

ORIGINAL ARTICLE

The purest form of communicative power. A reinterpretation of the key to the legitimacy of norms in Habermas's model of democracy

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1 | INTRODUCTION

The relevance of clarifying the core of Habermas's conception of legitimacy lies in the significance of his work for the theory of democracy. Reference to his theory is still unavoidable today, not only in debates on democracy conducted more or less within the framework of his theoretical assumptions, but also in those developed against his theory, or even without considering it. In order to understand this heart of legitimacy, I analyze the concept of communicative power, the relevance of which is undeniable in Habermas's model since it ties the principle of popular sovereignty to the discourse principle. In Habermas's words, "Read in discourse-theoretic terms, the principle of popular sovereignty states that all political power derives from the communicative power of citizens" (Habermas, 1996, p. 170). But although commentators on Habermas's theory broadly agree that his concept of communicative power is the core of legitimacy within his political architectonic (Baxter, 2011, pp. 85–89; Flynn, 2004; Günther, 1998), there is no such consensus about its role and scope. In effect, where such power comes from and how it is generated are obscure points of his theory.

These topics were object of one of the most illuminating articles written on communicative power. This is Jeffrey Flynn's article "Communicative Power in Habermas's Theory of Democracy," which identifies what he sees as a crucial ambiguity in Habermas's use of the concept in *Between Facts and Norms*. Flynn distinguishes between two possible readings, a narrow reading and a wide one. The former admits only the possibility that communicative power is generated by the political system, while the latter admits that civil society also participates in its generation. I take his article as the starting point for the analysis of the concept, and then offer new arguments in support of a new, wider, more radical interpretation, focused on the informal public sphere.¹

It must be said that the misunderstanding of this concept has often led to too simplistic an image of Habermas's political architectonics. Indeed, an interpretation that focuses only on the generation of communicative power by the institutions of the political system leads to the idea that his model serves as some sort of consensus machine that imposes, by law, the opinions of the majority on civil society, thus threatening minorities. In fact, in current debates

on democracy Habermas's deliberative model is accused of being hostile to dissensus in democratic life. Authors such as Lasse Thomassen identify—as a relevant criticism of Habermas's model—the position of those who are skeptical of the idea of consensus because they are afraid that consensus will be imposed on singularity and otherness, on individuals who are not part of the mainstream of society. Both François Lyotard and Chantal Mouffe have put forward this criticism (Lyotard, 1984; Mouffe, 2000; Thomassen, 2010, p. 102). According to Thomassen, who proposes a change of paradigm from that of Habermas to that of Derrida, “the case of civil disobedience shows Habermas is unable to submit all decisions and distinctions to the public use of reason as envisaged in his deliberative account of democracy” (Thomassen, 2006, 2007). Taking this criticism into account, Stephen K. White and Evan R. Farr propose maintaining the Habermasian approach, but they adopt an unorthodox position that asserts that Habermas's paradigm implies a greater suspicion of consensus because of the no-saying dimension of communicative action. Like Thomassen, they focus on the treatment that Habermas gives to cases of civil disobedience but deem it to be a clear no-saying to the force of even deliberatively justified law. This, they say, discredits the image of the communicative paradigm as being “monologically driven by consensus” (White & Farr, 2012). For my part, however, I believe this way of formulating the problem is mistaken. The debate on tyrannical majorities should not focus on whether it is consensus or dissensus that dominates Habermas's paradigm, but rather on what criterion makes it possible to distinguish different types of common or dissident convictions. Those positions overlook the fact that the heart and source of the legitimacy of democratic constitutional states in Jürgen Habermas's theory is communicative power, and that if we want to dismantle this burden of hostility to dissensus we should start our analysis by clarifying that concept.

The interpretation of Habermas's model I defend here shows that its radicalism is not hidden behind the concept of communicative action, but rather it is displayed in the closely related concept of communicative power, the key to the legitimacy of norms. The guiding thesis of this article is that only a wider reading of the concept of communicative power, which identifies the informal public sphere as the source of the purest form of communicative power, is consistent with the radical-democratic content of Habermas's theory and the power-dissolving character of public discussion. I also argue that, after clarifying those points, we will be able to see that Habermas's theory cannot be taken as being either hostile or favorable to dissensus per se and that that criticism is mistaken due to its blindness to the normative dimension that communicative power involves: it does not contemplate the different possible types of consensus. I emphasize that his model is favorable to qualified—that is to say, rational—types of both consensus and dissensus. The article is structured in five sections. After this introduction, the second section summarizes the main problem in the interpretation of the concept of communicative power and then demonstrates that, in its first formulation in Habermas's work (1977), the concept of communicative power is conceptually linked to communicative action developed in the informal public sphere. The third section shows that, contrary to what the narrow reading of communicative power suggests, this concept in *Between Facts and Norms* (1992) still carries the radical meaning it had when it was formulated in 1977. In this context, I refer to the anarchistic core of unleashed communicative freedoms that Habermas admits his theory presupposes and to the methodological turn to the anarchist heritage of the French Revolution that he proposed to make. The fourth section shows why the informal public sphere must be understood as the producer of the purest form of communicative power, which is based on a rational consensus and has the force to dissolve other forms of consensus, such as ideological consensus or consensus that is oppressive towards minorities. These two sections, the third and the fourth, aim to show the centrality of the power-dissolving character of public discussion as well as the role of dissident movements of civil society in actualizing the content of constitutional states, and thus show that Habermas's model even favors some cases of dissensus that are opposed to the political system. Finally, the article concludes with some considerations about populist movements as a reminder that, though civil society is capable of producing the purest form of communicative power when its structures of communication are kept intact, when they are not, it can produce movements and beliefs that are hostile to communicative power, and therefore, do not enjoy any kind of democratic legitimacy. This section shows the critical potential of our reading to distinguish legitimate forms of dissidence from illegitimate ones and reformulate the debate about the role of dissensus in Habermas's model.

