdeveloped. It is clear though, as commentators like Cohen and Arato suggest, that Habermas' analyses imply that the welfare state impasse requires the mutually reinforcing changes of the decolonisation of the lifeworld and the democratisation of the system. (43) A new relationship between the state and a self-organizing civil society would be crucial.

The application of discourse theory to law and democracy is especially important because it demonstrates a direct practical application of the general theory of communicative action. (44) It finesses the relationship between the functional logic of social systems and the communicative reproduction of the lifeworld in a manner that partly corrects the institutional deficiency of a purely normative theory and restores the utopian projection of far reaching democratisation in a compelling fashion. Although the utopian dimensions of critical theory are now to be found in Habermas' depiction of the counterfactual premisses

of everyday communication, rather than in the historical process. These counterfactual idealizations of communication point to how the conditions of justification may contradict the factual order, but, at the same time, as the presuppositions of understanding they are necessary for the existence of society. Indeed, Habermas claims that in modernity a type of 'second level of idealization' is a consequence of social reality being constituted through communicatively achieved agreement and this social reality 'takes as its yardstick the intersubjective recognition of criticizable validity claims.' (45) Accordingly, discourses have a constitutive significance in the production of law and, above all, this reflexivity enables the addressees of law to understand themselves to be its authors. The normative standards of justice and fairness do not need to be brought to bear upon the law from the outside. Instead, because of the validity requirements of legal legitimation, they can be extrapolated from the conditions of reciprocal understanding and the structures of mutual recognition intrinsic to communicative action. By their being translated into the institutional medium of law, principles of understanding can accomplish the social integrating function of regulating abstract forms of interaction between strangers. Now, the practical-political implications of Habermas' position become clear in his claim that only processes of democratisation which enable citizens' participation in public discourses can stabilize the tension between the 'facticity' and 'validity' dimensions of law.

Marx's critical theory partly originated in the attempt to extend modern political philosophy's notions of constitution and autonomy beyond the realm of explicit political institutions to the realm of the social. (46) Habermas somewhat reverses this extension in returning the problem of constitution to the political institutionalization of democracy. However, his approach is continuous with the action theoretical suppositions of Marx's critical theory in its attempt to reconstruct the intuitions underlying the constitutional state from principles of discourse. The discourse principle is based on an expectation of the 'assent of all', because: 'Just those action norms are valid to which all possibly affected could agree as participants in rational discourse.' (47) Legitimacy presupposes that the communicative processes of justification have been unimpeded and that these discursive procedures produce reasonable, that is, rational results. Habermas claims that in its intersubjective interpretation of citizenship rights this 'procedural paradigm' supervenes the liberal contract model and it is able to respond to the limitations of social welfare law through its vision of autonomy. Because discourse theory suggests that rights extend mutual recognition and are grounded in the rationality of 'discursively achieved agreement', it differs from the liberal-contract paradigm's framing of rights in terms of the model of market relations. Rather, in discourse theory, rights are not things possessed, they are relational and subjects mutually accord them to one another. According to Habermas, founding law in the voluntary association of subjects is the 'anarchistic core' within the notion of communicative freedom. From this starting point, he stresses that 'the

liberal rights protecting the individual against the state apparatus, with its monopoly on violence, are by no means *originary* but rather emerge from a transformation of individual liberties that were at first *reciprocally* granted.' (48) At the same time, Habermas opposes all utopian ideas of the social which annul the distinction between the private and public spheres. Distinctive within his procedural paradigm is a legal institutionalization of a reciprocity between public and private autonomy. Habermas claims that the exercise of autonomy in one of these spheres entails its existence in the other. The alloy of these interconnections is a 'basic system of rights'. (49)

