

Habermas's Democratic Balance Between Rights and Popular Sovereignty:

A Response to Charles Larmore

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In his contribution to a recent symposium on Habermas's work,¹ Charles Larmore critiques Habermas's *Between Facts and Norms*² from a largely Rawlsian perspective. His reading raises fundamental questions that divide Habermas from American pragmatists and other contextualists, and helps reveal, in my view, that the differences between Habermas's and Rawls's conceptions of justice are more basic than is often recognized. Yet as I will argue, in several places Larmore misconstrues Habermas's position and fails to understand his point at crucial junctures, largely because he attempts to discuss Habermas's democratic theory outside the context of Habermas's preceding work on normative theory.³ In the process of correcting these misrepresentations, however, I will agree with some of Larmore's criticisms.

Larmore begins with the suggestion that Habermas's "attempt to find the source of morality in a general principle of universalization which any agent must assume just by virtue of

¹Charles Larmore, "The Foundations of Modern Democracy: Reflections on Jürgen Habermas," *European Journal of Philosophy*, Vol. 3, No. 1 (April 1995): 55-68. All references to this article will be given by page number parenthetically in the main text. This essay also appears as the last chapter in Charles Larmore's challenging and innovative book, *The Morals of Modernity* (Cambridge University Press, 1996).

²Jürgen Habermas, *Between Facts and Norms*, tr. William Rehg (MIT Press, 1996).

³In particular, although he cites Habermas's *Postmetaphysical Thinking*, tr. William M. Hohengarten (MIT Press, 1992), he does not cite Habermas's "Discourse Ethics: Notes on a Program of Philosophical Justification" in *Moral Consciousness and Communicative Action*, tr. Shierry W. Nicholson and Christian Lenhardt (MIT Press, 1993), or Habermas's "Remarks on Discourse Ethics" in *Justification and Application*, tr. Ciaran P. Cronin (MIT Press, 1993).

being a competent speaker" is an attempt to derive fundamental moral obligations "from the notion of practical rationality as such" (p.55). He dismisses this project as lacking in "evident success" because of the familiar dilemma that communicative reason is either too weakly conceived to yield moral principles or is morally fruitful "only by virtue of moral content having been built into it from the outset" (p.55). In order to avoid retracing Habermas's entire analysis of validity-claims implicit in different illocutionary acts, I will not evaluate this objection beyond noting that, despite its familiarity, it is not obvious that the basic *non-strategic* aim of speech involving claims to truth and rightness (not *all* speech), or "the telos of reaching understanding, inherent in linguistic structures" from which Habermas derives the most basic norms of intersubjective communicative practice,⁴ is *artificially* loaded with more moral significance than it actually has.

Larmore's real reason for suspicion of Habermas's claims for the normative implications of communicative action seems to be his own preference for a weaker "pragmatic" conception which denies the "transcendent" Peircian conception that the meaning of our validity claims implies an understanding of the *provisionality* of our existing "standards of warranted belief" (p.57), or that practical reason implicitly reaches beyond the bounds of our particular language-game context. Larmore rightly points out that his own "contextualist notion of justification" need not by itself imply the further distinctively Rortyeian error that "democratic ideals" ultimately rest on a *modus vivendi* without needing any principled *philosophical* justification (p.58). Yet whether or not we should prefer Larmore's notion to the more Gadamerian conception of rational justification evident in Habermas's analysis of communication,⁵ Habermas does not deny that any

⁴See Habermas, "Toward a Critique of the Theory of Meaning," in *Postmetaphysical Thinking*, pp. 79-81.

⁵Actually, Habermas's notion of validity-claims is not so much Gadamerian as ultimately *Husserlian*, and it is Husserl's conception of the modal reach of our reason which Habermas shares in common with the ideas leading to Gadamer's own 'fusion-of-horizons' model of rational understanding and warrant. But an investigation of these issues is beyond the scope of this comment on Larmore.

actual instance of argument in favor of a principle's being a norm will be a "historically situated activity:" the `transcendent' feature of *moral* validity claims as Habermas interprets them reflects his Kantian understanding that such claims assert moral *necessity*, a modal operator with a scope extending beyond the group of those who happen to share our current standards of warrant. For Habermas, our *linguistic access* to such modal meanings implies the rational capacity to comprehend something like the counterfactually extended sphere of `all possible persons.'