2 | TOWARDS A WIDER READING OF COMMUNICATIVE POWER

In order to clarify the role and scope of this concept, Flynn provides two alternative readings: a wide reading and a narrow one. In his words, the wide reading

suggests that ideally it [communicative power] is generated both throughout the informal public sphere and within legislative bodies. Whenever citizens engage in political discourse, informally or as representatives within political institutions, the force of the shared beliefs and normative reasons generated by an agreement generates communicative power. (Flynn, 2004, p. 446)

But he also believes that Habermas's theory admits another reading, a narrow one, which would "locate the generation of communicative power primarily in the institutions authorized to make binding decisions" (Flynn, 2004, p. 446).

According to Flynn, the wide reading takes into account: (a) Habermas's statements where he says that communicative power originates in autonomous public spheres, and "must take shape" in the democratic institutions; (b) the conceptual connection between communicative power and communicative action; (c) the idea that communicative power is connected to ordinary language, a resource of the lifeworld; and (d) the potential for communicative power to delegitimize a regime (Flynn, 2004, pp. 445–446). On the other hand, the narrow reading takes into account the following features. The first is the introduction of the "parliamentary principle" in central passages in *Between Facts and Norms*, which establishes representative bodies for deliberation and decision-making; and the second consists of passages, such as that in which Habermas says that "public influence is transformed into communicative power only after it passes through the filters of the institutionalized procedures of democratic opinion-formation and will-formation and enters through parliamentary debates into legitimate lawmaking" and that

the social substratum for the realization of the system of rights consists ... in the currents of communication and public opinion that, emerging from civil society and the public sphere, are converted into communicative power through democratic procedure. (Habermas, 1996, pp. 371, 442)

The third lies in Habermas's claim that the public sphere is not responsible for making binding decisions; and the fourth in statements where he says that the role of the public sphere is not the generation of communicative power but rather of public opinion and influence (Flynn, 2004, pp. 446–448). Given these considerations, Flynn stands for a wide reading because: (a) it "is more appropriate to a flexible, functional interpretation of the separation of powers"; (b) it "provides a normative account of a resource that is necessary not only for authorizing administrative power, but also as a direct counterforce to social power within the public sphere"; and finally, because (c) it "could be helpful in extending Habermas's account to issues of global politics" (Flynn, 2004, pp. 449–451).

I'm going to take up the ambiguity Flynn identifies and offer new arguments in support of a wider reading of the concept of communicative power, which, together with a number of additional conceptual resources, will help to harmonize crucial elements of the discursive theory of constitutional democracy. My reading is wider than Flynn's because I assert that for Habermas the informal public sphere is capable of generating communicative power independently of, and even against, the political system. This reading does not deny that communicative power can be generated within the political system; it merely denies that the political system is its only source. The reading I offer here concedes that there are certain ambiguities in Habermas's use of the concept of communicative power in *Between Facts and Norms*, as Flynn believes. However, I think that after illuminating and harmonizing the different elements and the explicit goals of Habermas's writings, we will be able to provide a reading of the concept of communicative power that will be more feasible and consistent with Habermas's theory and will dissolve those tensions. In addition, I believe that the arguments I offer here and in the following section will lead us to discard the narrow reading as unfeasible and make the wide reading wider still.

My first argument analyzes the first formulation of the concept of communicative power in Habermas's theory.² Prior to both the *Theory of Communicative Action* (1981), in which this concept played no role, and *Between Facts and Norms* (1992), Habermas wrote a critical article in which he reformulated Hannah Arendt's concept of power in two important aspects after pointing out its strengths and weaknesses. This section will focus on that 1977 article, with

the aim of showing that the first formulation in Habermas's theory of this concept borrowed from Arendt's work is intrinsically linked to communicative action generated within the informal public sphere. In order to demonstrate this point, I first identify those aspects of the concept of power that Habermas explicitly reformulates and those that he leaves unchanged. It is important to bear in mind that we will be talking about Habermas's reading of Arendt's concept of power in order to elucidate the meaning that this concept has for him. We will not assess whether Habermas misunderstood Arendt's work or even distorted what she said, as some authors have claimed (see e.g., Di Pego, 2006; Knauer, 1980; Luban, 1979). Interesting as that might be, such an analysis goes beyond the objectives of this article. For us, the relevant point is the radical content that the concept of communicative power had in Habermas's work.

The first feature of Arendt's concept of power that Habermas identifies is that it does not start from a teleological model of action where the actors are oriented to their own success and not to reaching an agreement, but from a model of communicative action. He remarks that, while Max Weber understands power as the possibility of forcing one's own behavior on the behavior of others, Arendt defines power as "the ability to agree upon a common course of action in unconstrained communication" (Habermas, 1977, p. 3). This aspect of the concept is of vital importance to Habermas's theory of democracy for two reasons. First, using it he explains the phenomenon of the generation of political power, which he believes remains obscure in systems theory. Second, this model of action, together with systems theory, constitutes the basis from which he combines the participants' perspective and the external perspective in *Between Facts and Norms*. However, as we know, he never abandons the strategic type of action as a legitimate tool for understanding politics in complex societies.

The second feature that Habermas recovers from Arendt's work is its potential "to illuminate the deformations in Western mass democracies from opposite sides" (Habermas, 1977, pp. 9–10). Indeed, Habermas recognizes an important strength in Arendt's theory; namely, its ability to understand the specific feature of totalitarian rule. This consists in the mobilization of depoliticized masses: citizens isolated from one another through mistrust, the elimination of the public exchange of opinions, terror, and destruction of the communicative structures which are the only ways in which power can originate. He remarks that Arendt's investigation of totalitarianism points out the danger that representative governments and party systems may become channels for the political participation of a depoliticized mass. This would supplement and fortify the privatistic forms of life that provide the psychological base for mobilizing unpolitical groups (Habermas, 1977, pp. 9–10). Communicative power, as recovered by Habermas from Arendt's work, is produced only by structures of non-distorted communication that constitute the public political realm, which is why the deformation of the public political realm implies that legitimate power does not exist; only pure violence does.

