

Undamaged Intersubjectivity as the Irreducible Beginning: Jürgen Habermas on Resolving the Paradox of the Constitution of a Democratic Community

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Abstract

This article constructs Habermas's response to the debate in political theory on the problem of the boundaries of a democratic community. A newly constituted democratic community cannot legitimately account for its own boundaries of inclusion without resorting to an arbitrary source of constitutive power. Using a deliberative model for interpreting the founding act of communities, Habermas argues that the source of legitimacy is not an external arbitrary power, but the internal counterfactual ideal of mutual recognition in communicative processes. I argue, however, that Habermas's model stands on a too robust sense of autonomy of democratic actors, one that cannot fully account for the needed external push for converting the moral intuitions of democratic actors into political actions for solidarity.

Key terms *Jürgen Habermas, democracy, political community, intersubjectivity, power*

Paul Ricoeur's insight on the paradox that lies at the heart of every political community anticipates a debate in international political theory today.¹ This irresolvable paradox can be captured through a thought experiment on the constitution of a political community from a blank slate. In this scenario, there are no founders, no members, no boundaries of inclusion and exclusion. Suppose that a group of people decide to found a political community, and that they choose the democratic political order as its form. The question then arises: if, by definition, a *democratic* order rests on the legitimizing power of a self-governing people, who is then to account for the constituting power of the original founder of that community? The answer to this question is far more complex than a simple recourse to the logic of a newly constituted people's retroactive legitimation, because the founding act is simultaneously the demarcation or specification of the boundaries of a political community. As such, the constituted people may, through a temporal delay, justify the authority of the constituting power, but they cannot by themselves provide the basis for membership, the lines of inclusion and exclusion, which is essential to the creation of a community. The most plausible explanation would then be that the community already existed prior to its political establishment.

Modern democratic communities draw their cohesive force from the legitimation of autonomous members. Any use of power within democracy has to pass the test of legitimacy that reassures the autonomy of democratic subjects. Thus, the insertion of the story of a pre-political community that justifies the boundaries constituting it does not resolve the problem. It leaves open the question of why this community over others should be included in its democratic institutionalization. To put a stop to this infinite regress, the guaranteeing founder of founders has to be taken as irrevocably prelegitimate. In other words, the recourse to an irreducible

¹ Paul Ricoeur, "The Political Paradox," in *Legitimacy and the State*, ed. W. Connolly (Oxford: Basil Blackwell, 1984). See also Sofia Näsström, "What Globalization Overshadows," *Political Theory* 31 (2003): 820.

beginning is an inevitable move for any newly established political order, including a democratic one. Therefore, to postulate an Absolute beginning that is in no need of further legitimation illustrates a moment of arbitrariness built into democratic communities.

Jürgen Habermas points out this fact of arbitrariness in democracy through a historical description of the constitution of boundaries of the people. As he puts it:

There is a conceptual gap in the legal construction of the constitutional state, a gap that is tempting to fill with a naturalistic conception of the people. One cannot explain in purely normative terms how the universe of those who came together to regulate their common life by means of positive law should be composed. From a normative point of view, the social boundaries of an association of free and equal consociates under law are perfectly contingent. Since the voluntariness of the decision to engage in a law-giving praxis is a fiction of the contractualist tradition, in the real world who gains the power to define the boundaries of a political community is settled by historical chance and the actual course of events—normally, by the arbitrary outcomes of wars or civil wars.²

It is this fact of arbitrariness that remains a subject for debate in political theory until today.³ Habermas, through his discourse theory of democracy, argues that facts are not always reducible to norms, and that what is needed in this instance is a simple clarification of concepts through an effort of reconstructing the founding act. What this reconstruction

² Jürgen Habermas, “The European Nation-State: On the Past and Future of Sovereignty and Citizenship,” in *Inclusion of the Other: Studies in Political Theory*, ed. C. Cronin and P. De Greiff (Cambridge, MA: MIT Press, 1998), 113.

³ Sofia Näsström points to key thinkers who have taken up this problem in political philosophy. Näsström, “What Globalization Overshadows,” 829n1.

ultimately clarifies is not a fact of arbitrariness, but the basic intuition that holds all forms of communities—the intuition into relationships of intact intersubjectivity. Ultimately, the irreducible beginning for democratic political communities is what Habermas describes as the intuition of undamaged intersubjectivity that is presupposed in our linguistic interactions.

In Habermas's analysis, the founding act should be understood as the beginning of a conversation. Viewed this way, underlying structures that enable our language use in conversation reveal presuppositions of, among others, a symmetrical mutual recognition between the speaker and his addressees. The founding act can thus be viewed as involving a symmetrical relationship between the founder and the constituted people, rather than an asymmetrical one between an absolute power and its subjects.

The intention of this clarification is to close the gap of the paradox in democracy. Habermas's resolution, however, heavily relies on the plausibility of modeling the constitution of political communities after the structure of a conversation, which in turn stands on a very robust expectation on the people to be autonomous and critically responsive through a reflexive awareness of the basic intuition of undamaged intersubjectivity. This entails the enormous feat of sifting through the apparent coercive forces at work in the people's political world. While this is possible, the people still have to contend with one difficulty: the capacity to be reflexively aware of the basic intuition of undamaged intersubjectivity, which presupposes the capacity to see through the thicket of power relations at work in the community, and to transform that intuition into practical action, are brought about through the subjection of the individual under coercive processes of formation. In other words, the formation of an autonomous individual essentially involves the use of coercive power.

Habermas responds to this difficulty by pointing out that the self-understanding of a people as the ultimate authorities (authors) of their constitution presupposes a social environment that promotes reasonableness and reflexivity. I point out, however, that the creation of

such an environment once again involves the employment of coercion (albeit a gentle one in the form of encouragement) in the development of the actively discursive citizenry.⁴ I thus argue that this re-opens the gap between the constitution of democratic community and the legitimation of the constituting power which he sought to close. In the end, the possibility for realizing the intuition built into the discursive structure of the founding act is necessarily tied to the work of external forms of power that democracy cannot fully account for.