In my opinion, this dual conception of autonomy could supply normative criteria that weigh the implications of proposals like Giddens' for reforming the welfare state. Specifically, in terms of the third way rethinking of the welfare state, the discourse principle is compatible with rectifying the contemporary inequalities of social exclusion. The basically 'counterfactual' quality of the validity conditions of law and, of course, behind this mutual understanding, mean that Habermas' arguments are readily open to empirically informed objections concerning how the facticity dimension of law functions to legitimate and disguise power and domination. (50) Habermas, in fact, utilises criticisms of the failures of welfare state legislation to establish justice and autonomy to initiate the 'procedural' legal paradigm. His arguments for a dual conception of autonomy have parallels to those of Marshall's interpretation of social rights enabling citizens to realise their civil and political rights. However, he considers, like Giddens, that Marshall's arguments need to be revised in the light of social and cultural changes. (51)

Multiculturalism and feminist politics have revealed the paradox that welfare state legislation intended to guarantee equality has often consolidated traditional social roles and stereotypes. (52) In Habermas' opinion, a procedural interpretation of legitimacy entails that rights have to guarantee the private autonomy to enjoy subjective liberties through presupposing the public autonomy to participate in law making. He believes that this procedural understanding of rights is not 'blind to cultural difference', because, properly understood, the basic system of rights details the conditions under which citizens should understand themselves to be both the authors and the addressees of law.

Accordingly, rights require democratic discourses articulating 'those aspects under which equals should be treated equally and unequals treated unequally'. (53) In this way, the procedural paradigm affirms social welfare rights, but in this social model rights are not justified on the 'productivist' grounds of distributive justice. Since legitimacy requires the self-determination of citizens, welfare rights are institutionalized to counter the inequalities limiting autonomy. Yet, the precedence this may suggest of participation is slightly deceptive and significantly curtailed. Habermas claims that the discourse principle operating at the 'horizontal level' of social interaction has to be complemented by institutionalized legal codes so as to be constitutive of the principle of democracy. In

other words, the primary condition of democracy is not subjects' participation but the institutional procedures determining legitimacy.

The principle of discourse can assume the shape of a principle of democracy through the medium of law only insofar as the discourse principle and the legal medium interpenetrate and *develop* into a system of rights that brings private and public autonomy into a relation of mutual presupposition. (54)

Habermas does not see any inconsistency between the need for actors to find and determine for themselves the conditions and limits of autonomy and this privileging of the legal institutionalisation in his model of democracy. Although he considers that a capacity to transcend the existing order of society is intrinsic to the legitimating conditions of modern law, in his model the potential for transformation is no less intrinsically limited. The reciprocal relationship of public and private autonomy simultaneously facilitates the political participation of citizens and legally circumscribes the possibilities for self-determination. He claims that once the sacred authority of institutions based on a metasocial interpretation has been undermined by rational critique, the principle of democracy is already present at the stage of deciding to form a community of legal consociates and to regulate social relations according to the rule of law. In this way, 'popular sovereignty forms the hinge between the system of rights and the construction of a constitutional democracy'. (55) Habermas believes that his discourse model mediates between the liberal and republican conceptions of citizenship and the state. Since liberal conceptions, he argues, give priority to human rights and the private interests of individuals, they restrict democratic processes to establishing compromises and regulating state power. Whereas republicans adopt the standpoint of a 'self-organizing' ethical community, hence they understand the collective action of a political citizenry to be constitutive of society as a whole. Habermas' procedural model divests popular sovereignty of those ties it has to the idea of the community as a self-determining subject.

According to the discourse-theoretic conception of government by law, popular sovereignty is no longer embodied in a visibly identifiable gathering of autonomous citizens. It pulls back into the, as it were, 'subjectless' forms of communication circulating through forums and legislative bodies. Only in this anonymous form can its communicatively fluid power bind the administrative power of the state apparatus to the will of the citizens. (56)