In addition, Habermas highlights Arendt's investigation into revolutionary moments and cases of civil disobedience, and her interest in the special situations in which the power of common conviction is displayed, such as

the withdrawal of obedience to institutions that have lost their legitimacy; the confrontation of communicative power with the means of force of a coercive but impotent state apparatus; the beginning of a new political order and the attempt—the pathos of the new beginning—to hold fast to the initial revolutionary situation, to give institutional permanence to the communicative generation of power. (Habermas, 1977, p. 12)

Habermas notes how she traces the same phenomenon over and over again: "when revolutionaries seize the power that lies in the streets; when a populace committed to passive resistance confronts alien tanks with their bare hands; when convinced minorities contest the legitimacy of existing laws and organize civil disobedience" (Habermas, 1977, p. 13).

Nonetheless, he believes that Arendt's concept of power suffers a few weaknesses as well. He considers that, as she "remains bound to the historical and conceptual constellation of classical Greek philosophy," she has become the victim of a concept of politics that is inapplicable to modern conditions. Habermas offers in place of that of Arendt's the idea that the element of strategic action cannot be excluded from the concept of the political, because in the modern state "the struggle for political power is normalized through the institutionalization of strategic action (through the admission of an opposition, through the competition of parties and associations, through the legalization of labour struggles, etc.)" (Habermas, 1977, p. 16). The other weakness Habermas identifies in Arendt's concept of power is its lack of a critical standard for distinguishing between illusory and non-illusory convictions. It is here that we find

Habermas's major reformulation of the concept. In contrast to the classical distinction between theory and practice, Habermas asserts that the representative thought that examines the legitimacy of norms has a cognitive foundation. In other words, speech acts that claim normative rightness "can be discursively redeemed and fundamentally criticized." As a result, there is a criterion for distinguishing between ideological and rational conviction.

It is necessary to note that now Habermas accepts the centrality of the informal public sphere in Arendt's concept of communicative power and the idea that the latter is generated by the undamaged intersubjective structures of civil society, and only reformulates the concept in such a way as to include strategic action in politics and to provide a cognitive foundation for practical discourse, thanks to which it is possible to distinguish illusionary from rational convictions. In his 1977 work, communicative power is seen and described by Habermas as a kind of power arising from the streets, from non-institutionalized political action and unconstrained communication, from those who confront the state apparatus with the force of common conviction. This description of the source of communicative power shows the centrality of the informal public sphere, something that Habermas does not reformulate here, and neither, as we shall see, does he reformulate it later.

3 | THE ANARCHISTIC CORE OF UNLEASHED COMMUNICATIVE FREEDOMS

Habermas admits in the Preface to *Between Facts and Norms* that his theory has an anarchistic core. He states:

Of course, the potential of unleashed communicative freedoms does contain an anarchistic core. The institutions of any democratic government must live off this core if they are to be effective in guaranteeing equal liberties for all. (Habermas, 1996, p. xl)

In order to demonstrate why a wide reading of communicative power is preferable, we must see, in the first place, in what this anarchistic core consists, and then analyze the link between communicative freedoms and communicative power. These two steps will show that communicative power cannot be reduced to a form of power generated merely from above, that is, from the formal procedures of a political system. Moreover, this whole argument will show that, starting from Habermas's premises, we must necessarily conclude that the informal public sphere is capable of generating communicative power by itself.³

The anarchistic core of Habermas's theory is not found only in an isolated statement in the Preface to *Between Facts and Norms*. A few years earlier, in his lecture "Popular Sovereignty as Procedure" (1988), published as an appendix (pp. 464–490) to the English edition of *Between Facts and Norms*, Habermas had already proposed a methodological turn by using the proto-anarchist ideas of the sans-culottes. This lecture examines the relevance of the French Revolution to our time and asks if we can read the revolutionary ideas of 1789 in a way that may still inform our own needs for orientation. In order to provide an answer, Habermas takes the sans-culottes' model of the voluntary association:

What was already practiced in the petit bourgeois revolution of the sans-culottes finally received rational justification and partial theoretical elaboration in anarchist social criticism and the idea of council democracy. Here the techniques of self-organization (such as permanent consultation, imperative mandates, rotation of offices, and interlocking powers) were probably less important than the organizational form itself: the model of the voluntary association. Such associations displayed only a minimal degree of institutionalization. The horizontal contacts at the level of face-to-face interactions were supposed to coalesce into an intersubjective practice of deliberation and decision making strong enough to maintain all the other institutions in the fluid condition of the founding phase, more or less preserving them from coagulation. (Habermas, 1996, p. 480)

It should be noted that Habermas takes into account the precise phenomenon he emphatically remarked on in Arendt's work: the beginning of a new political order and the attempt to hold fast to the initial revolutionary situation, to give institutional permanence to the communicative generation of power. Like Arendt, he believes that a strong

intersubjective practice of deliberation is capable of preserving institutions from coagulation, that is, from illegitimacy. Here, he refers to this idea as anti-institutionalism and notes its anarchistic consequences:

This anti-institutionalism coincided with the classical liberal idea that associations could support a public sphere in which the communicative practices of opinion- and will-formation would occur, guided of course by argumentation. When Donoso Cortes complained that liberalism erroneously made discussion into the principle of political decision, and when Carl Schmitt likewise denounced the liberal bourgeoisie as the discussing class, both had the anarchistic, hence power-dissolving, consequences of public discussion in view. (Habermas, 1996, p. 480)

But, what does it mean to say that public discussion has anarchistic consequences? It cannot mean, of course, that wherever there is public discussion the state disappears. Habermas categorically asserts that in modern times “the state becomes necessary as a sanctioning, organizing, and executive power.”⁴ That is why his performative refutation of Otfried Höffe’s objection to his theory of communicative action, which accuses it of having anarchistic consequences (Habermas, 1996, p. xi), must be understood as a statement that the normative aspects of his theory do not reject the state itself, but only illegitimate forms of state or domination. If this is right, then, how should the anarchistic consequences of public discussion he admits to in his 1988 lecture, and the anarchist core of communicative freedoms he admits to a few years later, be understood? They should be conceived of strictly as power-dissolving elements within his theory. In fact, the answer to the question that guides the 1988 lecture is affirmative; the “shift in mentality that occurred during French Revolution still represents an unclaimed heritage.” The ideas that constitute this unclaimed heritage are, precisely, the model of voluntary association, the techniques of self-organization, and the idea of a strong intersubjective practice of deliberation at the level of face-to-face interactions. These ideas from the *sans-culottes* are now claimed by Habermas, who proposes a methodological turn to them:

But the anarchist’s suspicion can be given a methodological turn; indeed it can be turned critically against both sides: against the system-blindness of a normative theory of democracy that disregards the bureaucratic expropriation of the grassroots level, and against the fetishizing gaze of a systems theory that dismisses all normative considerations. (Habermas, 1996, p. 481)

This methodological turn is definitely present in *Between Facts and Norms*. There, Habermas develops his theory of democracy and law in response to these two traditions, citing John Rawls’s theory of justice as an example of a purely normative theory and Niklas Luhmann’s sociological study of society as one that sees society as a mere multiplicity of autonomous subsystems (Habermas, 1996, pp. 42–82). Here, he turns the “anarchist’s suspicion” against both sides, the merely normative theories of democracy and the merely descriptive sociological approach.