In what follows, I reconstruct Habermas's argument regarding the constitutive power behind the creation of political communities by drawing from his reflections on the creation of a democratic political order beyond the nation-states. I begin with (1) a brief overview of the conceptual paradox within democracy in view of the wider debate on the ontological status of power in communities. I then proceed with discussing (2) Habermas's conceptual clarification of the founding act *vis-à-vis* (3) his analysis of the reversibility of power structures in individual ontogenesis. Finally, (4) I show the ambiguity in Habermas's position on democracy's reliance on the motivating power of forces that lie outside the scope of legitimation in democracy.

The Gap in Democracy and the Ontological Status of Power

Habermas has much at stake in clarifying the paradox of the the founding act in democracy because it bears on the question of the ontological status of power in political communities. He has consistently argued, in the breadth of his work that spans more than five decades, that power-induced asymmetries in human relations are only derivations of the more basic, that is, the more fundamental form of human relation—

⁴ Amy Allen, *The Politics of Ourselves: Power, Autonomy, and Gender in Contemporary Critical Theory* (New York: Columbia University Press, 2008), 118. I am using an argument similar to Amy Allen's, which she draws from Judith Butler's idea of the constitution of the autonomous subject through subjection.

undamaged intersubjectivity.⁵ His critique of the claim that power has an ontological status is most elaborately laid out in his attack of postmodern thought in the tradition of Nietzsche.⁶ Habermas takes up this battle anew in the emerging debate on the system of legitimation in relation to the establishment of a transnational political order.

Sofia Näsström clarifies the terms of this debate by pointing out that the problem lies not in the forces of globalization that has consequently weakened the nation-states as the unit for political regulation of the market. The problem of the vacuum created by the question of who legitimizes the authority of the transnational order arose due to the systemic deficiency inherent in democracy itself. As such, questions in political theory for international relations—such as “Who has the right to constitute the people of political institutions beyond the state?”—are questions that have long been left unproblematic within the background of national democracies. In effect, its unproblematic status also concealed democracy’s dependence on the constitutive function of arbitrary power.⁷

Näsström argues that this problem was overshadowed by nationalism. Democracy, which has developed with the birth of nation-states, has managed to skirt problematization because of its convenient fusion with nationalism. The nation, was a “powerful metaphor” that belonged to the same class of absolutes—“God, natural law, the Immortal Legislator, Leviathan”—and as such, had no need of further legitimation. The people were represented as a clearly demarcated unity. Thus, nationalism created a break in the vicious cycle of the constituted people and the legitimately

⁵ I use the term “fundamental” in view of the postmetaphysical, “weak transcendentalist” approach of Habermas. I am referring to what Habermas has described as the unquestionable presuppositions we always make whenever we relate and interact with one another. Habermas also refers to these as conditions for the possibility of mutual understanding. See Melissa Yates, “Postmetaphysical Thinking,” in *Habermas: Key Concepts*, ed. Barbara Fultner (Durham: Acumen, 2011), 41–44.

⁶ Jürgen Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures* (Cambridge, MA: MIT Press, 1987).

⁷ Näsström, “What Globalization Overshadows,” 818–19.

recognized authority.⁸ It served as the metaphor for an irreducible beginning, in the same logic that “God” was used as the final signatory of the American Declaration of Independence.

Jacques Derrida’s deconstruction of the signature in the Declaration explains the logic of this recourse to an Absolute:

It is still “in the name of” that the “good people” of America call *themselves* and declare *themselves* independent at the moment at which they invent (for) themselves a signing identity. They sign in the name of the laws of nature and in the name of God. They *pose* or *posit* their institutional laws on the foundation of natural laws and by the same “coup” (the interpretive “coup de force”) in the name of God, creator of nature. He comes, in effect, to guarantee the rectitude of popular intentions, the unity and goodness of the people.⁹

Derrida highlights the ambiguity in the Declaration’s “We, the people . . .” It is ambiguous because the “we” speaks “in the name of the people,” despite the fact that “these people do not exist.” But the “free and independent subject” cannot have emerged, or given birth to itself as “creation ex-nihilo.” In the logic of a declaration, someone has to sign, to authorize this creation, and for Derrida, the insertion of God as the powerful signatory that authorizes rendered unity and finality to the value of independence and freedom.¹⁰

Derrida echoes Nietzsche’s insight that “in every system (every practice), whether linguistic, cultural, or political, there is a moment or place that the system cannot account for. Every system is secured by placeholders that are irrevocably, structurally arbitrary and prelegitimate.”¹¹

⁸ Ibid., 217.

⁹ Jacques Derrida, “Declarations of Independence,” in *Negotiations: Interventions and Interviews 1971–2001*, ed. Elizabeth Rottenberg (Stanford: Stanford University Press), 51.

¹⁰ Ibid., 49.

¹¹ Bonnie Honig, “Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic,” *The American Political Science Review* 85 (1991): 106.

In the context of democratic communities, however, this insight at once raises the question whether individual autonomy, the basis of popular sovereignty, is an illusion. Moreover, it suggests that power has an ontological status in every political order, including the democratic setup that stands on an idea of symmetrical recognition of autonomy among subjects, and between them and their elected authorities. Arbitrary power has an ontological status when it can be demonstrated that it is necessary for the constitution of the people.

The nation provided this same logic of finality in the establishment of the democratic community in the form of nation-states. This was done through the “conflation” of the nation with the idea of “the people.” Benedict Anderson has pointed out that the nation as we understand it today is a modern fiction of “imagined communities.”¹² The recourse to this fiction reveals for Bernard Yack a need created by the concept of popular sovereignty championed by the early nation-states.¹³ The stabilization and continued existence of the state depended on the continued recognition and support of the people. Popular sovereignty indicates that the sovereign is identified with the people. The nation was “an image of community *over time*” while “the people” referred to “an image of community over space.” The people was constituted through their relationship to the common authority of the state. In the event that state authority dissolved out of the people’s withdrawal of support, then it is was important to draw on the fiction of a shared form of life independent of the state.¹⁴ The nation then served as a protective board that kept nation-states intact despite intermittent vacuous moments within the development of democracy.

