

# Habermas and Foucault: thinkers for civil society?<sup>1</sup>

## ABSTRACT

Taken together, the works of Jürgen Habermas and Michel Foucault highlight an essential tension in modernity. This is the tension between the normative and the real, between what should be done and what is actually done. Understanding this tension is crucial to understanding modern democracy, what it is and what it could be. It has been argued that an effective way of making democracy stronger is to strengthen civil society. This article contains a comparative analysis of the central ideas of Habermas and Foucault as they pertain to the question of democracy and civil society. More specifically, the discourse ethics of Habermas is contrasted with the power analytics and ethics of Foucault evaluating their usefulness for those interested in understanding, and bringing about, democratic social change.

**KEYWORDS:** Civil society; democracy; modernity; power; Michel Foucault; Jürgen Habermas

## 1.

Havel (1993:3) has observed that a strong civil society is a crucial condition of strong democracy. Empowering civil society is a central concern for the project of democracy, just as the question of how best to think about such empowerment is important to social and political theory. But what is 'civil society'? A search for clear definitions in the relevant literature is in vain. Not because the concept lacks definitions; rather the definitions are too multiple and varied to bring clarity. Most writers on civil society agree, however, that civil society has an institutional core constituted by voluntary associations outside the sphere of the state and the economy. Such associations range from, for example, churches, cultural associations, sport clubs and debating societies to independent media, academies, groups of concerned citizens, grass-roots initiatives and organizations of gender, race and sexuality, all the way to occupational associations, political parties and labour unions (Habermas 1992a: 453).

The fundamental act of citizenship in a pluralist democracy is that of forming an association of this kind. Keane (1988a:14) ascribes to these associations the task of maintaining and redefining the boundaries between civil society and state through two interdependent and simultaneous processes: the expansion of social equality and liberty, and the restructuring and democratizing of state institutions. This explains the importance of civil society to democracy. That importance is supported not only by social and political theory but by historical-empirical evidence as well (Putnam 1993).

The works of Jürgen Habermas and Michel Foucault highlight an essential tension in modernity. This is the tension between consensus and conflict. With a point of departure in Kant, Habermas is the philosopher of *Moralität* based on consensus. Foucault, following Nietzsche, is the philosopher of *wirkliche Historie* (real history) told in terms of conflict and power. This article presents a comparative analysis of the central ideas of Habermas and Foucault as they pertain to the issue of empowering civil society and democracy. We will ask whether such empowerment is best understood, and acted, in terms of consensus, or whether conflict is a more suitable frame of reference. Keane (1988b:21) explicitly warns us that inequality and domination has been built into the concept of 'civil society' from the start. Historically, 'civil society is established after the image of the civilised [European] male individual,' Keane says, 'it rests on a foundation of excluded women, who are expected to live under conditions of household despotism'. Today, the problem of exclusion is raised not only by gender groups but also by groups defining themselves on the basis of, for instance, ethnicity and sexuality. Clearly, if presently we are to build anything – and something as important as democracy – on the concept of civil society, we need to deal with the problems of exclusion, difference, diversity and the politics of identity. Therefore, as a sub-theme to this article we will ask, what do Habermas and Foucault have to contribute to this task?

## 2.

'With Kant, the modern age is inaugurated,' says Habermas (1987:260), who cites the importance of Kant's attempt to develop a universal rational foundation for democratic institutions.<sup>2</sup> Habermas agrees with Kant as to the need to develop such a foundation for democracy and its institutions, but he points out that Kant failed to achieve his goal. According to Habermas (1987: 18–21, 302), this was because Kant's thinking was based upon a subject-centered rationality. Moreover, Habermas points out that the later philosophers, from Hegel and Marx to contemporary thinkers, have also been unable to develop the much sought-after rational and universal foundation for such social institutions. According to Habermas (1987: 294), this is because they have all worked within a tradition he calls, 'the philosophy of the subject'.

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

According to Habermas, the problem with Kant and with subsequent thinkers on modernity is not that they were mistaken in their goal of constituting society rationally, but that they had the wrong ideas of how to achieve the goal. For Habermas, the path toward a rational constitution and the establishment of a bulwark against relativism is a reorientation from earlier philosophers' focus on subjectivity, within which Habermas classifies both Hegel's 'world spirit' and Marx's 'working class,' to a focus on intersubjectivity. And Habermas's own work, particularly his 'theory of communicative action' and 'discourse ethics', is located in the intersubjective approach to the problematic of modernity (Habermas 1983, 1987, 1990, 1993).

The goal of Habermas's theory of communicative action is that of 'clarifying the presuppositions of the rationality of processes of reaching understanding, which may be presumed to be universal because they are unavoidable' (Habermas 1985:196). In his *Philosophical Discourse of Modernity*, Habermas develops his intersubjective approach to modernity using the concept of 'communicative rationality'.

The communicative rationality recalls older ideas of logos, inasmuch as it brings along with it the connotations of a noncoercively unifying, consensus-building force of a discourse in which the participants overcome their at first subjectively based views in favor of a rationally motivated agreement (Habermas 1987: 294, 315).