When he comes to issues of legal theory, Larmore repeats the charge of question-begging which he made with respect to Habermas's theory of communicative action. "Habermas's vision of radical democracy," he says, would be quite illiberal were it not for an "unacknowledged premise" by which Habermas slips moral content back into the notion of popular rule. The suppressed premise is supposedly "a fundamental individual right" (p.66), namely the Kantian formula of respect for persons as ends in themselves (p.67),⁶ through which Larmore thinks Habermas surreptitiously returns to the liberal fold. But if it is really this underlying liberal premise from which Habermas's conception of popular sovereignty draws its normative force, then, as Larmore says,

contrary to Habermas, the concept of discussion (*Diskurs*)—be it actual public discussion in which democratic self-rule is exercised or even the hypothetic discussion we might imagine to be carried out under ideal conditions— cannot play a fundamental role in our moral and political self-understanding. At a deeper level still must lie the moral principle of respect for persons (p.67).

Thus morality does not at bottom have a communicative form, and "democracy" rests mainly on the liberal principle of equality rather than being essentially *deliberative*, or justified by a deliberative

⁶Strangely enough, Larmore interprets this Kantian principle of equal respect as already a *political* right, though "certainly one more fundamental than the political rights which tend to be the object of explicit constitutional guarantees" (p.67), and thus implies that this norm does not apply in contexts where no legal enforcement or state sanction is in view. But although it may be correct that Habermas's principle D does not capture "all moral norms," since there may be principles of personal virtue, care, and love for which it cannot adequately account, surely the basic norm of equal respect it *does* capture is *a* moral one and not already political, though it may be of all the moral norms the one *most relevant* for determining the basic principles of political justice (given that these cannot similarly be derived from conditions for virtues like care and agape).

conception of moral legitimacy in the context of making laws for a legally constituted society. So Habermas's whole project is refuted in one quick stroke.

But this stroke is a little too quick, because it *entirely misses the core idea in discourse ethics*, thus also missing its whole novelty and power: for discourse ethics just *is* the thesis that the 'principle of respect for persons' about which Larmore speaks, i.e. the universalizability test for actions that respect persons, must be *dialogical* or deliberative in its very formulation.⁷ As a result, it is not, as Larmore just assumes, a principle of individual rights any more fundamentally any more than it is a proto-democratic ideal of legitimacy. The fundamental innovation which makes rights and popular sovereignty co-original is achieved at this level, in the paradigm-shift accomplished by the recognition that the Kantian principle must be reinterpreted so that *respect for persons, or universalizability itself, is defined in terms of rational communicative interchange with idealizing counterfactual conditions*. The very sense of justice, and the formula for legitimacy in coercive institutions, are essentially dialogical rather than monological.

And as I've already indicated, it is at this level, in the interpretation of moral legitimacy or normativity itself, that we find Habermas's reasons for rejecting Larmore's idea that justified belief or warrant requires only that we believe that our assertion is "justified by our own best standards of warranted belief" (p.58). As Larmore's account revealingly displays, this solipsistic or monological conception of warrant is precisely what underpins the Rawlsian notion of overlapping consensus, which hopes for a happy convergence on various norm-contents from different contextually-conceived (and thus not discursively interrelated) individual or group conceptions of conditions for rational warrant (p.63). As Larmore correctly sees, this Rawlsian notion assumes that 'respect for persons' can be defined in terms like the Veil of Ignorance without any *essential* reference to

⁷In this regard, see my discussion in Davenport, "Deontology and the Antinomy of Libertarianism," in *Rending and Renewing the Social Order: Studies in Social and Political Theory*, Vol. 17, ed. Yeager Hudson (Edwin Mellen Press, 1996): 177-218, esp. pp. 191-194.

discussion or communicative exchange, which is given at best a derivative place in the Rawlsian conception of "democratic justice."