¹² Benedict Anderson, *Imagined Communities* (London: Verso, 1983).

¹³ Here I am referring to the idea of “indirect sovereignty” which developed out of the French Revolution. Bernard Yack compares this to the older notion of popular sovereignty, which was understood as “the exercise of political authority by the majority.” The later notion has been widely adapted and carried on in democratic political communities for the past 250 years. The idea of popular sovereignty as indirect prevents individuals, few or many, to “ever have the final say on how to make use of state’s authority.” Bernard Yack, “Popular Sovereignty and Nationalism,” *Political Theory* 29 (2001): 519.

¹⁴ *Ibid.*, 524.

In Habermas's terms, the conflation of the nation with the people led to "a double coding of citizenship," where it was both understood as "a legal status defined in terms of civil rights" and of a "membership in a culturally defined community."¹⁵ He argues, however, that the mutually enabling relation between the cultural and political identity of the people should only be seen as an historical example. It cannot be used as a basis for arguing that democracy is inherently dependent on nationalism. The fusion of nationalism and democracy was initially a happy coincidence in that nationalism served as a balm that soothed the pain experienced by individuals who were at once "geographically mobilized and isolated."¹⁶

This political mobilization called for an idea that was vivid and powerful enough to shape people's convictions and appealed more strongly to their hearts and minds than the dry ideas of popular sovereignty and human rights. This gap was filled by the modern idea of the nation, which first inspired in the inhabitants of state territories an awareness of the new, legally and politically mediated form of community. Only a national consciousness, crystallized around the notion of a common ancestry, language, and history, only the consciousness of belonging to "the same" people, makes subjects into citizens of a single political community—into members who can feel responsible for one another.¹⁷

But Habermas insists that the role nationalism played here was merely that of a solution to a practical, and not a conceptual, problem of democracy. He does agree that there is conceptual gap in democracy, but is emphatically against the argument that democracy can only stand through the intervention of a cohesive force that is immune to the democratic demand for legitimation. It should be pointed out, however, that what has

¹⁵ Habermas, "The European Nation-State," 113.

¹⁶ *Ibid.*, 112.

¹⁷ *Ibid.*, 113.

been known as his dismissive regard for the role of nationalism has softened in the last decade.¹⁸ Habermas now focuses both on the *catalyzing* effect of nationalism in the establishment of constitutional democracies, and on its *postponing* effect in delivering the promise of establishing a self-governing and self-legislating people in a democratic community.¹⁹ Hence, from the normative perspective of his deliberative model of democracy, nationalism can only be justified in relation to its functional role of enabling the development of constitutional democracy.

For Habermas, constitutional democracy is the most relevant and enduring legacy of the American and French Revolution.²⁰ It refers to an association of free individuals of diverse cultural origins brought together by a common political culture. This political culture rests on a “patriotism” to the legal constitution. Constitutional patriotism is an abstract form of solidarity that facilitates political integration in democracy. It is a thin form of solidarity as opposed to thicker particular forms of solidarity, such as nationalism.²¹ At the core of constitutional patriotism is a “universalist meaning” of solidarity, in which citizens are bound by the shared conviction that the state’s power can only be used in the equal interest of all.²² These convictions are “rationally-based” and grounded in democracy and human rights,²³ which are mainly the rights to “unrestrained freedom of communication in the political public sphere, a democratic process for settling conflicts, and the constitutional channeling of political power.”²⁴

¹⁸ Max Pensky, *The Ends of Solidarity: Discourse Theory in Ethics and Politics* (Albany: SUNY Press), 49.

¹⁹ Jürgen Habermas, “On the Relation between the Nation, the Rule of Law, and Democracy,” in *Inclusion of the Other: Studies in Political Theory*, ed. C. Cronin and P. De Greiff (Cambridge, MA: MIT Press, 1998), 132.

²⁰ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press), 465–66.

²¹ Habermas, “The European Nation-State,” 118.

²² Jürgen Habermas, “On Law and Disagreement: Some Comments on ‘Interpretative Pluralism,’” *Ratio Juris* 16 (2003): 192–94.

²³ Habermas, *Between Facts and Norms*, 465–66.

²⁴ Jürgen Habermas, “Struggles for Recognition in the Democratic Constitutional State,” in *Inclusion of the Other: Studies in Political Theory*, ed. C. Cronin and P. De Greiff (Cambridge, MA: MIT Press, 1998), 225–26.

Habermas's deliberative model for democracy sets up a system of validation for the state's monopoly over the use of coercion.²⁵ The state's use of coercion is legitimate only when it is backed by law, which in turn should be the result of deliberative procedures that have been guided by the influence of discourse from the rough grounds of the informal public sphere. Habermas interrelates legitimation with law and discourses through his model of the circulation of powers.²⁶ Communicative power is formed from consensus in informal public spheres. Such consensus creates pressure that influences discourses and brings issues into the agenda of formal public spheres such as in parliament. The formal institutions, in turn, are expected to legislate laws that reflect the influence drawn from the informal public spheres, and when such is done, communicative power gets transformed into political power. Political power then serves as the justificatory basis for coercion from the state as it carries out the administrative task of applying the law. The law in turn sets the enabling limits that assure the freedom of communication in the informal public spheres, among others.

The logic of the circulation of powers serves as Habermas's take-off point in addressing the paradox of democracy. We recall that this paradox refers to the non-coincidence "between the people and the agreement that authorizes it" due to its temporal delay. "The people, no matter if we understand it in historical-descriptive or in normative terms, does not fully coincide with itself. It is not all at once."²⁷ Habermas argues that the constitution of the people indeed relied on a constitutive force, but this force should be construed as "enabling" rather than "constraining" democracy. The coercive force that delineated boundaries simultaneously facilitated the coherence of an ongoing conversation. For Habermas, the reconstruction of the founding act brings to light its conversational

²⁵ Habermas, *Between Facts and Norms*, 287–28.