Although Habermas sees communicative rationality as being threatened by actual modern society, he nevertheless argues that the core of communicative rationality, 'the unconstrained, unifying, consensus-bringing force of argumentative speech', is a 'central experience' in the life of a human being (Habermas 1983: 10). According to Habermas (1983: 316), this central experience is inherent in human social life: 'Communicative reason is directly implicated in social life processes insofar as acts of mutual understanding take on the role of a mechanism for coordinating action'. Habermas leaves no doubt that by 'inherent' he means *universally* inherent. The universality derives from the fact that for Habermas human social life is based upon processes for establishing reciprocal understanding. These processes are assumed to be 'universal because they are unavoidable' (Habermas 1985: 196). In an earlier formulation, Habermas (1979: 97) states this view even more clearly

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

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

As for the validity claims, Habermas (1990: 93) explains that validity is defined as consensus without force: 'a contested norm cannot meet with the consent of the participants in a practical discourse unless . . . all affected can *freely* [*zwanglos*] accept the consequences and the side effects that the *general* observance of a controversial norm can be expected to have for the satisfaction of the interests of *each individual*' (italics in original). This principle of validity, Habermas (1990: 120–1) calls '(U)', the 'universalisation principle' of discourse ethics. Similarly, in a key passage on truth, Habermas (1990: 198) states: 'Argumentation insures that all concerned in principle take part, freely and equally, in a cooperative search for truth, where nothing coerces anyone except the force of the better argument'. The only 'force' which is active in the ideal speech situation and in communicative rationality is thus this 'force of the better argument', which consequently obtains a critical place in Habermas's work.

Validity and truth are ensured where the participants in a given discourse respect five key processual requirements of discourse ethics: (1) no party affected by what is being discussed should be excluded from the discourse (the requirement of generality); (2) all participants should have equal possibility to present and criticize validity claims in the process of discourse (autonomy); (3) participants must be willing and able to empathize with each other's validity claims (ideal role taking); (4) existing power differences between participants must be neutralized such that these differences have no effect on the creation of consensus (power neutrality); and (5) participants must openly explain their goals and intentions and in this connection desist from strategic action (transparency) (Habermas 1993: 31, 1990: 65–6, Kettner 1993). Finally, given the implications of the first five requirements, we could add a sixth: unlimited time.

In a society following this model, citizenship would be defined in terms of taking part in public debate. Participation is *discursive* participation. And participation is *detached* participation, in as much as communicative rationality requires ideal role taking, power neutrality, etc. Habermas's model, i.e., discourse ethics, should not be confused with contingent types of bargaining or with models of strategically negotiated compromises among conflicting particular interests. What is missing in strategic pursuits and rational-choice models is the recourse to ultimate normative justification that Habermas claims to give us (Dallmayr 1990: 5). Empirically, Habermas

sees the new social movements as agents of communicative rationality and of change in the public sphere.

Habermas's definitions of discourse ethics and communicative rationality, and the procedural requirements mentioned above, make it clear that we are talking about procedural as opposed to substantive rationality: 'Discourse ethics does not set up substantive orientations. Instead it establishes a *procedure* based on presuppositions and designed to guarantee the impartiality of the process of judging' (Habermas 1990: 122). Habermas is a universalistic, 'top-down' moralist as concerns process: the rules for correct process are normatively given in advance, in the form of the requirements for the ideal speech situation. Conversely, as regards content, Habermas is a 'bottom-up' situationalist: what is right and true in a given communicative process is determined solely by the participants in that process.

As a consequence the study of processes for establishing consensus and the validity claims on which the processes are built stands at the centre of Habermas's work. Habermas's view of the democratic process is directly linked to judicial institutionalization: 'I wish to conceive of the democratic procedure as the legal institutionalization of those forms of communication necessary for rational political will formation' Habermas (undated: 15) says. On the relationship between law and power in this process, Habermas (undated:8) states that '*authorisation of power by law and the sanctioning of law by power must both occur uno acto*' (emphasis in original). Habermas thus makes it clear that he operates within a perspective of law and sovereignty. As we will see below, this is a perspective which contrasts with Foucault (1980a: 87–8) who finds this conception of power 'by no means adequate'. Foucault (1980a: 82, 90) says about his own 'analytics of power' that it 'can be constituted only if it frees itself completely from [this] representation of power that I would term . . . "juridico-discursive" . . . a certain image of power-law, of power-sovereignty'. It is in this connection that Foucault (1980a: 89) made his famous argument to 'cut off the head of the king' in political analysis and replace it by a decentred understanding of power. For Habermas the head of the king is still very much on, in the sense that sovereignty is a prerequisite for the regulation of power by law.

Habermas is substantially more optimistic and uncritical about modernity than both Max Weber and members of the Frankfurt School, such as Max Horkheimer and Theodor Adorno. Habermas's main 'methods of progress', for instance for strengthening civil society, are the writing of constitutions and institutional development, which thereby become central elements in and endpoints for Habermas's project. It is hard to over-emphasize the importance of this point. Habermas (1994: 514) quite simply sees constitutions as the main device for uniting citizens in a pluralist society

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

If Habermas is right about the importance of constitution-writing and institutional reforms, the prospects look good indeed for changing government in a more democratic direction by means of discourse ethics and the theory of communicative rationality. The problem, however, as pointed out by Putnam (1993: 17–8), is that '[t]wo centuries of constitution-writing around the world warn us . . . that designers of new institutions are often writing on water . . . That institutional reforms alter behavior is an hypothesis, not an axiom.' The problem with Habermas is that he has the axiom and the hypothesis reversed: he takes for granted that which should be subjected to empirical and historical test.