In one sense then, I take Larmore to be a very revealing witness for Rawlsian liberalism: he lays out the real implications of the monological conception of universalizability built into political liberalism, and affirms on their basis that deliberation is not essential to the concept of the right or justice --thereby unwittingly cutting through the devices by which Rawls has obscured this fundamental difference, e.g. by arguing that because of its appeal to "general and wide reflective equilibrium," real discussion plays an essential role in his model. By contrast, Larmore lays bare the point at which the parting of ways really occurs: either we interpret universalizability monologically or deliberatively. This is the level at which the debate must take place —unless deliberativists approach the problem of justification from the other direction and argue that the conceptual and political consequences of the deliberative conception more closely fit our intuitions and considered convictions, making better sense for our society.⁸

Unfortunately, however, Larmore grossly misconstrues Habermas's argument for his dialogical reconception of the Kantian position, which results in principles U and D. The argument is not from the abstract *idea* of practical rationality, which has led in analytic epistemology to solipsistic accounts of warrant as dependent on what the individual or his group takes to be 'properly basic,' but rather from the evidence of our real access to ideals of modal significance in actual linguistic practices, and the coordinating effects of these ideals. There are, Habermas proposes, transcendental conditions which ground the possibility of meaningfulness for claims with such modal significance in the lifeworld of languages. In other words, Habermas's arguments for U and D

⁸This type of argument would look compare the social and political consequences of the Rawlsian and Habermasian schemes, and argue that the latter is more capable of addressing overextensions of first amendment rights that threaten the integrity and fairness of our political processes, and of giving an adequate account of what democratic justice requires for the *worth* of liberties, especially conditions necessary for making right of political participation worthwhile to the less well-off.

arise from a number of concrete observations about argumentation, and phenomenological clarification of the meaning implicit in these practices. The theory of communicative action, the arguments from performative contradiction in *Moral Consciousness and Communicative Action*, and the arguments against Wittgensteinian contextualism in *Postmetaphysical Thinking* are all part of this phenomenology of lived practical reason which aims to show its implicit reliance on counterfactual or ideal conditions for the validity of different types of claims. This project is quite similar to Husserl's method of laying bare the constitution and conditions of access to phenomena that are necessary for these phenomena to be apprehended with the various kinds of *modal sense* or implicit reference to alternative possibilities which they always involve. Although Habermas replaces Husserl's transcendental ego with a more Hegelian corporate center in communicative interaction, he is also concerned to trace a certain form of synthetic modality, i.e. *normativity*, phenomenologically to its origin. In this respect, his argument is also truer to Kant than Larmore's own rendering of the equal respect principle: for Habermas takes the 'faktum' that we have some primitive sense of 'categorical imperative' or moral necessity, and looks for the transcendental conditions which enable access to this modal sense. The *modality* or extension over alternative possibilities which is essential to the phenomenon being clarified in this analysis is reflected in the counterfactuality of the procedural conditions in terms of which the meaning of ideally adequate warrant for normative claims is expressed. The difference between Habermas and Kant is that in Habermas's case, the lived process of communicative cooperation and the implicit rules of warrant-seeking exchange discoverable in the illocutionary side of linguistic practices, serve as a kind of *social schematism* for moral necessity (whereas Kant denies that there is any schematism for morality), and so Habermas escapes Kant's monological formulations and fulfills the inner dialogical tendency of the analysis Kant began. To put it in a proportion: as a Kantian category stands to the *spatiotemporally* schematized form of the category in the "Analogies," so Kant's categorical

imperative stands to the *deliberatively* schematized form of this imperative which Habermas has disclosed and reconstructed.

This analogy explains why the modal sense of validity which Habermas discovers in the meaning of communicated claims implies conditions on the *demonstration* of such claims to others — conditions which have what Habermas calls a *transcendental-pragmatic* status. The modal significance of validity claims has transcendental preconditions, contrary to the contextualism of contemporary pragmatist constructivism, yet these conditions of access are schematized in concrete forms of communicative action, and so their description is not merely an abstract conceptual analysis. The dilemma Larmore poses between justification "conceivable only as a historically situated activity" and justification conceived so as to "tap into the Unconditioned" is thus a false dichotomy: moreover, the falseness of this dichotomy is a *fundamental point* of Habermas's many arguments for the presuppositions of argumentation.⁹

In my view, Habermas's monumental edifice, with its mixture of transcendental phenomenology, philosophy of language (analysis of validity-conditions and meaning), and critical social science poses large and probably insurmountable problems for the kind of monological conception of practical justification and warrant on which Larmore's analysis (like Rawls's 'political not metaphysical' consensus approach) depends. In particular, Habermas would ask whether the modality inherent in the sense of normative justification can be explained by Larmore's conception of individualized rational warrant. It is the meaning of normativity itself and not "existing certainties" in our locale that "problematizes" normative claims (p.58) and reveals their need for 'critical discursive justification' --which means, as I read it, justification that does not limit itself to the