²⁶ *Ibid.*, 341–59.

²⁷ Näsström, "What Globalization Overshadows," 821.

structure: it should be understood as an initial phase of a discourse, a clearly marked “beginning in time” of a “tradition-building project” with a “future-oriented character.”

The conversational structure is revealed in the intentional aspect of the founding act:

we understand the normative bases of constitutional democracy as the result of a deliberative decision-making process that the founders—motivated by whatever historical contingencies undertook with the *intention* of creating a voluntary, self-determining association of free and equal citizens.²⁸

The groundlessness of the founding act need not bring us to an irrecoverable past. Habermas says that one should rather understand the groundlessness as that which opens everything in anticipation of a future that never fully arrives. In this way, the irreducible beginning comes from this moment of initiation which sets the limits of the focus of the conversation. The first act serves as the common reference point for all future responses to this initiated conversation. The founding act can be likened to an offer raised by a speaker before a listener, which includes both the immediate addressees and all the succeeding generations who may join in the ongoing conversation. It is this openness to a response that the founding act becomes distinctively democratic.

All the later generations have the task of actualizing the still-untapped normative substance of the system of rights laid down in the original document of the constitution. . . . To be sure this fallible continuation of the founding event can break out of the circle of a polity’s groundless discursive self-constitution only if this process—which is not immune to

²⁸ Jürgen Habermas, “Constitutional Democracy: A Paradoxical Union of Contradictory Principles?,” *Political Theory* 29 (2001): 772. Italics added.

contingent interruptions and historical regressions—can be understood in the long run as a self-correcting learning process.²⁹

Resolving the Paradox through the Irreducibility of Intersubjectivity

The key to understanding how coercive power is neutralized in the discursive structure of the founding act lies in the important elaboration on the concept of illocutionary intent of a conversation. Habermas draws the concept of illocutionary acts from J. L. Austin's analysis of the classes of speech acts, namely, the locutionary, perlocutionary, and illocutionary speech acts.³⁰ A speaker performs locutionary speech when she merely describes a state of affairs, and perlocutionary speech when she brings about an effect on the hearer, such as "to give a fright, to cause to be upset, to plunge into doubt, to annoy, mislead, offend, infuriate, humiliate."³¹ Illocutionary speech functions by simultaneously describing the state of affairs and performing an action that creates an effect on the second person.

The class of illocutionary acts is the center of Habermas's reflections in drawing out the bonds of solidarity that are created in communicative practices. He refers to this bond of solidarity as illocutionary force (*Bindungseffekt*). Illocutionary acts have both a propositional content and a bonding effect.³² In contrast with locutions, illocutionary acts do not simply express states of affairs, for they issue an internal bond in a form of a guarantee towards the other participant. This guarantee implicitly states that should the occasion arise in which the second person questions the

²⁹ Ibid., 774.

³⁰ Jürgen Habermas, *The Theory of Communicative Action*, vol.1, *Reason and the Rationalization of Society*, trans. Thomas McCarthy (Boston: Beacon, 1984), 286–95.

³¹ Ibid., 292.

³² Ibid., 278. Barbara Fultner helpfully pointed out the connection between illocutionary force and the concept of solidarity according to Habermas. See Barbara Fultner, "Communicative Action and Formal Pragmatics," in *Habermas: Key Concepts*, ed. Barbara Fultner (Durham: Acumen, 2011), 59.

truth, rightness, or sincerity of the claim, the speaker is prepared to provide good reasons for the statement's validity. The force of this guarantee binds speaker and hearer in a communicative relation.³³

Illocutions like perlocutions create an effect on the second person, but they differ in the kind of force used in producing the needed effect. Perlocutions draw force from sanctions and rewards that are imposed on the individuals. In this sense, the force of perlocutions is external. Illocutionary force is internal to the speech act insofar as the aim of the illocutionary speech is to draw the second person's "yes" or "no" to the claim raised in speech through the "force of good reasons." Hence, this force is explicitly laid out in the reasons explicitly given to support the validity of a claim. A second person accepts the offer made in illocutions because she is convinced by the justificatory reasons, and is not merely influenced by the use of threat or rewards. Illocutionary force formed through reasonable agreements then becomes the basis of mutual obligations.³⁴ By contrast, the force of perlocutionary acts comes from the influence drawn from threats or rewards. As such, regardless of the success in producing the desired effect, perlocutions are unable to create a bond of agreement among interlocutors. It is based on this distinction that Habermas draws the meaning of a genuine communication.

A communicatively achieved agreement has a rational basis; it cannot be imposed by either party, whether instrumentally through intervention in the situation directly or strategically through influencing the decisions of opponents. Agreements can indeed be objectively obtained by force; but what comes to pass manifestly through outside influence or the use of violence cannot count subjectively as agreement. Agreement rests on common convictions.³⁵

³³ Habermas, *Theory of Communicative Action*, 296–97.

³⁴ Ibid.

³⁵ Ibid., 287.

Thus, the fulfillment of mutual obligations borne out of reasonable agreements should be read as voluntary actions, or actions that stem from the autonomous will of individuals. They are the manifestations of a person's well-examined "yes" to an offer, and expressions of a person's renewal of consent to a shared conviction. Shared convictions are contained in a background stock of reasons, which Habermas refers to as communicative reason. Communicative reason is the product of illocutionary acts and is reproduced through further illocutions. She who speaks illocutions raises a claim to validity, a claim that is validated through the stock of reasons shared by participants. In a sense, participants in illocutionary speech share a commitment to this background. To be communicative is to be reasonable.³⁶

Reconstructing the discursive structure of the founding act of democratic communities would thus allow us to view it as an illocutionary act. The entry of force in the founding act from the perspective of illocutionary acts should then be understood as an "unforced force." It is unforced because the act of founding simultaneously raises a guarantee that in the event that doubts are raised regarding its legitimacy, the founding actors are prepared to redeem it by resorting to the shared convictions in communicative reason.