The basic weakness of Habermas's project is its lack of agreement between ideal and reality, between intentions and their implementation. This incongruity pervades both the most general as well as the most concrete phenomena of modernity and it is rooted in an insufficient conception of power. Habermas himself observes that discourse cannot by itself insure that the conditions for discourse ethics and democracy are met. But discourse about discourse ethics is all Habermas has to offer. This is the fundamental political dilemma in Habermas's thinking: he describes to us the utopia of communicative rationality but not how to get there. Habermas (1990: 209) himself mentions lack of 'crucial institutions', lack of 'crucial socialization' and 'poverty, abuse, and degradation' as barriers to discursive decision making. But he has little to say about the relations of power that create these barriers and how power may be changed in order to begin the kinds of institutional and educational change, improvements in welfare, and enforcement of basic human rights that could help lower the barriers. In short, Habermas lacks the kind of concrete understanding of relations of power that is needed for political change.

With his characteristically comprehensive approach, Habermas (1987: 322) lets us know that his theory of communicative action opens him to criticism as an idealist: 'It is not so simple to counter the suspicion that with the concept of action oriented to validity claims, the idealism of a pure, non-situated reason slips in again'. I will argue here that not only is it difficult to counter this suspicion, it is impossible. And this impossibility constitutes a fundamental problem in Habermas's work.

'There is a point in every philosophy,' writes Nietzsche (1966:15[§8]), 'when the philosopher's "conviction" appears on the stage'.<sup>3</sup> For Habermas that point is the foundation of his ideal speech situation and universal validity claims upon a Kirkegaardian 'leap of faith'.<sup>4</sup> Habermas, as mentioned, states that consensus-seeking and freedom from domination are universally inherent as forces in human conversation, and he emphasizes these particular aspects. Other important philosophers and social thinkers have tended to emphasize the exact opposite. Machiavelli (1984: 96), whom Crick (1983: 12, 17) and others have called 'a most worthy humanist' and 'distinctly modern', and whom, like Habermas, is concerned with 'the business of good government,' states: 'One can make this generalisation about men: they are ungrateful, fickle, liars, and deceivers'. Less radically, but still

in contrast to Habermas, are statements by Nietzsche, Foucault, Derrida and many others that communication is at all times already penetrated by power: 'power is always present', says Foucault (1988: 11, 18). It is therefore meaningless, according to these thinkers, to operate with a concept of communication in which power is absent.

For students of power, communication is more typically characterized by non-rational rhetoric and maintenance of interests than by freedom from domination and consensus-seeking. In rhetoric, 'validity' is established via the mode of communication – e.g., eloquence, hidden control, rationalization, charisma, using dependency relations between participants – rather than through rational arguments concerning the matter at hand. Seen from this perspective Habermas (1987: 297–8) seems overly naive and idealistic when he contrasts 'successful' with 'distorted' utterance in human conversation, because success in rhetoric is associated precisely with distortion.

Whether the communicative or the rhetorical position is 'correct' is not important here. What is decisive, rather, is that a non-idealistic point of departure must take account of the fact that both positions are possible, and even simultaneously possible. In an empirical-scientific context, something to which Habermas otherwise takes great pains to define himself, the question of communicative rationality versus rhetoric must therefore remain open. The question must be settled by concrete examination of the case at hand. The researcher must ask how communication takes place, and how politics and democracy operate. Is communication characterized by consensus-seeking and absence of power? Or is communication the exercise of power and rhetoric? How do consensus-seeking and rhetoric, freedom from domination and exercise of power, eventually come together in individual acts of communication?<sup>5</sup>

The basic question being raised here is whether one can meaningfully distinguish rationality and power from each other in communication and whether rationality can be viewed in isolation from power, as does Habermas. To assume an answer to this question *a priori* is just as invalid as presuming that one can ultimately answer the biblical question of whether humans are basically good or basically evil. And to assume either position *ex ante*, to universalize it and build a theory upon it, as Habermas does, makes for problematic philosophy and speculative social science. This is one reason we have to be cautious when using the theory of communicative rationality to understand and act in relation to civil society.<sup>6</sup>

Constituting rationality and democracy on a leap of faith is hardly sustainable. Habermas here seems to forget his own axiom that philosophical questions ought to be subject to empirical verification. And it is precisely in this sense that Habermas must be seen as utopian. Richard Rorty does not use these exact words, but it is nevertheless the same issues which impel Rorty (1989: 68) to criticize communicative rationality for having religious status in Habermas's thinking, and for being 'a healing and unifying power which will do the work once done by God'. As Rorty says, 'We no longer need [that]'.

There may be a substantial element of truth in the benefits of constitution-writing à la Habermas. And Habermas's home country, Germany, clearly needed new constitutional principles after World War II, a fact that seems to have been formative for Habermas's thinking. But Habermas (1994: 513–4) relies on something as weak as *Verfassungspatriotismus* (constitutional patriotism) as the main means to have constitutional principles take root and gain practical importance in a society

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

Studies of struggles over the actual writing, implementation and modification of real constitutions in real societies prove this account – with its emphasis on conflict-free phenomena like ‘good experiences’, ‘vision’ and ‘pride’ – to be far from sufficient (Putnam 1993). Something infinitely more complex than these phenomena are at work in real life situations, perhaps because humans are infinitely more complex than Habermas's *homo democraticus*. People know how to be, at the same time, tribal and democratic, dissidents and patriots, experts at judging how far a democratic constitution can be bent and used in non-democratic ways for personal and group advantage (Flyvbjerg 1998).