⁹This part of Larmore's response thus misses the point in the same way as would an argument that Riemannian geometry is impossible because it violates a well-known truism about parallel lines never meeting. Larmore apparently does not see the paradigm-shift Habermas is trying to bring about, and thus does not evaluate this shift itself, but simply reiterates the outmoded liberal formula.

context of a single substantive conception of reason but which can discuss different theories of reason themselves. All it excludes, again as I read the implications of discourse rationality, is argument from any theory of reason that does not distinguish reason from revelation, i.e. any conception that regards gnostic insights or revealed truths to be taken on faith alone as reason. The critiques of opposing views of rational warrant in Habermas's *Justification and Application* show in great depth that other conceptions of warrant, such as those in the family of conceptions to which Larmore's belong, cannot explain our awareness of *moral necessity* as a meaningful concept. Thus it is not true that "the political doctrine of liberalism is 'post-metaphysical' only in a trivial sense" that it excludes controversial premises (p.63): it is antimetaphysical and *pragmatist* in the much more substantive sense that it levels off the modal meaning of normativity by giving it a context-relativist reduction. This is Habermas's concern when he says that Rawls is unclear about the "validity claim" of the normative contents in his conception of the reasonable person¹⁰ and that Rawls needs a sharper distinction between the contingent *acceptance* of principles and their ideal *acceptability*, a "neutrality towards competing world views...confirmed in public discourses" that would yield validity in the epistemic sense.¹¹

Larmore avoids these imposing challenges by supposing that Habermas's argument for D is that it is the only available principle of legitimation once religious and metaphysical worldviews have collapsed. Unfortunately, Habermas does talk a lot about their collapse, and this may have given Larmore the wrong impression, but this relates to the structural anthropology of 'stages' in Habermas's analysis of history: D expresses the principle of legitimacy along with the rule of law, which is the schema of identity-formation in the "postmetaphysical" stage of culture, which corresponds to the last point of individual maturity in Kohlberg's hierarchy. This

¹⁰See Jürgen Habermas, "Reconciliation through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," *Journal of Philosophy* (March 1995): 109-131, p.119.

¹¹Ibid, p.122.

genealogy, in which Habermas looks most Hegelian, is however not the basis of Habermas's *philosophical justification* of D, no more than an analysis of the historical conditions under which, say, a mathematics capable of recognizing the Pythagorean theorem arose in ancient Greece tells us what the best proof of that theorem is. Moral right or justice is expressed by the discourse principle because it captures the meaning of normativity presupposed by linguistic practices aimed at justifying claims with the modal sense of moral necessity.

One of the supporting premises in the process of this argument is that 'truth' is not a substance and that the meaning of moral truth cannot simply be that it happens to correspond to an external moral reality totally independent of mind or our epistemic access to this very correspondence --and Habermas considers this to be part of 'postmetaphysical thinking' (though it really is a metaphysical premise, and present in Husserl as well). For this reason among others, I am sympathetic to Larmore's sense that neither Habermas nor anyone else can escape metaphysical presuppositions, or for that matter, an implicit conception of what the personal subject underlying the 'citizen' consists in.¹² But while I agree with Larmore that Habermas cannot and should not want to avoid metaphysics within the restricted range necessary for moral psychology and ethical theory, and that it is presumptive to declare religious and comprehensive metaphysical worldviews dead, Larmore has misunderstood when he says that for Habermas, the priority of the Right (as expressed in U and D) is deduced from "the obsolescence of metaphysical and religious worldviews" (p.62). This is to misconstrue Habermas's argument as a bad absolutist version of Rawls's softer pragmatist argument from tolerance in areas where rational disagreement is unavoidable. On the contrary, Habermas's foundational principles for democratic theory are deduced from a dialogical account of reason's access to moral meaning, with its normative (i.e. categorical, modal, or counterfactual-

¹²Habermas's failure to admit this derives, I think, from the pressure on the Continent to appear to be offering an alternative *postmodernism* in competition with Derrida's.

supporting) significance. In one sense, as I have tried to indicate, this is a phenomenology of a `metaphysical' topic in Kant's sense: the given meaningfulness of a kind of synthetic *necessity*. It is metaphysical in another sense as well: Habermas's analysis of normativity depends on a "nonsemantic concept of truth purified of all connotations of correspondence" and is thus opposed to simple "moral realism" or the idea that there are reified moral facts.¹³ Similarly, Habermas rejects teleological and substance conceptions of personal agents, and requires a hermeneutic theory of meaning that is opposed to substantialized, empiricist, and individualist reductions as well. In analytic usage, these positions all have a `metaphysical' content, but in continental philosophy, since "metaphysics" has been *equated* with moral realism, correspondence theories of truth, and substantialist theories of personhood, Habermas calls his positions "postmetaphysical." But the error here is only a misleading terminology with positivist overtones: it does not concern the `substance' of Habermas's arguments for conception of justice.