This does not yet, however, resolve the paradox. Note that the possibility of illocutions rests on a stock of reasons on which participants in conversation ground the validity of their claims. This is not problematic in existing communities where the shared convictions that answer questions of validity are taken for granted as true. But the community in question, the about-to-be-constituted democratic community, is one that is just about to construct its own background of shared convictions. The question arises on the content of the stock of reasons to which the founders and the addressees can refer. From where shall a newly constituted people draw meaning in their ongoing conversation if the

³⁶ *Ibid.*, 398.

founding act as a future-oriented project presumes that the meaning is yet to be formed?

I would like to draw out a provisional answer for Habermas here by referring to his discussions on the performative meaning of speech. Habermas would say that the source of meaning does not have to be drawn from elsewhere, because the ongoing conversation has a self-referential character. It points to the performative meaning of the founding act, the “subtext” simultaneously put forward with the “text” of the performance of the declaration. The text, which is the raising of an offer to addressees, projects a subtext that accompanies all forms of speech—the linguistic subject’s everyday intuition of undamaged intersubjectivity.³⁷

The performance of illocutions projects the *counterfactual ideal of an unlimited communication among a community of equals who reciprocally recognize one another’s autonomy*. The formal structure of this community is an undamaged intersubjectivity among participants. It is described as counterfactual insofar as it provides the basis for our normative dissatisfactions and disappointments. When a communication process fails, such as when it ends with dissensus, or when participants resort to violence or manipulation to achieve their goals, we understand it as a failure of communication because it contrasts with the presupposed counterfactual ideal of a successful intersubjective process. We presuppose what it means to have a successful communication, where there is no manipulation or distortion of the communicative process used by some participants to get an edge over others.³⁸

The founding act as an illocution projects the counterfactual ideal of intact intersubjectivity. This counterfactual ideal becomes the background source of legitimacy. In other words, the declaration of “we” in “We, the people . . .” by the founders should be read as an offer to the addressee. It is the offer of a promise of keeping the relationships of intersubjectivity

³⁷ Habermas, *Between Facts and Norms*, 370.

³⁸ *Ibid.*, 148.

intact. It concretely promises to do so by declaring the “we” as a community of equals. Because the criterion of membership into that community is the recognition of one’s equal autonomous position with everyone, then the bounds of such a community are thin and abstract. Yet, it is a bounded community nonetheless, and everyone who engages in the communicative process constantly submits to the demand to treat every member of the community as one’s equal.

The founding act can thus secure its own legitimacy if it lives it up to its implicit promise of keeping the community of undamaged intersubjectivity intact. The response from the addressees can then be seen as an acceptance of the offer. Furthermore, the succeeding conversations of the following generations can be viewed as a continuous demand for legitimacy which is measured against this promise.³⁹

Thus, by reconstructing the founding act as the beginning of an ongoing conversation, Habermas has solved two problems at once: the legitimacy of the authority who performs the founding act, and the legitimacy of the boundaries of the people represented by the authority. To repeat the argument, the legitimacy of the authority and the boundaries of the people are contained potentially within the founding act, anticipating an actual legitimation that is an on-going process. Neither the representative authority nor the boundaries of the *demos* can be considered final. As Ciaran Cronin puts it in defense of Habermas against Yack:

the definition of the *demos* is open to reinterpretation as the democratic constitutional project unfolds. The *demos* as the subject of democratic self-determination cannot be thought

³⁹ Jürgen Habermas, “Democracy, Solidarity and the European Crisis,” <http://www.kuleuven.be/communicatie/evenementen/evenementen/jurgen-habermas/en/democracy-solidarity-and-the-european-crisis.html>, last modified April 27, 2013. This is how Habermas described the dynamic of political solidarity that was formed through the movements in nineteenth-century Europe. The idea of an ongoing conversation for legitimacy is captured in the concept of political solidarity which was first conceived in the class struggles of the nineteenth century. Political solidarity is characterized here with an “*offensive character* of pressing or even struggling for discharging the promise which is invested in the legitimacy claim of any political order.”

of as fixed or given at any particular moment in the unfolding of the constitutional project. . . . Since no cultural representation of collective identity can ever count as final, the definition of who qualifies for citizenship may expand or contract over time.⁴⁰

The self-referential character of the founding act, its performative meaning that unavoidably projects the counterfactual ideal of intact intersubjectivity, also addresses the question of the ontological status of power. The authority that authorizes the constitution of the political community is the authority that emanates from the ideal of undamaged intersubjectivity. Why can this not be considered an external source of authority and meaning? For Habermas, the self-referential structure of undamaged intersubjectivity can only be comprehended through “weak transcendentalism.” It is a *weak* transcendentalism in that it proceeds through confirming those “conceptual structures recurring in all coherent experiences” of communication *a posteriori*. It is contrasted with Kant’s *strong* transcendentalist goal of *a priorism* which seeks to draw out the formal conditions for the possibility of experience. Habermas’s postmetaphysical approach abandons any attempt at reductionism, at mapping out universal structures of reality and experience through *a priori* categories.⁴¹ He is indeed concerned about drawing out the underlying structure that accounts for the possibility of any communication, but proceeds instead from the reconstruction of everyday interactions.⁴² The reconstructive approach uses not the third-person perspective of a detached metaphysician, but the first- and second-perspective of a

⁴⁰ Ciaran Cronin, “Democracy and Collective Identity: In Defense of Constitutional Patriotism,” *European Journal of Philosophy* 11 (2003): 23

⁴¹ Melissa Yates, “Postmetaphysical Thinking,” 41–44. Yates helpfully points to key texts in which Habermas clarifies this.