It is clear, then, that the idea of the power-dissolving character of public discussion and that of the anarchistic core of unleashed communicative freedoms are not isolated ideas, but are of central importance to Habermas’s theory. But we must still determine what these power-dissolving elements within his theory consist in. The idea that communicative freedoms generate power and, at the same time, are asserted to have a power-dissolving character may be seen as a contradiction, but this contradiction is only an apparent one. It disappears as soon as we recognize that the kind of power they generate is very different from the kind of power they dissolve. Indeed, we know that communicative action—in which individuals exercise their communicative freedoms—has a cognitive and a practical sense. Habermas says of the discourse principle:

This principle has, to begin with, the cognitive sense of filtering reasons and information, topics and contributions in such a way that the outcome of a discourse enjoys a presumption of rational acceptability; ... however, it also has the practical sense of establishing relations of mutual understanding that are “violence-free” in Arendt’s sense and that unleash the generative force of communicative freedom. The communicative power of shared convictions issues only from structures of undamaged intersubjectivity. This interpenetration of discursive lawmaking and communicative power formation ultimately stems from the fact that in communicative action reasons also have a motivational force. (Habermas, 1996, p. 151)

In other words, under certain conditions the exercise of communicative freedoms generates communicative power, the kind of power which is held by the “unforced force of the better argument.”

However, there is a kind of power whose force is not unforced but is instead somehow coercive, that is, it is not identified by the individuals affected by it as the rational product of their own common convictions. This power can be typified as the steering media of the administrative system, a concept used openly throughout Habermas's *Theory of Communicative Action* (1981).⁵ Whereas communicative power is conceptually connected to the communicative action of individuals, administrative power is conceptually tied to the functioning of the administrative system and is deemed to emerge from it. In addition, there is a broader concept of power used by Habermas in the context of his theory of law. This is the concept of social power, whose conversion into political influence should be blocked by civil society (Habermas, 1996, p. 379). We can assert that—for Habermas—the nature of the former is radically different from that of the latter: communicative power is a rationally justified power, a power provisionally held by the better argument.

Taking this into account, we can assert that the power-dissolving character of the exercise of communicative freedoms refers exclusively to the kind of power that is coercive. But how do citizens counteract coercive power? Precisely by exercising their communicative freedoms in face-to-face interactions in order to reach an agreement and act in concert, that is, they oppose a different kind of power from that of coercive power; namely, communicative power. If I'm right here, the narrow reading Flynn suggested as one of the two feasible interpretations of Habermas's concept of power is not in fact feasible at all: communicative power cannot be reduced to a power exclusively generated from within the political system; the capability of the informal public sphere to generate it cannot be denied. The power generated by the state has, obviously, a coercive nature and as soon as it links good reasons to coercion, it contaminates the unforced force of reason, losing the power-dissolving character that spontaneous public discussion has.⁶ The following section will return to this point.

Although it is possible, as Habermas believes, that the constitutional state institutionalizes anarchistic elements within its law-making mechanisms, the anarchistic character of public discussion still indicates something about how communicative power is generated and where it comes from. Habermas never abandons the radical content that he believed he had found in Arendt's concept of political power, even with the specific reformulations we have seen in his 1977 article. In effect, in *Between Facts and Norms*, he highlights the specific moments in which communicative power arises: in resistance to forms of repression that threaten political liberty internally or externally, in the freedom-founding acts that bring new institutions and laws into existence, and in acts of civil disobedience (Habermas, 1996, p. 148). The centrality that Habermas confers on those moments demonstrates his idea that the political system is not the only actor capable of producing communicative power. Furthermore, against what Flynn calls the narrow reading, those examples show that communicative power can be generated from the streets, independently of the political system, and further show it must be recognized that communicative power is not only “generated both throughout the informal public sphere and within legislative bodies” but also in the informal public sphere independently of legislative bodies. That's why the reading I offer here is even wider than the one that Flynn calls wide.

As is known, Habermas does not conceive of constitutional democracy as an political order that is always legitimate but as an unfinished project that calls for citizens to actualize its normative content. Moreover, given that constitutional states are delicate, fallible, and revisable enterprises, civil disobedience can be justified (Habermas, 1996, pp. 383–384). The process of the “unofficial counter-circulation of power” that occurs during acts of civil disobedience shows that civil society is capable of generating communicative power independently of, and even against, the political system. In fact, civil disobedience is not a rare element in Habermas's architectonic. As Stephen K. White and Evan R. Farr show, civil disobedience plays a central role in Habermas's concept of democracy, something that is shown by its description “as the ‘guardian of legitimacy’ and as a ‘litmus test for or ‘touchstone’ (*Prüfstein*) of the ‘maturity’ of a democratic order” (Habermas, 1985; White & Farr, 2012, p. 36).

White and Farr correctly assert that “the imperfection of democracy is not just an isolated normative prescription in Habermas's writing; constitutional dynamism is embedded in his understanding of democratic law” (White & Farr, 2012, p. 48). From a more comprehensive perspective on Habermas's work, we must add that this conception of democracy as an unfinished project is part of his conception of modernity as itself an unfinished project. According

to Habermas, we should not abandon the project of modernity, which “consists in the relentless development of the objectivating sciences, of the universalistic foundations of morality and law, and of autonomous art” and the intentions of which consist in encouraging “the rational organization of social relations,” but rather learn from the aberrations and mistakes of that project (Habermas, 1997, pp. 45, 51).