Machiavelli is a more enlightened guide to social and political change than Habermas when it comes to constitution-writing. In *The Discourses* Machiavelli (1983: 111–2[§I.3]) recapitulates that ‘[a]ll writers on politics have pointed out . . . that in constituting and legislating for a commonwealth it must be taken for granted that all men are wicked and that they will always give vent to the malignity that is in their minds when opportunity offers’.<sup>7</sup> If Machiavelli and other writers are right in this ‘worst-case’ thinking, then we might clearly end up in trouble if we use Habermas's discourse ethics as a basis for organizing our society, as Habermas advocates we do, since discourse ethics contains no checks and balances – other than an abstract appeal to reason – to control the wickedness which Machiavelli talks about. Such wickedness is assumed away by Habermas's leap of faith for the good. History teaches us, however, that assuming evil away may give free reign to evil. Thus, the lesson to be learnt from Machiavelli is not so much that moralism is hypocrisy. The lesson is that the first step to becoming moral is realizing we are not.

Furthermore, by determining validity, truth, justice, etc., as an outcome of ‘the better argument’, Habermas simply moves the problems of determination from the former concepts to the latter. As Bernstein (1992: 220)



correctly points out, 'the better argument', and with it communicative rationality, is an empirically empty concept: 'Abstractly, there is something enormously attractive about Habermas's appeal to the "force of the better argument" until we ask ourselves what this means and presupposes'. The problem here is that in non-trivial situations there are few clear criteria for determining what is considered an argument, how good it is, and how different arguments are to be evaluated against each other. This does not mean that we should not attempt to identify arguments and evaluate them. Yet as Bernstein (1992: 221) states, 'Any society must have some procedures for dealing with conflicts that cannot be resolved by argumentation – even when all parties are committed to rational argumentation.' In real civil society – as opposed to Habermas's ideal types – it is precisely these kinds of conflicts which are of interest, both empirically and normatively.

Agnes Heller, Albrecht Wellmer, Herman Lübbe and Niklas Luhmann have expressed similarly strong criticisms of discourse ethics. In commenting upon Habermas's universalization principle (U) mentioned earlier, Heller (1984–5: 7) simply rejects the value of Habermas's approach: 'Put bluntly, if we look to moral philosophy for guidance in our actions here and now, we cannot obtain any positive guidance from the Habermasian reformulation of the categorical imperative'. Wellmer (1986: 63) is equally harsh when he writes that adhering to the universalization principle in moral judgment 'would make justified moral judgment an impossibility [*einem Ding der Unmöglichkeit*]'. At the level of institutional analysis, Lübbe (1990) and Luhmann comments that upholding any concrete institutions to the demands of discourse ethics would paralyse institutional life to the point of a breakdown (Benhabib 1990).

Even Habermas's most sympathetic interpreters, such as Seyla Benhabib and Alessandro Ferrara, have begun to criticize Habermas for his formalism, idealism and insensitivity to context. They are trying to provide a corrective to Habermas's thinking on precisely these weak points and to introduce an element of *phronesis* into critical theory (Ferrara 1989).<sup>8</sup> I would argue that critical theory and Habermas's work also need to bring in the element of power. In his *Between Facts and Norms* and other recent work, Habermas (1996a, b; 1995) has attempted to deal with power, and he has, at the same time, developed a deeper analysis of civil society (Carleheden and Rene 1996). Despite these efforts, however, Habermas's approach remains strongly normative and procedural, paying scant attention to the preconditions of actual discourse, to substantive ethical values and to the problem of how communicative rationality gets a foothold in society in the face of massive non-communicative forces. Habermas also continues to disregard the particular problems relating to identity and cultural divisions as well as the non-discursive ways of safeguarding reason that are being developed by so-called minority groups and new social movements.

Habermas's universalization of the democracy problematic, besides being unsustainable, may also be unnecessary. For instance, the groups in civil society which worked for the expansion of suffrage from

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

Rorty (1991: 190) is correct in noting that the 'cash value' of Habermas's notions of discourse ethics and communicative rationality consists of the familiar political freedoms of modern liberal democracies, freedoms that are essential to the functioning of civil society. But such notions are not 'foundations' or 'defences' of free institutions; they *are* those institutions, says Rorty: 'We did not learn about the importance of these institutions . . . by thinking through the nature of Reason or Man or Society; we learned about this the hard way, by watching what happened when those institutions were set aside'.

The vocabulary of Enlightenment rationalism, although it was essential to the beginning of liberal democracy, has become an impediment to the preservation and progress of democratic societies (Rorty 1989: 44). One reason for this is that Enlightenment rationalism has little to offer in understanding power and in understanding the related discrepancy between formal rationality and *Realrationalität* (real rationality) in modern democracies. In staying close to the Enlightenment vocabulary Habermas has developed little understanding of power and thus tends to become part of the problem he wishes to solve. Habermas's efforts to achieve more rationality and democracy, however laudable, draw attention away from critical relations of power. The neglect of power is unfortunate, because it is precisely by paying attention to power relations that we may achieve more democracy. If our goal is to move toward Habermas's ideal – freedom from domination, more democracy, a strong civil society – then our first task is not to understand the utopia of communicative rationality, but to understand the realities of power. Here we turn to the work of Michel Foucault, who has tried to develop such an understanding.