The alternative Larmore offers expects to infer the priority of the Right from two premises: (1) the fact that religious and comprehensive accounts of the world "remain the object of controversy among reasonable people" (p.62), and (2) the pragmatic need to get along somehow, to have a society, so that we can have the benefits of a big economy enabling everyone to pursue their conceptions of the good. The inference from these premises to a priority of Right, however, is subject to objections that seem insurmountable, at least when taken together:

- (1) First, as many critics have pointed out, the priority of the Right and its pragmatic importance is precisely one of those principles that is at issue in controversy among `prima facie reasonable' people. In excluding them as intolerant, we impose our view on others to serve a pragmatic need, and probably exclude too much.
- (2) Second, as not as many have pointed out, from a pragmatic necessity instrumental for ethical purposes (i.e. our pursuit of the good life) and a fact of intellectual pluralism, we cannot infer anything with the force of *moral* necessity: in other words, this is simply the wrong type of account for the modal phenomenon at issue. We could try to respond by saying that such an

¹³Habermas, "Reconciliation through the Public Use of Reason," p.124.

argument justifies a 'purely political' priority of Right principle, which is only pragmatically necessary once again. But to think that this avoids the problem amounts to the fallacy thinking that compounded modal senses are distributive: the revised principle says that it is *pragmatically* necessary to have norms fixing *moral* necessities governing actions affecting others, but this does not mean that the latter are *pragmatic* necessities. It thus leaves us the problem of saying what moral necessity is, and this cannot be a 'purely political' question: rather, the purely political expediency in question *mentions* and is thus defined in terms of this other concept of moral necessity, whose analysis must be independent if circularity is to be avoided!

- (3) Third, the tolerance-based liberal account arguably leads to a (mis)conception of democracy with both theoretical and practical consequences that do not meet with other convictions we would arrive at upon due consideration of economic justice, social life, freedom of speech jurisprudence in a democracy, etc.

Let me take up just one of these differences in consequence alluded to in (3), since Larmore himself mentions it. He says that if patriotism to constitutional principles is the basis for common social life, "then such a people would have to espouse as its ultimate goal the construction of a world political order" (p.60). This is the right conclusion, but from the wrong premise. In fact, Habermas believes that in the short run, in multicultural societies allegiance should and will be to constitutional principles which are *particular instantiations* of his "procedural principles of equal freedom and respect," including the basic categories of right. As he makes clear in *Between Facts and Norms*, the democratic formation of the constitution takes into account the shared historical memory and "common circumstances" (p.60) within a geographical area that Larmore thinks are needed for substantive community without 'communitarian particularism.' Like Rawls's four-stage sequence, Habermas's scheme is a series of schematizations: D is the result of the idea of universalizability made dialogical or schematized in the form of interpersonal discourse; the Democratic Principle (DP) is the result of D schematized through the form of law (with its allied notion of constitutional citizenship); and the particular democratic constitution is a result of DP schematized in the particular history and industrial and environmental circumstances of a people. Habermas has also argued at length that an array of institutions forming a 'civil society' that mediates between state and individual