Habermas would seem to have found in law a means to overcome those elements of the division between system and lifeworld vitiating his earlier 'siege' model of communicative power. The later 'sluice' model is more open and does not adhere to the systemic closure of the earlier. It argues for the partial inclusion of democratic deliberation and will

formation inside the political administrative system. Similarly, the sluices 'opening' and the 'flow' of the communicative power generated by the voluntary association of subjects in civil society mean that the legitimacy of legislation depends on far higher levels of public participation. Habermas' analysis of the exhaustion of utopian energies concluded that the idea of a political programming centre is unable to meet the expectations that it was invested with by the social democrats. The parameters of democratisation have changed. What occurs in the 'periphery' is equally, if not more important, than the political core of the 'parliamentary complex', public administration and the courts. Lacking the formal decision-making power of the inner core institutions, the periphery is the variegated associations of civil society, the public sphere of formal and informal networks of communication, and the private sphere. In particular, in this model, the periphery is endowed with the capacity to perceive and interpret social problems, as well as the location for the actions and innovative projects of social movements. A self-organizing public sphere and the constitution of rational will-formation through 'communicative freedom' themselves depend on the 'liberal political culture' and 'enlightened socialization' of a rationalized lifeworld. But, the project of democratizing complex societies through realizing the system of rights, Habermas strenuously asserts, does not contain anything like an 'ideal projection of a concrete form of life'. Rather than presenting a 'utopia', the procedural paradigm of discourse only defines 'formal' conditions. Habermas' vision of democratic change amounts to no more, but actually requires no less, than 'all the involved actors must form an idea of how the normative content of the democratic state can be effectively and fully exploited within the horizon of existing social structures and perceived developmental tendencies.' (57)

At an early stage in his theory, Habermas sought to define institutionalization as an outcome of the synthesis between social struggles and conditions of legitimation anchored in cultural projections of a just social organisation. (58) The shifts from this perspective eventuate, however, in his overlaying institutions on a structure of interaction tailored to normative discourses and the constitution of a rational social identity. Despite the limitations of this latter approach, he is entirely consistent with its supposition in arguing for regulating the economic and political-administrative systems from the outside. *Between Facts and Norms* also offers the prospect for democratizing inside part of the system, yet rectifying the earlier institutional deficit may only displace an underlying problem concerning conflicts and the motivation for actualising democratic principles. (59) Sympathetic commentators on Habermas' theory of democracy and law have highlighted some of the consequences of displacing these problems of struggle and conflict onto the formal structure of discourse procedures. (60) There is, to be sure, a great deal of validity to this construction. Habermas does not even attempt to meet expectations of reconciling form and content, justice and the good life. The problem is, as Richard Bernstein

demonstrates, whether distinctions, such as that between moral and ethical discourses, are too artificial from the perspective of actual practices. Since cultural projections of identity inform notions of justice, as well as conceptions of justice define an identity. (61) In a sense, Habermas agrees entirely, implying that he merely distinguishes between discourses and equates democracy with procedures in order to preclude any potential for ethnocentrism and to acknowledge the plurality found in complex societies. Still, this line of argument risks undermining the real significance of Habermas' founding insight, because his discourse theory actually 'relies on, and presupposes, substantial-ethical considerations'. (62)

Habermas has not satisfactorily clarified the extent to which the dispersed networks of communicative power are capable of democratically directing the state administrative system in a way that differs significantly from the liberal determination of legitimacy. The difficulty resides less in his accepting a basic tenet of the liberal perspective over the richer republican alternative, than his coupling liberal reservations with a systems theory inspired notion of the polycentric character of contemporary societies. Bohman rightly comments that Habermas' 'descriptive account of social complexity grants too much to systems theory, many of the "necessary" deviations from radical democratic norms are due to an uncritical acceptance of its theoretical presuppositions rather than to "unavoidable social facts"'. (63) In so doing, Habermas may undercut the associative power of subjects to reshape institutions. Given the possibilities for democratic self-determination are curtailed by the differentiation of the functionally organised political administrative system, a great deal hinges on the capacity of the medium of law to convert communicative power into administrative power. Giddens' writings are highly relevant to this question of conversion, especially because Habermas' position depends on the duality of the facticity and validity dimensions of law, rather than the juxtaposition of them. Of course, this duality is by no means identical to that of structure and action, but the connection in law between facticity and validity holds so long as the analogy to 'institutionally unbound' speech is accurate and insofar as communicative power is not itself subject to systematic distortion. By contrast, Giddens' notion of structuration was always related to the connection between subjects and institutions, structure is located in practices but action contributes to the reproduction of systems. (64) He better appreciates than Habermas the entwinement in social systems of both types of mediation and the problem this poses for striking the right balance between communicative power and administrative power.