### 3.

Both Foucault and Habermas are political thinkers. Habermas's thinking is well developed as concerns political ideals, but weak in its understanding of actual political processes. Foucault's thinking, conversely, is weak with reference to generalized ideals – Foucault is a declared opponent of ideals,

understood as definitive answers to Kant's question, 'What ought I to do?' or Lenin's 'What is to be done?' – but his work reflects a sophisticated understanding of *Realpolitik*. Both Foucault and Habermas agree that in politics one must 'side with reason'. Referring to Habermas and similar thinkers, however, Foucault (1980b) warns that 'to respect rationalism as an ideal should never constitute a blackmail to prevent the analysis of the rationalities really at work' (Rajchman 1988: 170). In the following comparison of Foucault and Habermas, emphasis will be placed on what Descombes (1987) has called the 'American Foucault', the Foucault who saw liberal democracy as a promising social experiment and who regarded himself as a citizen in a democratic society working on the project of human liberty.

Foucault was familiar with the work of Habermas and the Frankfurt School, just as Habermas is familiar with the work of Foucault. Foucault occasionally even built upon the work of Habermas which is a fact of some significance for someone who rarely built upon contemporary philosophers. In an interview, Foucault (1984a: 248) said he was 'completely in agreement' with Habermas regarding the importance of Kant. 'If one abandons the work of Kant', explained Foucault, 'one runs the risk of lapsing into irrationality'. And, like Habermas, Foucault was unequivocal in his evaluation of the significance of rationality as an object of study. Foucault suggests, however, that the work of Kant might have been too narrowly interpreted by Habermas and his followers. '[I]f the Kantian question was that of knowing what limits knowledge has to renounce transgressing', says Foucault (1984b: 45), 'it seems to me that the critical question today has to be turned back into a positive one . . . The point, in brief, is to transform the critique conducted in the form of necessary limitation into a practical critique that takes the form of a possible transgression'. This entails an obvious consequence, according to Foucault (1984b: 45–6), namely 'that criticism is no longer going to be practiced in the search for formal structures with universal value, but rather as a historical investigation'.

Habermas's main complaint about Foucault is what Habermas sees as Foucault's relativism. Thus Habermas (1987:276) harshly dismisses Foucault's genealogical historiographies as '*relativistic, cryptonormative* illusory science' (emphasis in original). Such critique for relativism is correct, if by relativistic we mean unfounded in norms that can be rationally and universally grounded; and this is what Habermas (1987: 294) means when he criticizes Foucault for not giving an 'account of the normative foundations' for his thinking. By this standard, however, Habermas's own work is also relativistic. As we have seen, Habermas has not, so far, been able to demonstrate that rational and universal grounding of his discourse ethics is possible, he has only postulated such grounding (Habermas 1985: 196, 1979: 97). And Habermas is not alone with this problem. Despite more than two thousand years of attempts by rationalistic philosophers, no one has been able so far to live up to Plato's injunction that to avoid relativism our thinking must be rationally and universally grounded.

The reason may be that Plato was wrong. Perhaps the polarity relativism-foundationalism is just another artificial dualism that makes it easy to think but hard to understand. Such dualisms simplify things conceptually but with little reference to actual phenomena. Perhaps the horns of the dualism can be avoided by contextualism. This is the strategy of Foucault. As we will see, it is clearly wrong to criticize Foucault for being a relativist if we by relativistic mean 'without norms' or 'anything goes'. 'I do not conclude', says Foucault (1984c: 374), 'that one may say just anything within the order of theory'.

Foucault resolves the question of relativism versus foundationalism by following Nietzsche (1974: 284–5) who says about what he calls 'historians of morality' that

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

Employing this line of reasoning, Foucault rejects both relativism and foundationalism and replaces them by situational ethics, i.e., by context. With explicit reference to Kant and Habermas, Foucault (1984b: 46) says that unlike these two thinkers he 'is not seeking to make possible a metaphysics that has finally become a science'.

Distancing himself from foundationalism and metaphysics does not leave Foucault normless, however. His norms are expressed in a desire to challenge 'every abuse of power, whoever the author, whoever the victims' (Miller 1993: 316) and in this way 'to give new impetus, as far and wide as possible, to the undefined work of freedom' (Foucault 1984b: 46). Foucault here is the Nietzschean democrat, for whom any form of government – liberal or totalitarian – must be subjected to analysis and critique based on a will not to be dominated, voicing concerns in public and withholding consent about anything that appears to be unacceptable. Foucault's norms are based on historical and personal context, and they are shared with many people around the world. The norms cannot be given a universal grounding independent of those people and that context, according to Foucault. Nor would such grounding be desirable, since it would entail an ethical uniformity with the kind of utopian–totalitarian implications that Foucault would warn against in any context, be it that of Marx, Rousseau or Habermas: 'The search for a form of morality acceptable by everyone in the sense that everyone would have to submit to it, seems catastrophic to me' (Foucault 1984f: 37 quoted in Dreyfus and Rabinow 1986: 119). In a Foucauldian interpretation, such a morality would endanger civil society, not empower it. Instead, Foucault focuses on the analysis of evils and shows restraint in matters of commitment to ideas and systems of thought about

what is good for man, given the historical experience that few things have produced more suffering among humans than strong commitments to implementing utopian visions of the good.