⁴² Jürgen Habermas, “What is Universal Pragmatics?,” in *Communication and the Evolution of Society*, trans. Thomas McCarthy (Boston: Beacon, 1979), 21–22.

participant in interaction.⁴³ Through this approach, he is able to draw out the intuition of intact intersubjectivity or mutual recognition as something we presuppose whenever we speak before a second person. This presupposition enables the very possibility of communication, and one's capacity to understand why a communication fails.

This supposition states that a subject who is acting intentionally is capable, in the right circumstances, of providing a more or less plausible reason for why she did or did not behave or express herself this way rather than some other way. Unintelligible, odd, bizzare, or enigmatic expressions prompt up follow-up questions because they implicitly contradict an unavoidable presupposition of communication and therefore trigger puzzled or irritated reactions.⁴⁴

Through the presupposition of undamaged intersubjectivity, which also implies the mutual recognition of autonomy and symmetrical reciprocity, the founding actor can be read as someone who has already understood the addressees as equally autonomous with her. The performative sense of the founding act, which is captured in the address that say “we” shows that the founder has recognized the addressees as equally autonomous and capable in responding to the founder's claim to legitimacy. The constitution of the people in the founding act is thus a cooperative act, and not an act of coercion. Forces do not appear from the outset. They do not emanate from an apparent position of superiority of the founder over the people, but from the superiority of the shared world of undamaged intersubjectivity.

⁴³ Jürgen Habermas, “Metaphysics after Kant,” in *Postmetaphysical Thinking: Philosophical Essays*, trans. William Mark Hohengarten (Cambridge, MA: MIT Press, 1992), 14–18.

⁴⁴ Jürgen Habermas, *Between Naturalism and Religion*, trans. Ciaran Cronin (Cambridge: Polity, 2008), 36.

Power and the Fundamental Vulnerability of Individuals

To test the argument against the ontological status of power in the constitution of democratic communities, I would like to briefly take up a different but related analysis on what a legitimate use of coercion would look like for Habermas. The focus on this analysis is on parents' use of coercion in the formative process of educating their children.⁴⁵ For Habermas, some use of force over children does not cancel out the potential development of autonomy because the said forms of coercion enable rather than constrain it. As such, some forms of parental coercion should be understood as intrusions of power that can be retrospectively neutralized over time.⁴⁶

For Habermas, breaking away from parental coercion is possible if the formative socialization process to which the child is subjected is understood as a communicative act. The formative power of parental authority takes up the structure of linguistic propositions that are backed by reasons. Since they cannot yet be comprehended by the growing child, these justificatory reasons simply remain in the background. Nonetheless, the control and regulation of children's behavior through the use of force are potentially "contestable."

Since a psychically binding "delegation" of children can only be brought about in the medium of reasons, the adolescents still have the opportunity to respond to and retroactively break away from it.⁴⁷

⁴⁵ My approach here follows the direction of Amy Allen's analysis of the role of coercive power in Habermas's deliberative model of democracy. My contribution to this debate is a consideration of Habermas's weak naturalism which Allen understandably does not take up, as it has only shown up more explicitly in Habermas's recent works. See Allen, *The Politics of Ourselves*, as well as "The Unforced Force of the Better Argument: Reason and Power in Habermas' Political Theory," *Constellations* 19 (2008): 353–68.

⁴⁶ Jürgen Habermas, *The Future of Human Nature*, trans. William Rehg, Max Pensky, and Hella Beister (Cambridge: Polity Press, 2003), 61–62.

⁴⁷ *Ibid.*, 62.

The capacity to break away from the coercive parental structures signals the entry into mature adulthood. Habermas developed this idea in his earlier collaborative work with reconstructive research in psychology. A child develops cognitively over time through a gradual increase in reflexivity over the social forces that constitute him and his self-understanding. The transition into adolescence opens up the child to overwhelming experiences caused by conflicting forces within which he continues to be socialized. This stage of development has an ambivalent tendency for the young adolescent—either he retreats from this social conflict with utter denial and would go on living according to the strong waves of contingencies (flight), or he learns through the painful effort of integrating these conflicts to stabilize a critical appropriation of his past (fight). The latter option is key to the entry of mature adulthood.⁴⁸

Habermas clarifies that the development of young teenagers into mature adults depends on forms of socialization that encourage independent and reflexive thought. Only under these conditions can a mature adult claim full responsibility over authorship of one's life.⁴⁹ In the language of ontogenesis, ego-identity must find available fora for the expression and interpretation of one's needs.⁵⁰ This practically means that the child must be exposed to a social environment that encourages critical questioning of value orientations on which a person's identity stands. The same social environment must provide space in which value conflicts can be resolved in a rational discursive way. The discursive aspect of value and identity clarification is crucial for Habermas because it rests on processes of mutual recognition of claims to one's identity. Recognition stabilizes the identity that a mature adult owns up to by exerting a soft pressure on the individual to commit to his own project of self-realization.⁵¹

⁴⁸ Jürgen Habermas, "Moral Development and Ego-Identity," in *Communication and the Evolution of Society*, trans. Thomas McCarthy (Boston: Beacon, 1979), 92–94; and "Individuation through Socialization: On George Herbert Mead's Theory of Subjectivity," in *Postmetaphysical Thinking: Philosophical Essays*, trans. William Mark Hohengarten (Cambridge, MA: MIT Press, 1992), 179–81.

⁴⁹ Habermas, "Moral Development and Ego-Identity," 93–94.

⁵⁰ Ibid.

⁵¹ Habermas, "Individuation through Socialization," 181.

The development of reflexivity can either enable or endanger the capacity for leveling of the asymmetrical power structure in the parent-child relationship. As soon as the young adolescent becomes aware of the power structures that constitute him, he also becomes aware that the same structures can have a contrary effect on him. This means that he can allow or reject the entry of these structures. Having seen the problematic status of the previously taken-for-granted legitimacy of parental authority, the adolescent is made to face a forking road: one road leads to isolation, complete distrust, destruction; the other leads to creativity, volunteerism, and cooperative effort. Habermas has established that the adolescent can be *oriented* to choose the second road through socialization processes that allow the internalization of highly abstract principles such as autonomy and equality. The internalization of autonomy and equality leads to creativity and cooperation, because this enables the young adult to comprehend that liberation from coercion can only be genuinely enjoyed in a community of individuals who reciprocally recognize each other's autonomy.⁵² Thus, it entails the cooperative effort to construct a community of mutual recognition.