If we grasp Habermas's theory of democracy in the context of his work as a whole, and take his central philosophical premises into account, we have to conclude that constitutional democracy is only a developed instance of a wider project that intends to develop a universalistic morality and law. Accordingly, we should understand that producing communicative power, that motivating the force of good reasons, cannot be an exclusive feature of the political system of mature constitutional democracies but is a practical consequence of the communicative freedoms that were unleashed in modern times. The revolutionary examples in which communicative power emerges illustrate how communicative action in civil society was capable of generating its motivational force, that is, communicative power, even when constitutional democracies did not yet exist. The cases of justified civil disobedience illustrate how communicative action within civil society is capable of generating communicative power when established constitutional democracies fail. And precisely because there is no constitutional democracy that could be considered a finished project, that is, there are always aspects in which democracies do not work well and need actualization; the communicative power of civil society can emerge at any time. However, in empirical terms, according to Habermas's treatment of civil disobedience, the less the state is able to channel civil society claims, the more likely it is that civil society stands up for its claims, and the more undamaged are the structures of communication within that civil society, the more likely it is that the civil society will do so by generating communicative power. It follows that communicative power can originate in civil society during revolutionary moments and in the founding phase of institutions; and that it can also emerge in acts of civil disobedience alongside the development of constitutional democracies.

4 | THE PUREST FORM OF COMMUNICATIVE POWER

We have shown that there are no grounds for interpreting Habermas's concept of communicative power as being produced exclusively through the formal mechanisms of a political system. Both the political system and the informal public sphere can produce communicative power. There is no place for the narrow reading, as Flynn calls it. Moreover, we have shown why an even wider reading than the wide reading that Flynn suggests would be preferable. Thus, we have established that communicative power can be generated within civil society even against the law. Now, we must establish the difference, if there is any, in normative terms, between the communicative power generated directly by citizens and the communicative power that is mostly generated within the political system.

Is there any criterion which distinguishes between different kinds of communicative power? Flynn believes so. Although he believes that there is an ambiguity in Habermas's use of the concept of communicative power and that it is not just a terminological issue but is also related to tensions within Habermas's theory, he suggests that introducing additional conceptual resources may help to deal with it. He believes that the power generated by citizens in the informal public sphere should be termed weak or informal in order to differentiate it from the power generated in the political system, which should be termed strong or formal because of its binding force (Flynn, 2004, p. 448). However, I believe such a typology is not entirely consistent with Habermas's work. It is true that Habermas usually identifies the weakness of good reasons as a motivational force; however, not only are they weaker than the binding force of law, that is, than coercion, they also seem to be weaker than unproblematic beliefs and even ideologies. In contrast to this, Klaus Günther asserts that “communicative power seems to be the strongest kind of power, since it motivates people to act on the basis of rational insight and communicative freedom” (Günther, 1998, pp. 235–236). Furthermore, strong and weak are relative terms that must be analyzed in context. The cases of civil disobedience and revolution show that moral convictions generated communicatively can be much more powerful than coercive force. For this reason, introducing the terminology of weak or strong communicative power may confuse more than it clarifies. It is also necessary to distinguish communicative power generated within the informal public sphere from communicative power mostly generated within the political system, but using a different criterion, and other terms. These two types of

communicative power will be called pure and impure, in agreement with Habermas's own terminology. Habermas says of communicative power that

[i]t emerges in its purest form in those moments when revolutionaries seize the power scattered through the streets; when a population committed to passive resistance opposes foreign tanks with their bare hands; when convinced minorities dispute the legitimacy of existing laws and engage in civil disobedience; when the sheer "joy of action" breaks through in protest movements. (Habermas, 1996, p. 148)

But, what does the purest mean in this context? Although Habermas does not qualify communicative power anywhere else as pure, impure, contaminated or less pure, we will adopt the terminology as it appears here and explore its meaning. There is a criterion in Habermas's theory to qualify power, normatively speaking, as more or less rational or legitimate. This indicates that the legitimacy of power depends on the rational acceptability of the convictions from which it arises. More rational convictions generate a more legitimate power, and their rationality can always be judged in the light of an ideal speech situation. This concept is, in Benhabib's words, a meta-norm applicable to theoretical as well as to practical reason, which "serves to delineate those aspects of an argumentation process which would lead to a 'rationally motivated' as opposed to a false or apparent consensus" (Benhabib, 1985, p. 87). Thus, rational convictions emerging from communicative action are further from or closer to the ideal speech situation to the greater or lesser extent to which the discursive exchange were contaminated by external factors such as privileges and social power. We must remember which, for Habermas, are the most important formal properties or pragmatic presuppositions of argumentation:

(a) publicity and inclusiveness: no one who could make a relevant contribution concerning a controversial validity claim must be excluded; (b) equal rights to engage in communication: everyone must have the same opportunity to speak to the matter at hand; (c) exclusion of deception and illusion: participants must mean what they say; and (d) absence of coercion: communication must be free from restrictions that prevent the better argument from being raised and determining the outcome of the discussion. (Habermas, 2008, p. 50)

For Habermas, these unavoidable presuppositions of argumentative practice are actually effective in the behavior of the participants themselves, and the process of argumentation should be judged in accordance with them. If we compare argumentation processes in the light of those postulates, taking them ideally and not empirically, we must conclude that the argumentation process within the political system is a priori further from an ideal speech situation than the same process in an informal public sphere, as long as its structures of communication remain unsubverted, actual and egalitarian face-to-face interactions take place, and the communicative freedoms of the participants remain unleashed.