Giddens' theory of structuration starts from an acceptance of the knowledgeability and the transformative capacity of agency. His generative notion of agency and Habermas' conception of communicative power could be regarded as complementary, though they

are not equivalent. The structuration approach to the administrative conversion of discourses would imply a recognition of a 'dialectic of control' influencing this process. In my opinion, such an interpretation would be another way of understanding the relationship between facticity and validity. It would not replace the normative standpoint of discourse theory, but it points to an avenue for rectifying weaknesses in Habermas' model. In particular, it preserves an awareness of the subordinate interests that initiate struggles for change, while accepting that a rational agreement requires the following of procedures. Indeed, Habermas appreciates the importance of 'struggles for recognition' to realising the normative principles of institutions. The projects of transformation that guide these struggles have often revealed the limitations of the present embodiment of modern principles of autonomy and equality. However, his theory incorporates these dimensions of change only to defuse their potential implications, the actualizing of popular sovereignty and the implications of realizing the system of rights have to be largely consistent with existing institutions. In a sense, Habermas' difficulties in incorporating conflicts into his model of discursive democracy seem to stem from his belief that an acceptance of the probability disagreement risks undermining this model's principle of the agreement of all. In his opinion, this problem should not arise, precisely because deliberative politics draws its power from the freedom of subjects to resolve disagreements through the communicative processes of rational argument. McCarthy has extensively reviewed the issues which disagreement poses for Habermas' discourse theory. He correctly points to revisions that rectify some problems but it is unlikely that they resolve them at source. (65)

The historical analyses of Giddens' critiques of historical materialism, alternatively, support a far more sceptical view of the implications of an administrative conversion of discourses. (66) They imply that Habermas' conception of law preserves the facticity of authority at the price of diluting the institution of power of its actuality as a mode of control and domination. In these historical analyses, Giddens suggests that the political-administrative pacification of the nation-state is associated with enhanced surveillance and information control. Although these analyses of the modern state administration appear to diverge from Habermas' only in their emphases, the conclusion they portend is precisely the opposite interpretation of law, that is, that the facticity dimension of law becomes its validity dimension. According to Giddens, modern civil law was fundamental to the institutionalising of both modern systems of domination and the capitalist mode of production. He considers that it was, in fact, class struggle which promoted citizenship rights and he opposes the notion of an evolution of democracy, so that change would be a logical elaboration of principles. (67) Despite revealing a greater ambivalence, the more important question these arguments raise is whether Habermas' model adequately depicts the interconnections and relative balance between the different components of modern

social formations, like citizenship and class, administration and solidarity. Dews and Outhwaite have each suggested that there is a tension between Habermas' view of the erosion of solidarity and the expectations of discourse theory concerning the democratic potential of law. (68) The reinvigorating of solidarity may converge with this potential, but, even so, legal 'and political autonomy are at best necessary and not sufficient conditions for this'. (69)

Of course, recognising the problems Habermas neglects in seeking to define the internal connection between law and democracy need not entail an endorsement of Giddens' position as an alternative. Nevertheless, this comparison reinforces, on the one hand, my contention that on citizenship rights and deliberative democracy, Giddens does not - or even could - provide an alternative normative position to Habermas' discourse theory. On the other hand, Giddens' historical analyses have critical implications for his later rethinking of social democracy and they clarify some of the obstacles to Habermas' carrying through the program of discourse theory. They highlight just how felicitous and tenuous are Habermas' argument for democratic determination in his dual conception of autonomy. In my opinion, recognising the tenuous nature of democratisation does not detract in anyway from the desirability of seeking to realise the project to which it belongs. Habermas' conception translates into the democratic ideal of free and equal opportunities for subjects to participate in discourses. It is important, above all, because it offers a means for continuing the program of critical theory and it discloses how there could be a level of democratisation beyond that already achieved. This still may not be sufficient to address the conundrum of Habermas' having salvaged a normative standpoint at the price of setting it against the implications of historical reflection in general.