In his discourse theory of morality, in which he combines the ontogenesis of the individual with Lawrence Kohlberg's developmental account of moral consciousness, Habermas indicates that the internalization of highly abstract principles follows logically from the procedure of norm-testing and justification, that is, argumentation. Argumentation is a more reflexive socialization process in which the individual internalizes principles of justice and equality through the force of good reasons.⁵³ In this sense, argumentation replaces the socialization process that involves coercion. Argumentation is a process of reasoning that now taps the needed autonomy and reflexivity of individuals,

⁵² Jürgen Habermas, *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Sherry Weber Nicholsen (Cambridge: Polity Press, 1990), 181–82.

⁵³ *Ibid.*, 163.

and reproduces and stabilizes them further. The more one engages in such a socialization process, the more one's autonomous identity gets stabilized.

For Habermas, therefore, the neutralization of parental authority can lead to an adult's responsible appropriation of one's own life so long as reflexive forms of socialization are there to encourage it. The mature adult understands that she can be the author of her own biography, but also comprehends that she cannot completely be severed from the influence of the coercive forces from her past. This is because the coercive forces that repressed her freedom are the very same forces that have formed her into this autonomous individual she currently appreciates. At this stage, the young adult already understands autonomy, not as the isolation of a freed up individual, but as the responsible taking over of one's life through a conscious appropriation of one's past.⁵⁴

There is, however, something circular in the way Habermas accounts for the neutralization of the power of parental authority. First of all, undergoing reflexive forms of socialization such as argumentation and norm-testing justification is already in itself *a decision* to take the road of cooperation and volunteerism. As I have shown above, reflexive socialization processes can *encourage* the adolescent to take on the the life of cooperation rather than isolation. In other words, they can only be laid out as a viable option, but cannot be imposed on the child. But this only leads us back to the question of what would encourage the adolescent to choose to enter argumentative processes, when those ego-ideals are assumed to have not yet been internalized (because it is only through the socialization processes that happen in argumentation that they can). In other words, why would the adolescent think that one road is better than the other?

Conventional societies have the advantage of securing the reasons for what makes a choice better over others because the idea of the good has been pre-given, and it was attached to particular prescriptions for action.⁵⁵

⁵⁴ Habermas, "Individuation through Socialization," 181.

⁵⁵ Habermas, *Moral Consciousness and Communicative Action*, 177–81.

The illustration of the adolescent in the face of the crossroads indicates that the pre-givennes of what is good no longer applies in post-conventional societies, and that the decision whether to take up the burden of living a life through cooperation with others is entirely up to him.

A possible answer from Habermas would be from his thesis of individuation through socialization. This captures the idea that one's self-understanding is inextricably dependent on socialization processes that require communication and cooperative effort.⁵⁶ As such, the ultimate ground for the adolescent to take the road of cooperation would be this "fundamental vulnerability" of one's sense of self. The idea of fundamental vulnerability ends the infinite regress in searching for the prime mover that moves one to opt for cooperative action.⁵⁷ The idea of intact intersubjectivity fuses with the idea of an intact subjectivity. What is at stake in the choice for cooperative action is one's own sense of self. This captures the intersubjective meaning of autonomy for Habermas.⁵⁸

Habermas resolves the paradox of democracy just in the same manner. The idea of vulnerability of individuals to their collective forms of life legitimizes the imperative to engage in cooperative acts. The idea of mutual recognition and intact intersubjectivity, justifies the constitutive power of the founding act from within. It is already justified before its potential constituents because they will have consented to it in view of their own fundamental vulnerability to collective forms of life. It is as if the founders have anticipated that individuals uprooted from communal forms of life were in need of a moment of normativity in the face of a void brought about by modernization processes. As such, the founding act contains the promise of keeping the intersubjective fabric intact, and the succeeding conversations serve to substantiate and reproduce new forms of understanding this intersubjective fabric that binds autonomous individuals.

⁵⁶ Habermas, "Individuation through Socialization," 192.

⁵⁷ Habermas, *Moral Consciousness and Communicative Action*, 199.

⁵⁸ Habermas, "Individuation through Socialization," 192.

The Problem of the Impetus for Action

By framing the founding act within the structure of a conversation, Habermas has conceptually resolved the gap of legitimacy within the constitution of democratic communities. This response provides a substantial contribution to the ongoing debate in international political theory on the grounds for legitimacy of institutions beyond the state. Based on his deliberative model of democracy, supranational or global political orders can be legitimized so long as the processes of institutionalization are framed as ongoing conversations between the constituting power and the ever expanding borders of the community.

Habermas's contribution to this debate also reinforced his long-standing argument against the ontological status of power in political communities. Based on his recent writings, however, this debate with the "power camp" is anything but closed. If I were to use Habermas's terms in assessing his resolution for the democratic paradox, the use of the model of conversation to describe the founding act offers only a "conceptual solution to a conceptual problem." This, however, does not address how the cognitive awareness of the "natural kernel" of the founding act, which is the relationship of undamaged intersubjectivity, can be translated into practical action.

The connection between moral knowledge and action has long been a question for Habermas.⁵⁹ In his more recent writings, however, Habermas has taken this up with more focus in a way that seems to open the question of the ontological status of power anew. I would like to point out one occasion in which this appears.

In a dialogue with Josef Ratzinger on the subject of the pre-political moral foundations of a secular state, Habermas touched on the question of how solidarity among citizens in a secular state can be reproduced.⁶⁰ Just as

⁵⁹ Habermas, *Moral Consciousness and Communicative Action*, 178–83. See also Habermas, *Between Facts and Norms*, 111–14.