Representative bodies exclude a priori the equal opportunity to speak and equal rights to engage in communication: only representatives have a right to give and require justifications, not those who are fictitiously represented. In fact, contrary to postulates (a) and (b), these bodies can be seen as the institutionalization of that a priori exclusion. Within an undamaged informal public sphere, by contrast, there is no a priori exclusion of participants. Even non-citizens can participate in the formation of public opinion; whenever validity claims are questioned, individuals can spontaneously get involved in argumentative discourses. Here the motivational force of common convictions does not arise from the private mind of an observer of the process of argumentation, that is, an observer of parliamentary debates, but from actual communicative exchange. By contrast, as Günther states, "taking an affirmative position on a validity claim generates this illocutionary obligation which links reasons to motives" (Günther, 1998, p. 240). It follows that only the performative attitude of a speaker who participates in actual processes of argumentation generates communicative power. This is in complete accordance with Habermas's statements about the motivating force of reasons:

The rational acceptability of the corresponding statement is based on the convincing force of the better arguments. Which argument does convince is not decided by private insight but by the stances that, bundled together in a rationally motivated agreement, are adopted by everyone who participates in the public practice of exchanging reasons. (Habermas, 2008, p. 49)

In a similar way, Günther shows the reflexive and social dimension necessary to generate actual communicative power:

The potential of illocutionary forces becomes a power only if factual acceptance is brought about. Nevertheless, the simple fact of the acceptance of a validity claim does not suffice for the constitution of power as long as it is ego alone who accepts a validity claim raised by alter. What has to be added is a factual social dimension. Communicative power is a reflexive identification and confirmation of those who have factually accepted a validity claim. The social space, which came into being with the factual acceptance and with its illocutionary obligations relevant to subsequent interactions, is now cognitively reidentified and volitively reconfirmed. By this reflexive move, the individual acquires a reflexive relationship to the first person plural, to a we who is in agreement about convictions relevant to actions. (Günther, 1998, pp. 247–248)

The illocutionary obligation that “serves as a bridge between reasons and motives” emerges, then, when the hearer takes an affirmative position, and she is obliged not only to adopt the reasons justifying the validity claim as her own reasons, but also as her own reasons for action (Günther, 1998, p. 240). Thus, communicative power, at least in its most original form, spreads out its motivational force among actual participants of communicative praxis. Due to the legitimacy of democratic procedures, a consistent interpretation of Habermas's work would accept that communicative power spreads out its force beyond the actual participants in the representative bodies of the political system and also generates rational conviction among observers (citizens), but this is a more derived and impure form of power. The latter does not depend only on illocutionary obligations that emerge necessarily from communicative action, but rather on the legitimacy of the political system considered as a whole.

In addition, while the formation of public opinion in the informal public sphere takes place by using ordinary language—a resource of the lifeworld—the political system translates it into a complex legal code (Habermas, 1996, p. 56). Using special codes also goes against the inclusiveness postulate of an ideal speech situation, given that it requires some level of expert language. Moreover, this translation of communicative power into the legal code made by the political system implies appending a different form of force, that is, coercion, to the new rational convictions generated through the formal procedures and with it, the administrative power to enforce the law. While communicative power is, by definition, the product of the unforced force of the better argument, in the case of communicative power generated by the political system, a coercive force is appended to it. This perspective allows us to distinguish what we term the purest form of communicative power from other forms that are contaminated—in the sense we indicated above—and are therefore less pure. Thus, if communicative power were produced by the communicative action of individuals who participate in an actual praxis of exchanging reasons in an undamaged informal public sphere and as long as the structures of communication remain undamaged, we would be in the presence of its purest form. Otherwise, we would be in the presence of impure forms of communicative power.

5 | POPULIST MOVEMENTS IN CIVIL SOCIETY

Thus far we have shown the radical origins of the concept of communicative power, the radical content it still bears in *Between Facts and Norms*, together with the anarchistic core that Habermas's theory presupposes and the central role of dissident movements for the legitimacy of constitutional states. At this point and by way of conclusion, we will illustrate our interpretation with a difficult case: populist movements. These could be considered as a counterexample to our reading since they seem to prove the alleged hostility of Habermas's model to dissensus. According to this criticism, Habermas's model would dismiss the claims of these movements precisely for being an expression of dissensus; the consensus machine—the constitutional state—oppresses those dissenters.

This criticism has, in turn, been criticized by White and Farr, who, on the basis of the no-saying dimension of communicative action, conclude that Habermas's model implies a great suspicion of consensus, and therefore, rather than being hostile to dissensus, welcomes it. By contrast, our interpretation doesn't tip the balance to one side or the other, neither to that of consensus nor to that of dissensus, but emphasizes that the discursive model is favorable to qualified—that is to say, rational—types of both consensus and dissensus. In our reading, the discursive theory does not

disapprove of all forms of dissensus because it is able to distinguish the dissident claims of civil society that tend to amend and correct the “unfinished projects of constitutional states” from those that represent its deterioration. Our reading enables us to go deeper into the normative core of those claims of civil society by analyzing the communicative conditions they presuppose and promote as well as whether they facilitate or block the generation of communicative power, and thus, to determine whether they enjoy democratic legitimacy or not.

In other words, our reading dismantles the burden of hostility to dissensus by showing that the formulation of the issue of the role of dissensus in Habermas's model in terms of dissensus versus consensus is deceptive. Habermas's model is hostile to ideological forms of both dissensus and consensus, and favors their rational forms. Our reading stresses the generation of communicative power wherever it takes place, whether within the political system or civil society. Thus, it enables us, on the one hand, to criticize the law generated within the political system when it is not backed up by communicative power but by an ideological consensus, which the civil society can counteract by opposing it with its own communicative power. On the other hand, our reading makes it possible to extend the criterion of legitimacy beyond the legal norms and apply it also to the claims of social movements and the streams of public opinion within civil society.

For the present analysis, populism will be understood as “a particular moralistic imagination of politics, a way of perceiving the political world which opposes a morally pure and fully unified, but ultimately fictional, people to small minorities who are put outside the authentic people” (Müller, 2014).⁷ This definition compresses both right-wing and left-wing populisms. While the former adopts a cultural-nationalist conception of the peoplehood to define who the authentic people are, the latter adopts a contestatory conception of it, for which the contours of the people can be shaped only through mobilization (Wolkenstein, 2016). We shall also take into account a few other features that are commonly admitted to be typical of populist movements, such as the personalism and the importance of strong, and even charismatic, leaderships,⁸ as well as their Manichean conception of politics (De la Torre, 2000, pp. 21–22; Kaltwasser, 2013; Mudde, 2004). As a full analysis of populism is beyond the purpose of this article, we here consider just one case of populism and its features relative to the generation of communicative power: the case of populist movements that emerge from and remain within civil society, and are an expression of dissensus relative to the official politics. What causes the emergence of a populist movement is also beyond the purpose of this article; however, it must be noticed from discursive theory that they presuppose already damaged structures of communication and that their configuration makes these worse.