Foucault's view of the value of universals in philosophy and social science stands in diametrical opposition to that of Habermas. 'Nothing is fundamental', says Foucault (1984a: 247), 'That is what is interesting in the analysis of society'. Compare this with Foucault's (1984d: 87–8) remark that 'nothing in man – not even his body – is sufficiently stable to serve as the basis for self-recognition or for understanding other men'. Therefore, Foucault's analysis of 'the rationalities really at work' begins with the assumption that because no one has yet demonstrated the existence of universals in philosophy and social science, we must operate as if the universals do not exist. That is, we should not waste our time searching in vain for universals. Where universals are said to exist, or where people tacitly assume they exist, universals must be questioned, according to Foucault. For Foucault, our history endows us with the possibility to become aware of those social arrangements which create problems, for instance a weak civil society, and those which create satisfaction, for instance empowering civil society. It follows that we have the possibility to either oppose or promote these arrangements. This is Foucault's point of departure for social and political change, not global moral norms.<sup>9</sup>

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

According to Foucault, Habermas's (undated: 8) 'authorisation of power by law' is inadequate (emphasis deleted). '[The juridical system] is utterly incongruous with the new methods of power', says Foucault (1980a: 89), 'methods that are employed on all levels and in forms that go beyond the state and its apparatus . . . Our historical gradient carries us further and further away from a reign of law.' The law, institutions – or policies and plans – provide no guarantee of freedom, equality or democracy. Not even entire institutional systems, according to Foucault, can ensure freedom, even though they are established with that purpose. Nor is freedom likely to be achieved by imposing abstract theoretical systems or 'correct' thinking. On the contrary, history has demonstrated – says Foucault – horrifying examples that it is precisely those social systems which have turned freedom into theoretical formulas and treated practice as social engineering, i.e., as

an epistemically derived *techné*, that become most repressive. '[People] reproach me for not presenting an overall theory', says Foucault (1984c: 375–6), 'I am attempting, to the contrary, apart from any *totalisation* – which would be at once *abstract* and *limiting* – to *open up* problems that are as *concrete* and *general* as possible' (emphasis in original).

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

In this sense, what Foucault calls 'the political task' is

to criticise the working of institutions which appear to be both neutral and independent; to criticise them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them. (Chomsky and Foucault 1974: 171)

This is what, in a Foucauldian interpretation, would be seen as an effective approach to institutional change, including change in the institutions of civil society. With direct reference to Habermas, Foucault (1988: 18) adds

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

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

difference between Foucault and Habermas, a difference reflected in Foucault's (1988: 18) labelling of Habermas as 'utopian,' while Habermas (1987: 253, 294) responds by terming Foucault a 'cynic' and 'relativist'. This kind of 'mud-slinging' is unproductive for concrete social and political studies, however, since nothing remains to be discovered if everything is power or if nothing is power, but instead ideal utopia.

Whereas Habermas emphasizes procedural macro politics, Foucault stresses substantive micro politics, though with the important shared feature that neither Foucault nor Habermas venture to define the actual content of political action. This is defined by the participants. Thus, both Habermas and Foucault are 'bottom-up' thinkers as concerns the content of politics, but where Habermas thinks in a 'top-down' moralist fashion as regards procedural rationality – having sketched out the procedures to be followed – Foucault is a 'bottom-up' thinker as regards both process and content. In this interpretation, Habermas would want to tell individuals and groups in civil society how to go about their affairs as regards procedure for discourse. He would not want, however, to say anything about the outcome of this procedure. Foucault would prescribe neither process nor outcome; he would only recommend a focus on conflict and power relations as the most effective point of departure for the fight against domination. This fight is central to civil society both internally, i.e., in the relationship between different groups within civil society – groups of different gender or ethnicity, for instance – and externally, in the relationship of civil society to the spheres of government and business where the fight against domination can be said to be constitutive of civil society.

It is because of his double 'bottom-up' thinking that Foucault has been described as non-action oriented. Foucault (1981) says about such criticism

It's true that certain people, such as those who work in the institutional setting of the prison . . . are not likely to find advice or instructions in my books to tell them 'what is to be done.' But my project is precisely to bring it about that they 'no longer know what to do,' so that the acts, gestures, discourses that up until then had seemed to go without saying become problematic, difficult, dangerous (Miller 1993: 235).

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

Seeing Foucault as non-action oriented would be misleading, however, in so far as Foucault's genealogical studies are carried out only in order to show how things can be done differently to 'separate out, from the contingency that has made us what we are, the possibility of no longer being, doing, or thinking what we are, do, or think' (Foucault 1984b: 45–7). Thus Foucault was openly pleased when during a revolt in some of the French prisons the prisoners in their cells read his *Discipline and Punish*. 'They

shouted the text to other prisoners', Foucault told an interviewer. 'I know it's pretentious to say', Foucault said, 'but that's a proof of a truth – a political and actual truth – which started after the book was written' (Dillon 1980: 5).<sup>10</sup> This is the type of situated action Foucault would endorse, and as a genealogist, Foucault saw himself as highly action oriented, as 'a dealer in instruments, a recipe maker, an indicator of objectives, a cartographer, a sketcher of plans, a gunsmith' (Ezine 1985: 14).

The establishment of a concrete genealogy opens possibilities for action by describing the genesis of a given situation and showing that this particular genesis is not connected to absolute historical necessity. Foucault's genealogical studies of prisons, hospitals and sexuality demonstrate that social practices may always take an alternative form, even where there is no basis for voluntarism or idealism. Combined with Foucault's focus on domination, it is easy to understand why this insight has been embraced by feminists and minority groups. Elaborating genealogies of, for instance, gender and race leads to an understanding of how relations of domination between women and men, and between different peoples, can be changed (McNay 1992, Bordo and Jaggar 1990, Fraser 1989, Benhabib and Cornell 1987). Given the interpretation above of Foucault as a practitioner of *phronesis*, it comes as no surprise that the appropriation of Foucault by feminists has recently been followed by a similar adoption of Aristotle – the philosopher of *phronesis* par excellence – despite the misogynic character of some of Aristotle's thinking (Hirshman 1992a, b; Posner 1992; Nussbaum 1992; Sherman 1989). Finally, given the emphasis in *phronesis* on practical rationality and common sense knowledge, it is also not unexpected that Habermas has distanced himself from *phronesis* and neo-Aristotelianism, both of which he rhetorically has associated with neo-conservatism (Habermas 1987, 1990, 1993).