are essential to functioning democracy, and that in particular it is the *democratization*¹⁴ of these clubs, churches, voluntary associations, foundations, media outlets, unions, etc. that is crucial for deliberative democracy. So his is hardly a 'thin' picture of social life. Nevertheless, Larmore's instincts are right when he detects the ultimate "cosmopolitan" intentions of Habermas's democratic theory, as is made clear in "Appendix II: Citizenship and National Identity" in *Between Facts and Norms*.¹⁵ The reasons for this are clear: Habermas perceives that the fundamental human rights implied by principle D in conjunction with the rule of law must be extended to every human being on the planet, and that only democratic world institutions could be equal to this task. Larmore seems to think that democracy simply has to be conceived within the limits of the nation-state, and Rawls's far-too-weak theory of international justice imports the same unsupported premise. Democracy depends essentially on the idea of law, but *not essentially* on the notion of a nation as distinct ethnic and geographic particular "that sets it off from other peoples" (p.60); accordingly, the deliberative theory is *correct* in implying that democracy can exist at the *transnational* level, and that this must be its ultimate form. In my own view, this must be the considered conviction of anyone who thinks clearly about the paralysis which nation-states exhibit, precisely because of prisoner's dilemmas resulting from their competition with one another, with respect to problems like (1) the spread of environmental destruction; (2) the development of world economy with monetary fluctuations and multinational corporations that single nations cannot easily regulate; and (3) human rights crises in nations run by fundamentalist or totalitarian regimes. For example, so that we can act without any single nation or group having to shoulder the burden while others free-ride, there is a clear need for a

¹⁴This means not that they have to be run through elections and committees, but that they must function to reinforce the rationality of public discourse, facilitate the exchange of diverse ideas, and help build mutual understanding about individual and group needs, and the requisites of the common good. They should not function to commercialize the public sphere or conform the expression of opinions and ideas to special interests.

¹⁵This appendix is a revised version of a 1990 article in *Praxis International*.

world army, answerable to a truly democratic world executive and legislature,¹⁶ that could intervene in countries where the most fundamental human rights are being systematically denied and grossly violated: e.g. Bosnia in 1994-5, Burma, Afghanistan, Iraq, Liberia, Nigeria, Sudan, etc. etc. It is one of the strongest recommendations *for* Habermas's account that it implies the legitimacy of substantive world government, whereas Rawls's account fails in this regard.

Overall, Larmore seems to be concerned that Habermas is overly dismissive of religious and comprehensive metaphysical worldviews at odds with his own, while still averring to a comprehensive conception of reason that is itself more substantive and controversial than is needed for the justification of democracy. This seems to sum up the basic 'Rawlsian' doubt about *Between Facts and Norms*. It is mistaken in two closely interrelated ways. First, Habermas is right that a comprehensive theory of reason cannot be avoided if we are trying to clarify the transcendental grounds of possibility of democracy. It can be shown that (just as Habermas implicitly relies on metaphysical presuppositions he does not acknowledge) Rawls's theory, despite his protests to the contrary, also implicitly relies on a comprehensive theory of reason, specifically one with the kind of epistemology of warrant that Larmore describes. But this is the *wrong* theory of reason, not only in itself (on hermeneutic grounds) but also as being unfit for an adequate conception of democracy. This takes us to the second point against Rawlsian critiques of Habermas: just as Rawls's account will exclude 'unreasonable' comprehensive metaphysical and ethical conceptions of the good when

¹⁶This implies the end of the UN system as it stands today, of course. That system is plagued with two contradictions: it purports to be a democratic legislative entity, but it includes as *members* regimes that deny rights of popular sovereignty to their own people, and its constitution includes among the *rights* of member states which the UN legislature cannot abridge an almost unlimited right to internal 'self-determination' even if the regime and its military is the only 'self' doing the determining within its borders, and even if it (or even its people) determine outcomes incompatible with the basic human rights presupposed by the conditions for the popular sovereignty they claim to be exercising in performing 'self-determination.' It seems obvious that only democratic states could be represented in a true world democracy. In addition, there would also have to be *direct* election of at least some components of its leadership for it to count as a world democratic government, rather than world empire in the bad sense.

they violate the basic precepts of Right,¹⁷ Habermas's account of democracy in terms of public discourse reaching into the depths of civil society will exclude less than Rawls's but still exclude something. Although regrettably he does not spell this out, I think Habermas's conception of democracy implies that a citizen cannot argue publicly on grounds that would count as reasons only on a 'theory of reason' that does not distinguish between reason and divine revelation, or that lets revealed insights accessible only by supposed divine election (or chance) count as reasons. The reason for this is simple: democracy has some presuppositions, and one of them is that its participants not operate from theories of reason that must imply the validity of *theocracy*. This is not to say that theocratic conceptions of reason are indefensible, or that only those compatible with democracy can be right: it only says that *if* we are committed to democracy in our other considered convictions, we must not accept a theocratic theory of reason at odds with this commitment.¹⁸ This condition captures the kernel of truth in what Habermas says about democracy being 'beyond' religion. It is a mistake or implicit contradiction in this regard to conceive democracy so inclusively that arguments from any grounds (including, for example, the proclamations of the Imam, the Pope, or the Book of Mormon) can furnish the basis for defending proposed laws and policies.