## Notes

- 1 Habermas, Jürgen 1990 *Moral Consciousness and Communicative Action* MIT Press: Cambridge, Mass; Giddens, Anthony 1994 'Living in a Post-Traditional Society', in Ulrich Beck, Anthony Giddens and Scott Lash (eds) *Reflexive Modernisation* Polity Press: Cambridge pp 56-109
- 2 In deference to the complexity of Habermas' and Giddens' theories, my discussion will concentrate on their arguments. A number of works and collections have been published on deliberative democracy. Of particular relevance to the work of Habermas are Benhabib, Seyla (ed) 1996 *Democracy and Difference* Princeton University Press: Princeton; Dryzek, John 1990 *Discursive Democracy: Politics, Policy and Political Science* Cambridge University Press: Cambridge, England; Blaug, Ricardo 1999 *Democracy, Real and Ideal* State University of New York Press: Albany
- 3 Habermas, Jürgen 1989 *The Structural Transformation of the Public Sphere: an Inquiry into a Category of Bourgeois Society* MIT Press: Cambridge, Mass; Habermas, Jürgen 1992 'Further Reflections on the Public Sphere', in Craig Calhoun (ed) *Habermas and the Public Sphere* MIT Press Cambridge, Mass pp 421-461; Habermas, Jürgen 1992 'Concluding Remarks', in Craig Calhoun (ed) *Habermas and the Public Sphere* MIT Press Cambridge, Mass pp 462-479; Giddens, Anthony 1981 *A Contemporary Critique of Historical Materialism: Power, Property and the State* Macmillan: London
- 4 Habermas, Jürgen 1989 *The New Conservatism* Polity Press: Cambridge
- 5 Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge; Giddens, Anthony 1994 "Living in a Post-Traditional Society", in Ulrich Beck, Anthony Giddens and Scott Lash (eds) *Reflexive Modernisation* Polity Press: Cambridge pp 56-109
- 6 Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge; Giddens, Anthony 1994 "Living in a Post-Traditional Society", Ulrich Beck, Anthony Giddens and Scott Lash (eds) *Reflexive Modernisation* Polity Press: Cambridge pp 56-109; Giddens, Anthony 1991 *Modernity and Self-Identity: Self and Society in the Late Modern Age* Stanford University Press: California; Habermas, Jürgen 1984 *The Theory of Communicative Action* Beacon Press: Boston; Habermas, J. 1987 *The Theory of Communicative Action, Volume 2: Lifeworld and System* Polity Press: Cambridge
- 7 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass p 269, p 299; Cohen and Arato's definition of solidarity overlaps Habermas': 'Solidarity involves a willingness to share the fate of the other, not as the exemplar of a category to which the self belongs but as a unique and different person. Despite this orientation to "difference," the resource of solidarity nevertheless presupposes a common membership in some actual or ideal group, and beyond this some common norms, symbols, and memories as well. Solidary individuals are consciously rooted in the same or significantly overlapping lifeworlds, and this guarantees consensus about important matters, even in a modern lifeworld where their content can be discussed and challenged.' Cohen, Jean L and Arato, Andrew 1992 *Civil Society and Political Theory* MIT Press: Cambridge, Mass p 472
- 8 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass; Habermas, Jürgen 1984 *The Theory of Communicative Action* Beacon Press: Boston; Habermas, Jürgen 1987 *The Theory of Communicative Action, Volume 2: Lifeworld and System* Polity Press: Cambridge The problems of the distinction between system and lifeworld are reviewed in the essays collected in Axel Honneth and Hans Joas (eds) 1991 *Communicative Action: Essays on Jürgen Habermas's The Theory of Communicative Action* MIT Press: Cambridge, Mass
- 9 Giddens, Anthony 2000 *The Third Way and its Critics* Polity Press p 55
- 10 Giddens, Anthony 2000 *The Third Way and its Critics* Polity Press: Cambridge pp 55-56
- 11 Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge pp 127-128
- 12 Giddens, Anthony 1985 *The Nation-State and Violence* Polity Press: Cambridge; Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge; Giddens, Anthony 1981 *A Contemporary Critique of Historical Materialism: Power, Property and the State* Macmillan: London
- 13 Giddens, Anthony 1998 *The Third Way: the Renewal of Social Democracy* Polity Press: Cambridge p 80