Foucault's emphasis on marginality makes his thinking sensitive to difference, diversity and the politics of identity, something which today is crucial for understanding civil society and for acting in it. As mentioned in the introduction to this paper, historically the very idea of civil society contains a gender bias, and this bias must be rooted out if today we are to build on the concept of civil society. Feminists have found that for this task Foucault is more helpful than Habermas, and progress has been slow in developing the theory of communicative rationality in ways that would be sensitive to gender and race. Even a sympathetic observer like Cohen (1995: 57) criticizes Habermas for his 'peculiar blindness to gender issues'. Other feminists have been sceptical about Habermas's 'confidence in abstract rationality' as the general cure to social and political ailments, and researchers working on race, ethnicity and sexuality have received Habermas in a similar manner (Ryan 1992: 262, Fraser 1987, Eley 1992, Simpson 1986).

Habermas (1992b: 466–7) has acknowledged that his analysis does not include 'gender, ethnicity, class, popular culture'. But Habermas insists, wrongly in my judgment, that 'the critique of that which has been excluded from the public sphere', and from Habermas's analysis of it, can be carried



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

For example, the critical assessment of the exclusion from the public sphere Habermas talks about can be and has been carried out unilaterally by the very groups that have been excluded, and without regard to following the 'declared standards' and 'manifest self-understanding' of this sphere. As a matter of fact, such standards and self-understanding have often been seen as what was in need of change; they were the objects of critical assessment, not its basis (Eley 1992, Ryan 1992). Even where the standards and self-understanding were not seen as a problem, they may not have been viewed by excluded groups as the most efficient means for gaining access to the public sphere. Groups may therefore choose to use other, non-discursive, means to gain such access, the politics of activism or power politics, for instance. Feminist and environmental initiatives, today central to the structure and functioning of civil society in many societies, got their issues on the public agenda not primarily by rational consensus but through the power struggles and conflicts characteristic of activism and social change (Wapner 1994; Spinosa, Flores and Dreyfus 1995). Moreover, as Eley and Ryan have demonstrated, historically the very constitution of the public sphere took place, not solely from rational discourse and consensus, but 'from a field of conflict, contested meanings, and exclusion' (Eley 1992: 307). The claim to reason implied by the constitution of the public sphere was simultaneously a claim to power in Foucault's sense, in Eley's analysis. Rustow (1970) has similarly argued that democracy has generally come into existence not because people wanted this form of government or because they had achieved a wide consensus on 'basic values' but because various groups had been at each other's throat for a long time and finally came to recognize their mutual inability to gain dominance and the need for some accommodation (Hirschman 1994: 208).

In arguing that exclusion of ethnic, cultural, national and gender groups from the public sphere needs to be assessed by the discursive standards of the public sphere, Habermas uses the conduct of court cases as a model for such assessment. 'Court cases', says Habermas (1992b: 467), 'are meant to settle practical conflicts in terms of mutual understanding and intended agreement'. And agreement is arrived at, according to Habermas, by use of the 'force of more or less good reason', that is, the force of the better

argument, as 'the *only* alternative to overt or covert violence' (emphasis added). It is correct that courts are meant to settle conflicts and that arguments, rational or not, are used for this purpose. Yet such settlement is not dependent in the individual case on mutual understanding or agreement between the parties involved in the court case, as Habermas says it is. It is, instead, dependent on an understanding by the parties that once the arguments have been heard and the judge has ruled they will have to live by this ruling, whether they like it or not. If they choose not to respect the ruling, the judge is backed by an elaborate system of sanctions, and ultimately by police force and prisons. Thus court cases are typically settled by power, not by mutual understanding and agreement. Courts in pluralist democracies secure the type of conflict-resolution Richard Bernstein talked about above when he said that any society must have some procedures for dealing with conflicts that cannot be resolved by argumentation, even when all parties are committed to rational argumentation. If courts relied on Habermas's understanding of litigation, the court system would break down because many cases would never come to an end. While morally admirable and politically provocative, Habermas's thinking about rational argument here seems not only utopian but sociologically naive.

If Habermas's discourse ethics were to be constituted as reality this would not signify an end to power, it would be a way to regulate power. And to the extent that actual implementation of discourse ethics would run counter to the interests of social and political actors – which is bound to be the case for societies and decisions of any complexity – discourse ethics will be opposed, whether such opposition can be rationally justified or not. The basic contradiction here is that coercion would be needed to arrive at Habermas's non-coercive (*zwanglos*) communication. Agreement would, in this sense, be forced. So even if one could imagine the existence of what Habermas (1992a: 453) calls 'a political public sphere unsubverted by power', such a sphere could not be said to be free of power since it was established through a claim to power. The Nietzschean insight that historically morality has typically been established by immoral means would hold true for Habermas's morality, too. Power is needed to limit power. Even to understand how publicness can be established we need to think in terms of conflict and power. There is no way around it. It is a basic condition for understanding issues of exclusion and inclusion, and for understanding civil society.