⁶⁰ Jürgen Habermas, "Pre-political Foundations of the Democratic Constitutional State," in *The Dialectics of Secularization: On Reason and Religion*, ed. Florian Schuller (San Francisco: Ignatius Press, 2006) 19–52.

he has described in other occasions how constitutional democracies have been confronted with the question of motivation in the beginning nation-states, Habermas pointed out in this dialogue the demands of “costly commitment and motivation” among citizens to exercise their democratic freedom through participation in discursive processes of co-legislation. Since participation cannot simply be imposed by law, “All one can do is suggest to the citizens of a liberal society that they should be willing to get involved on behalf of fellow citizens whom they do not know and who remain anonymous to them and that they should accept sacrifices that promote common interests.”⁶¹ He thus proposed that the state should “carefully deal with all the cultural sources that nourish its citizens consciousness of norms and their solidarity.”⁶² Religion and the socialization of members in a congregation is one important area for this.

Habermas established this in another essay on religion by comparing an individual socialized into Kantian secular morality through one’s family and peers, and an individual steeped in relationships of solidarity with fellow religious members. Cognitivist secular morality is “not inherently embedded in communal practices.”⁶³ As such, the socialization processes within a rationalist morality is unable to “foster any *impulse* towards solidary, that is, towards morally guided, collective action.”⁶⁴ Habermas compared this with the socialization of individuals within religious communities, especially those of the major world religions. He observed that religious members can seem to derive from their religious consciousness “stronger impulses towards action in solidarity.”⁶⁵ He attributed this to the inherent connection between religious life and community life. Thus, religious consciousness seems to “preserve” this impulse towards solidary acts.

⁶¹ Ibid., 30.

⁶² Ibid., 46.

⁶³ Jürgen Habermas, *An Awareness of What Is Missing: Faith and Reason in a Post-Secular Age*, trans. Ciaran Cronin (Cambridge: Polity Press, 2010), 74.

⁶⁴ Ibid. Italics added.

⁶⁵ Ibid.

This repeats Habermas's point about the problem of how the mere internalization of the ego-ideals of autonomy and equality is not enough to create a disposition for action.⁶⁶ But Habermas seems to be saying more than this in the commentary on religious socialization. He seems to suggest that in order to transform the moral intuition on intact intersubjectivity into a disposition for action, individuals will need a motivational push, and the example of religious socialization indicates that the push is outside the rational bounds of justification.

One cannot but sense the parallels here between religion and nationalism in terms of their relationship with constitutional patriotism. While nationalism has been regarded as a “catalyzer,” religious convictions have also been described as providing the “impulse towards solidarity.” The parallels are even more underscored as Habermas clarifies that the significance of religion to the public sphere is mainly functional in nature.⁶⁷ Habermas again emphasizes that religious solidarity, like nationalism, can spur the development of constitutional patriotism, but constitutional democracies can later “develop a political dynamic of their own.”⁶⁸

Habermas insists that democracy has within its own resources the capacity to account for the legitimacy of the founding act provided that constitutional democracies are understood as ongoing communicative acts. This definition of constitutional democracies applies, however, only if it can account for the disposition of individuals to actually engage in discursive processes of will-formation. Habermas has repeatedly acknowledged that democracy cannot enforce this on its subjects without being inconsistent with itself. Meanwhile, Habermas maintains an ambiguous stance regarding the dependence of democracy towards external motivators such as nationalism and religion.

⁶⁶ Habermas, *Between Facts and Norms*, 114–17.

⁶⁷ Habermas, *An Awareness of What is Missing*, 76.

⁶⁸ Habermas, “Pre-political Foundations,” 31.

This only shows that the paradox of democracy is not completely resolved. Even if democracy can conceptually account for the legitimacy of the founding act from its implicit intention of creating a community of self-legislators, it cannot account for the necessary external power that converts the intuitive knowledge of undamaged intersubjectivity into a disposition for political action. Without this political action, the self-correcting process of democracy which is anticipated and used to legitimize the coercive power of the founding act cannot even possibly begin.

To where does this juncture lead us? Should we accept the ontological status of power in democracy altogether which would subsequently raise doubts whether autonomous decisions and the idea of self-governance is a complete illusion? Critics of Habermas suggest that Habermas's idea of autonomy and self-governance for democracy can still be saved even in the doubtless necessary role of power, provided that he gives up the "transcendental status" of the intuition into undamaged intersubjectivity.⁶⁹ I have, however, shown above that the problem lies not in his weak transcendentalism, but in the conversion of this intuition into a disposition for action. Nonetheless, arguing for or against the ontological status of power seems to be irrelevant at this point, since the concern that Habermas has recently raised is something more urgent—the concern regarding the lack of any spontaneous act, the absence of an impulse to engage in acts of democratic solidarity against the uncontrollable spin of market globalization.⁷⁰ Perhaps what is needed is a systematic account that makes a distinction between external forms of power that encourage the transformation of moral knowledge into moral action and those that do not. The activation of such a project is already contained in Habermas's

⁶⁹ Amy Allen takes up the criticisms of Maeve Cooke, Seyla Benhabib, and Thomas McCarthy in *Politics of Ourselves*, 122–50.

⁷⁰ Jürgen Habermas, "A Postsecular World Society? On the Philosophical Significance of Postsecular Consciousness and the Multicultural World Society," interview by Eduardo Mendieta, trans. Matthias Fritsch, *The Immanent Frame: Secularism, Religion, and the Public Sphere*, <http://blogs.ssrc.org/tif/2010/02/03/a-postsecular-world-society/>, accessed January 17, 2015.

analysis on the relationship of law to morality, one which raises the question on how law can transform moral intuitions in a manner “effective for action.”⁷¹ Perhaps it is along these lines where we can begin to ask the question how education, backed by a deliberative model of law and democracy, can contribute to this transformation.

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⁷¹ Habermas, *Between Facts and Norms*, 114–17.

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