The lack of democratic legitimacy on the part of populist movements, according to the discursive model of democracy as we understand it, is related to the subversion of the communicative conditions they presuppose and promote. A first requirement for the generation of communicative power is the existence of actual practices of communicative exchange, open discussion; that is, deliberative practices (Günther, 1998). The promotion of such practices is not a typical feature of populist movements but, were we to concede that these practices take place within them, we should ask under what communicative conditions they do so. In first place, the presence of strong—and sometimes also charismatic—leaderships that arrogate to themselves the right to interpret the will of the people subverts the conditions for discussion in a serious way. It introduces a principle of authority into public discussion, for which the outcome of discussion is ultimately determined by the leader's will and not by the better argument. No rational conviction arises from a communicative exchange where there are privileges of this kind. Strong leaderships collide with the principle of individual autonomy, on which the very idea of modern democracy relies. The more pronounced the personalistic characteristics in the configuration of the populist movement, the deeper is the damage done to the speech situations where the formation of public opinion takes place, and therefore, the less propitious they are to generating communicative power. The speech situation where the participants do not proceed autonomously, as holders of their equal condition of co-speakers and co-legislators (in a broad sense), but as hearers of one who arrogates to herself the expression of their thinking, interests and arguments, may be able to generate beliefs—even very strong ones—but not rational convictions, that is, not communicative power. The formation of a rational agreement requires as much reciprocity between the participants as possible.

In the second place, the configuration of populist movements damages communicative conditions through a sphere of the topics that are excluded from discussion. As we know, their starting point is a preconceived and non-disputable

definition of who the people are, excluding discussion of the whole sphere of ethical discourses. This sphere consists in a "hermeneutic explication of the self-understanding of our historically transmitted form of life," and deliberation in this respect serves to specify and weight collective goals through the critical appropriation of tradition (Habermas, 2006, p. 161). The populist conception of peoplehood closes the very possibility of such critical appropriation; instead, it holds a non-disputable definition of the people, its traditions and goals. Through this arbitrary exclusion of what can be discussed, populist movements impoverish the plurality of points of view and arguments, and with this, the epistemic value of any communicative exchange.

In addition, due to the Manichean conception of politics in which society is considered to be separated into two homogenous and antagonistic camps, "the pure people" and "the corrupt elite" (Mudde, 2004, p. 543), populist movements disqualify every voice that dissents from the populist movement's discourse which arrogates for itself the right to determine who the people are, what defines them and what they want. Any dissonant voice belongs not to the people but to the elite, the establishment, the oligarchy, and so on. The rational strength or weakness of what a dissonant voice says is less important than its condition of being dissonant, because it is seen as threatening the unity of the people. Thus, any expression of dissensus is suspected of coming from outside the authentic people, and room for legitimate disagreement is dramatically reduced. In other words, this conception of the people, which is central to populist movements, entails an anti-pluralism that tends to diminish the expression of different points of view and, because of that, the configuration of populist movements prevents the better argument from determining the outcome of the discussion. Thus, even if there were a broad deliberation in populist movements and between them and the rest of society, such deliberation would be unable to generate communicative power to the extent that the above-mentioned features of populism prevail.

These standards for assessing the legitimacy of the claims of populist movements are no more than some concretizations of the postulates of the meta-critical canon of the ideal speech situation. Indeed, the presence of leaderships in these movements collides with the reciprocity postulates, which require a suspension of situations of inequality and subordination. The premise of an undisputable conception of who the people are as well as the reduction of the space for legitimate disagreement collides with the symmetry postulates, which require that each participant must have an equal chance to make assertions, recommendations, and explanations, and to challenge justifications (Benhabib, 1985, p. 87).

As we have shown, our analysis of the concept of communicative power sheds light on the criticism of being hostile to dissensus from a very different angle. It gets rid of the rigid interpretation of Habermas's model, for which the political system would be an always legitimate-consensus machine that imposes the consensus generated therein over the whole society and dismisses the persisting forms of dissensus (Thomassen, 2007). By showing that civil society can also be a source of communicative power demanding from the political system more legitimate binding norms—even the source of its purest form, if the structures of communication are undamaged, our interpretation shows that in Habermas's model some deep forms of dissensus—that may even be considered legitimate cases of civil disobedience—are welcome. By pointing out the practices of justification within civil society, it also abolishes the rigid interpretation provided by the narrow reading, which overestimates the formal mechanisms of the political system to generate legitimate law. But our interpretation also shows, unlike that of White and Farr, that there may be some other forms of deep dissensus, such as those expressed in populist movements. These movements, which emerge from a society where the structures of communication are already damaged, are not only incapable of generating a pure form of communicative power but are also incapable of generating any kind of communicative power whatsoever, since their configuration undermines the very conditions of its generation, and therefore, they lack democratic legitimacy.⁹

For us, the image of civil society provided in Habermas's model doesn't look like an inert and lifeless civil society (as the narrow reading suggests), nor as an always active and progressive one (as the positions of Thomassen, Mouffe, and White & Farr presuppose). The same happens with the image of the political system and constitutional states. On the one hand, the political institutions of a constitutional state facilitate the generation of communicative power, and therefore, the making of legitimate law. On the other, not every consensus generated within the political system is backed up by communicative power, given that the procedures can fail. For this reason, constitutional states, which are ongoing projects, need actualization as well as a guardian of their legitimacy, that is, a vibrant civil society.

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NOTES

¹ An important precedent of a radical interpretation of Habermas's critical theory is *Civil Society and Political Theory* (Cohen & Arato, 1992), according to which the critical public opinion generated in civil society is central to democratic legitimacy. The recurrent references to this work in *Between Facts and Norms* show that Habermas also understood his own theory in radical terms.