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

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

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

From the perspective of the history of philosophy and political theory, the difference between Foucault and Habermas lies in the fact that Foucault works within a particularistic and contextualist tradition, with roots in Thucydides via Machiavelli to Nietzsche. Foucault is one of the more important twentieth century exponents of this tradition. Habermas is the most prominent living exponent of a universalistic and theorizing tradition derived from Socrates and Plato, proceeding over Kant. In power terms, we are speaking of 'strategic' versus 'constitution' thinking, about struggle versus control, conflict versus consensus.

#### 4.

Generally, conflicts have been viewed as dangerous, corrosive and potentially destructive of social order and therefore in need of being contained and resolved. This view seems to cover Habermas's outlook on conflict, which is understandable given Germany's, and Habermas's, experience with Nazism, World War II and their after-effects. There is mounting evidence, however, that social conflicts produce themselves the valuable ties that hold modern democratic societies together and provide them with the strength and cohesion they need; that social conflicts are the true pillars of democratic society (Hirschman 1994: 206). Governments and societies that suppress conflict do so at their own peril. A basic reason for the deterioration and loss of vitality of the Communist-dominated societies may be in

their success in suppressing overt social conflict. In a Foucauldian interpretation, suppressing conflict is suppressing freedom, because the privilege to engage in conflict is part of freedom.

If societies that suppress conflict are oppressive, perhaps social and political theories that ignore or marginalize conflict are potentially oppressive, too. And if conflict sustains society, there is good reason to caution against an idealism that ignores conflict and power. In real social and political life self-interest and conflict will not give way to some all-embracing communal ideal like Habermas's. Indeed, the more democratic a society, the more it allows groups to define their own specific ways of life, and the individuals to select the form in which such groups are composed, and legitimates the inevitable conflicts of interest that arise between them. Political consensus can never be brought to bear in a manner that neutralizes particular group obligations, commitments and interests. To think that it can be is to repeat the fallacy of Rousseau's belief in the General Will as distinct from the actual will of particular individuals and groups (Alexander 1991). A more differentiated conception of political culture than Habermas's is needed, one that will be more tolerant of conflict and difference, and more compatible with the pluralization of interests.

As pointed out by Ryan (1992: 286), because everyday politics inevitably falls short of the standards of communicative rationality, which was a chimera even in the heyday of the bourgeois public sphere, the goal of publicness might best be allowed 'to navigate through wider and wilder territory'. Such territory is imbued with conflict. Public life is best cultivated, not in an ideal sphere that assumes away power, but 'in many democratic spaces where obstinate differences in power, material status, and hence interest can find expression'. With the plurality that a contemporary concept for civil society must contain, conflict becomes an inevitable part of this concept. Thus civil society does not mean 'civilized' in the sense of well-mannered behaviour. In strong civil societies, distrust and criticism of authoritative action are omnipresent as is resulting political conflict. Moral outrage is continuous, because actual authorities inevitably violate whatever ideal norms civil society has for justice. Civil society guarantees only the existence of a public, not public consensus (Alexander 1991). A strong civil society guarantees the existence of conflict. A strong understanding of civil society, and of democracy, must therefore be based on thought that places conflict and power at its centre, as Foucault does and Habermas does not.

This is not to reject the importance of the public sphere as a bulwark of freedom. Nor is it to deny that Habermas's work is morally admirable and intellectually stimulating, especially in a time when most philosophers have given up on the high ambitions for philosophy and social science that Habermas still pursues, for instance regarding universal grounding of our thoughts and actions. Even if such ambitions cannot be fulfilled, the history of philosophy and science shows that we have much to learn from attempts at doing so. It must be said, however, that forms of public life that are practical, committed and ready for conflict provide a superior paradigm of civic

citizen virtue than do forms of public life that are discursive, detached and consensus-dependent. For those who see things this way, in order to enable the public sphere to make a serious contribution to genuine participation, one would have to tie it back to precisely what it cannot accept in Habermas's interpretation: Foucault's focus on conflict, power and partisanship.<sup>11</sup>

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#### NOTES

1. I wish to thank Zygmunt Bauman and two anonymous referees for their helpful comments. This article contains part of the theoretical and methodological considerations behind (Flyvbjerg 1998). Further theoretical and methodological considerations behind this book can be found in my paper 'Towards Phronetic Social and Political Sciences: An Aristotelian Approach to Integrating Context, the Particular, and Narrative in Social and Political Inquiry,' forthcoming.

2. The following evaluation of Habermas's work concentrates on his concept for democracy. Other aspects of his authorship are not taken up.

3. Nietzsche (1968: 188 [app.A]) adds that to the extent that the philosopher's 'conviction' is the basis of a 'system' of thinking it corrupts the system.

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

5. Flyvbjerg (1998) contains an in-depth example of how these questions can be analysed in empirical research.

6. For a different view of the relationship between discourse ethics and civil society, see Cohen and Arato (1992) which develops and defends Habermas's position, including a sympathetic critique of Foucault.

7. Text corrected for misprint.

8. See, for example, Bernstein's debates (1987, 1988) with Rorty (1987) and Dallmayr (1988). See also Dallmayr (1989).

9. For more on this point, see Dean (1994) which develops and defends Foucault's position, including a critique of Habermas.

10. For more on Foucault and prison reform, see Foucault and Deleuze (1977), Foucault (1974) and Deleuze (1986).

11. See also Spinoza, Flores and Dreyfus (1995).

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