One final note on the co-originality of negative liberties and popular sovereignty. Larmore rightly says that "this co-originality is for Habermas a relation of mutual presupposition" (p.64), since the point is supposed to be that both negative and positive liberties derive from the same conception of justice or the Right (=the Reasonable). Habermas's motive for this 'equiprimordiality' (Heidegger's term) of subjective rights and popular sovereignty is to avoid a dichotomy of

¹⁷Though the normative grounds for this exclusion are not fully clear in his theory, as I indicated above.

¹⁸One way to handle this would be to say that those who believe in theocracy should exit democracies and form new governments if possible. These theocracies might in some cases be very virtuous communities (though I doubt it would last). However, in the context of a future democratic world government, we should add the proviso that such theocracies will have to face sanction if their violations of basic human rights become so gross that sitting idly by and allowing them to happen would corrode the moral sense of justice in the international democratic community.

unsatisfactory alternatives: if popular sovereignty can exist without subjective liberties, then majority rule has no limits and the last act of the Weimer parliament, for example, is legitimated (a consequence that Habermas is most adamant about ruling out); on the other hand, if the justification of subjective rights does not also justify the power of deliberative popular sovereignty, then we will be left with what is essentially some form of political *libertarianism*, which addresses or fails to address background justice in to different degrees in different conceptions, but which in principle could do without deliberative legislative procedures if its independent principles were satisfied. Naturally, I think that Rawlsian liberalism is too close to libertarianism in this regard, though of course it is far more satisfactory than the proposals of, say, Nozick, Rand, or Narveson. Rawls does not get to *the root* of the error in libertarianism, as Habermas's Rousseauan/republican reconception of democracy does.

Yet Larmore then says that Habermas's scheme is imbalanced, assigning priority to popular sovereignty (p.64) and that subjective rights against the state are derived *solely because of their instrumental value* for empowering people to participate in deliberative democracy (p.65). This is incorrect: other proponents of deliberative democracy have advanced the view that Larmore here attributes to Habermas, but the subtlety of Habermas's mediation is precisely to avoid swinging the pendulum too far the other way into the Rousseauan territory. His derivation of the *categories of* subjective liberties, as he calls them, is not instrumental but transcendental: they are partially *constitutive* of constitutional citizenship as implied by the rule of law. How these rights are *specified* in a democracy, however, is influenced by their relation to popular democracy, deliberatively conceived. One promising way to develop this idea would be to say that the *scope* of liberties is to be determined, along with distributive schemes, such that any inequalities in the *worth* of liberties do not seriously undermine the voice of socioeconomically disadvantaged citizens in public deliberation. Although this proposal is my own, it illustrates the spirit of Habermas's approach,

which opposes Rawls's separation of formal liberties from their worth, and, I would argue, implies conclusions more radical than Rawls's new principle of fair worth of political liberties.

These extensions of Habermas's approach must wait for another paper, but their mention helps clarify that Larmore has conflated the derivation of the liberties as unsaturated categories with their democratic specification in the constitutional convention. Certainly it is true, as he says, that on Habermas's conception, popular sovereignty "cannot subordinate itself to any pre-given norms" (p.65), if by *pre-given* we mean a Lockean set of pre-political liberties that are supposed to follow from the metaphysics of human subjectivity and agency as such. This is the libertarianism (and metaphysics) that Habermas rejects, but rejecting it does not entail that he must fall into the opposite fallacy of failing to restrict the procedural power of popular sovereignty, nor that he avoids this aporia only by building a "fundamental individual right" of the Lockean or Kantian sort into his conception of justice (p.66). Once again, this seems to miss the point of the mediation at work.

In sum, Larmore's Rawlsian critique of Habermas cannot be sustained. Although the questions he raises about Habermas's antimetaphysical stance have some force, his contention that Habermas's democratic theory depends on something like a contractarian principle of equal respect is a misinterpretation. And his belief that *discourse* is not central to the legitimation of moral norms but only to their political enforcement depends on a weaker notion of legitimation than is consistent with the modal force of moral claims.