- 14 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass
- 15 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 449
- 16 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 7
- 17 Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge pp 22-50
- 18 Habermas, Jürgen 1984 *The Theory of Communicative Action* Beacon Press: Boston; Habermas, Jürgen 1987 *The Theory of Communicative Action, Volume 2: Lifeworld and System* Polity Press: Cambridge
- 19 Joas, Hans 1993 *Pragmatism and Social Theory* University of Chicago Press: Chicago; Arnason, Johann P 1991 'Modernity as Project and as Field of Tensions', in Axel Honneth and Hans Joas (eds) *Communicative Action*, Polity: Cambridge pp 181-213
- 20 Giddens, Anthony 1998 *The Third Way: the Renewal of Social Democracy* Polity Press: Cambridge; Giddens, Anthony 2000 *The Third Way and its Critics* Polity Press: Cambridge
- 21 Giddens, Anthony 1998 *The Third Way: the Renewal of Social Democracy* Polity Press: Cambridge p 114
- 22 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass; Habermas, Jürgen 1998 *The Inclusion of the Other: Studies in Political Theory* MIT Press: Cambridge, Mass
- 23 Giddens, Anthony 1998 *The Third Way: the Renewal of Social Democracy* Polity Press: Cambridge; Giddens, Anthony 2000 *The Third Way and its Critics* Polity; Habermas, Jürgen 2001 *The Postnational Constellation* Polity Press: Cambridge
- 24 Giddens, Anthony 1984 *The Constitution of Society* Polity Press: Cambridge
- 25 Habermas, Jürgen 1998 *The Inclusion of the Other* MIT Press: Cambridge, Mass
- 26 Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge; Giddens, Anthony 2000. *The Third Way and its Critics* Polity Press: Cambridge
- 27 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass
- 28 Habermas, Jürgen 1989 *The New Conservatism: Cultural Criticism and the Historian's Debate* Polity Press: Cambridge
- 29 Habermas, Jürgen 2001 *The Postnational Constellation* Polity Press; Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge
- 30 Giddens, Anthony 1998 *The Third Way: the Renewal of Social Democracy* Polity Press: Cambridge; Giddens, Anthony 2000 *The Third Way and its Critics* Polity Press: Cambridge
- 31 Habermas, Jürgen 2000 'Globalism, Ideology and Traditions - Interview with Jürgen Habermas' *Thesis 11* No. 63, p 6; 1-10
- 32 Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge p 4
- 33 Giddens, Anthony 1991 *Modernity and Self-Identity: Self and Society in the Late Modern Age* Stanford University Press: California
- 34 Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge p 48
- 35 Held, David and Thompson, John B (eds) 1989 *Social Theory of Modern Societies: Anthony Giddens and his Critics* Cambridge University Press: Cambridge; Cohen, Ira 1989 *Structuration Theory - Anthony Giddens and the Constitution of Social Life* Macmillan: London
- 36 Giddens, Anthony *Modernity and Self-Identity: Self and Society in the Late Modern Age* Stanford University Press: California; Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge

- 37 Habermas, Jürgen 1987 *The Theory of Communicative Action, Volume 2: Lifeworld and System* Polity Press: Cambridge
- 38 Giddens, Anthony 1994 *Beyond Left and Right: the Future of Radical Politics* Polity Press: Cambridge p 88
- 39 Hutton, Will and Giddens, Anthony 2000 'Anthony Giddens and Will Hutton In Conversation' in Will Hutton and Anthony Giddens (eds) 2000 *On the Edge - Living with Global Capitalism* Vintage, London pp 1-52
- 40 Giddens, Anthony 2000 *The Third Way and its Critics* Polity Press: Cambridge
- 41 Honneth, Axel and Joas, Hans (eds) 1991 *Communicative Action: Essays on Jürgen Habermas's The Theory of Communicative Action* MIT Press: Cambridge, Mass
- 42 Habermas, Jürgen 1989 *The New Conservatism: Cultural Criticism and the Historian's Debate* Polity Press: Cambridge
- 43 Cohen, Jean L and Arato, Andrew 1992 *Civil Society and Political Theory* MIT Press: Cambridge, Mass, p 455
- 44 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass
- 45 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 20
- 46 Marx, Karl 1977 'On the Jewish Question', in David McLellan (ed) *Karl Marx: Selected Writings* Oxford University Press: Oxford pp 39-62
- 47 Habermas, J Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 107
- 48 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 457
- 49 'In justifying the system of rights, we saw that the autonomy of citizens and the legitimacy of law refer to each other. Under postmetaphysical conditions, the only legitimate law is one that emerges from the discursive opinion- and will-formation of equally enfranchised citizens. The latter can in turn adequately exercise their public autonomy, guaranteed by rights of communication and participation, only insofar as their private autonomy is guaranteed. A well-secured private autonomy helps "secure the conditions" of public autonomy just as much as, conversely, the appropriate exercise of public autonomy helps 'secure the conditions' of private autonomy.' Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 408
- 50 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 39
- 51 Marshall, T H 1991 *Citizenship and Social Class and Other Essays* Pluto Press: London
- 52 Habermas, J Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass
- 53 Habermas, J Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 426
- 54 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass p 128
- 55 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 169
- 56 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, pp 135-136
- 57 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass, p 395
- 58 Habermas, Jürgen 1978 *Knowledge and Human Interests* Heinemann, London
- 59 Habermas, Jürgen 1996 *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* MIT Press: Cambridge, Mass; Honneth, Axel 1994 'The Social Dynamics of Disrespect: On the Location of Critical Theory Today', *Constellations* 1: 255-269

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- 60 Honneth, Axel 1994 'The Social Dynamics of Disrespect: On the Location of Critical Theory Today', *Constellations* 1: 255-269; see Rosenfeld, Michael and Arato, Andrew (eds) 1998 *Habermas on Law and Democracy: Critical Exchanges* University of California Press: Berkeley
- 61 Bernstein, Richard J 1998 'The Retrieval of the Democratic Ethos', in Michael Rosenfeld and Andrew Arato (eds) 1998 *Habermas on Law and Democracy: Critical Exchanges* University of California Press: Berkeley, pp 287-305
- 62 Bernstein, Richard J 1998 'The Retrieval of the Democratic Ethos', in Michael Rosenfeld and Andrew Arato (eds) 1998 *Habermas on Law and Democracy: Critical Exchanges* University of California Press: Berkeley, p 289
- 63 Bohman, James 1994 'Complexity, Pluralism, and the Constitutional State: On Habermas's Faktizitat und Geltung', *Law and Society Review* 28 p 900; 897-930
- 64 Giddens, Anthony 1984 *The Constitution of Society: Outline of the Theory of Structuration* Polity Press: Cambridge
- 65 McCarthy, Thomas 1998 'Legitimacy and Diversity: Dialectical Reflections on Analytical Distinctions', in Michael Rosenfeld and Andrew Arato (eds) 1998. *Habermas on Law and Democracy: Critical Exchanges* University of California Press: Berkeley pp 115-153
- 66 Giddens, Anthony 1981 *A Contemporary Critique of Historical Materialism: Power, Property and the State* Macmillan: London; Giddens, Anthony 1985 *The Nation-State and Violence* Polity Press: Cambridge
- 67 Giddens, Anthony 1985 *The Nation-State and Violence* Polity Press: Cambridge; Giddens, Anthony 1996 *In Defence of Sociology: Essays, Interpretations, and Rejoinders* Polity: Cambridge
- 68 Dews, Peter 1995 *The Limits of Disenchantment: Essays on Contemporary European Philosophy* Verso: London;
- Outhwaite, William 1994 *Habermas: A Critical Introduction* Polity Press: Cambridge
- 69 Outhwaite, William 1994 *Habermas: A Critical Introduction* Polity Press: Cambridge p 151