² In this section I focus on the 1977 work, where the concept of communicative power first occurs in Habermas's theory. It should be pointed out, however, that the idea of the communicative genesis of political public opinion in civil society is present in Habermas's early work of 1962, though with a distinct terminology.

³ The assertion that the informal public sphere is capable of generating communicative power by itself does not mean that it is capable of making law by itself. Indeed, it should be noticed that the generation of communicative power should never be confused with law making or with ruling. Communicative power can appear between a group of speakers without ever being converted into a binding norm. In the same way, law and rule are possible without communicative power. The distinction between communicative power, on the one hand, and ruling and law making, on the other, is due to the force on which they principally rely, that is, the unforced force of reasons and state coercion, respectively. Certainly, law-making processes can rely on communicative power, and therefore append to the force of law the unforced force of reasons. In that case we are in presence of a legitimate law.

⁴ Habermas justifies the necessity of the state in complex societies with several arguments, which can be classified into two levels of argumentation, a normative level and a sociological one. Summarizing those arguments would exceed the purpose and possibilities of this work. However, one of the moments at which both levels seem to converge is in his reconstruction of the systems of rights. The self-understanding of modern legal orders starts from citizens' rights, where private and political rights are co-originally constituted. This implies the necessity of the state "because rights must be enforced, because the legal community needs both a collective self-maintenance and an organized judiciary, and because political will formation issues programs that must be implemented" (see Habermas, 1996, p. 134).

⁵ Unlike communicative power, which arises from communicative action, power as the steering media of the administrative system is a substitute of language. In fact, Habermas states that "Media such as money or power can largely spare us the costs of dissensus because they uncouple the coordination of action from consensus formation in language and neutralize it against the alternatives of achieved versus failed agreement . . . they are a substitute for special functions of language. Language serves as a model for such media in other respects as well. Media simulate some of its features—for example, the symbolic embodiment of semantic contents or the structure of raising and redeeming claims—while others are not reproduced—above all, the internal structure of mutual understanding which terminates in the recognition of criticizable validity claims and is embedded in a lifeworld context. The transfer of action coordination from ordinary language to steering media has the effect of uncoupling interaction from lifeworld contexts" (Habermas, 1987, p. 263).

⁶ It could be objected to our interpretation that, for Habermas, the exercise of coercive political power is legitimate in as far as citizens can independently endorse such power for reasons they themselves can recognize as rationally acceptable, and that such endorsement safeguards the unforced force of reason. Indeed, according to Habermas, a legitimate state only can force the individuals to follow the law without interfering with their motives for doing so. The system of rights, especially the freedom of conscience, protects them against such interference. In this sense, if the individuals can follow the law according to private reasons, egoistic or not, the state enjoys some legitimacy. But this objection disregards another central line of reasoning of Habermas's model. For Habermas, if the law is followed only because of citizens' private reasons, that is, the reasons they have without entering into a communicative exchange, it will, sooner or later, become illegitimate. Indeed, Habermas asserts that "The democratic procedure of lawmaking relies on citizens' making use of their communicative and participatory rights also with an orientation toward the common good, an attitude that can indeed be politically called for but not legally compelled. . . . Law can be preserved as legitimate only if enfranchised citizens switch from the role of private legal subjects and take the perspective of participants who are engaged in the process of reaching understanding about the rules for their life in common. . . . This explains why, in the proceduralist paradigm of law, the structures of a vibrant civil society and an unsubverted political public sphere must bear a good portion of the normative expectations, especially the burden of a normatively expected democratic genesis of law" (Habermas, 1996, p. 461). This tension between the impossibility of legally compelling individuals to orientate themselves towards the common good and the necessity of this orientation in order to preserve the

legitimacy of law is what Habermas identifies as the paradoxical nature of modern law. Against Weber's understanding of the emergence of legitimacy from legality, the discursive theory opposes "the evidence that democratic institutions of freedom disintegrate without the initiatives of a population accustomed to freedom" (Habermas, 1996, p. 131). In addition, we must point out something else about the reasons that individuals can recognize themselves as rationally acceptable. These reasons are private in two senses. The first of these is egoistic, that is, a law could be rationally acceptable from the perspective of a strategic rationality. In this case these reasons are private and not public because they cannot be shared by everyone involved. Second, they are private reasons because they lack the social dimension of discussion. Even if these reasons were not egoistic, even if they were orientated to the common good, they are private in the sense that they didn't arise from actual communicative exchange, where individuals had actual illocutionary obligations: "the simple fact of the acceptance of a validity claim does not suffice for the constitution of power as long as it is ego alone who accepts a validity claim raised by alter" (see Günther, 1998, pp. 247–248). Thus, a political power endorsed by individuals according to their own private reasons enjoys some legitimacy but less than a political power that is in line with the communicative power generated through both an energetic civil society and the political system. Moreover, according to Habermas's model, it could be questioned whether those private reasons are reasons in a strict sense, since there is no room for a monological or solipsist conception of rationality within the Habermasian paradigm. For Habermas, the social dimension is constitutive of rationality. It follows that a situation in which political power is endorsed according to private reasons doesn't entirely safeguard the unforced force of reason because these reasons, untested through actual communicative exchange, are suspect.

⁷ I will take the definition of populism as unproblematic. Certainly, the concept of populism is one of the most contested and controversial political theory, but a better definition is beyond the purpose of this article. In any case, my analysis applies to the social movements with the above-mentioned features, and either they should or should not be called populist.

⁸ For many scholars the presence of a leader is a defining feature of populism. Robert Barr, for instance, defines populism as a "a mass movement led by an outsider or maverick seeking to gain or maintain power by using anti-establishment appeals and plebiscitarian linkages" (see Barr, 2009, 2009, p. 38; De la Torre, 2007; Roberts, 2006; Weyland, 2001). The charismatic condition of populist leaders has also been pointed out, but not as a defining feature; it is said that though the charismatic leadership is common among populists, it facilitates rather than defines populism (see, for instance, Mudde, 2004, p. 545).

⁹ The populist movements may pose questions about the current state of democracy that are worthy of consideration but this is a very different issue from their democratic illegitimacy.

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