Beyond the Public Sphere: Habermas, Locke, and Tacit Consent
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In Revue d’histoire moderne et contemporaine Volume 59-4, Issue 4, 2012, pages 7 to 32
Translated from the French by Cadenza Academic Translations

This document is the English version of:

Available online at:

How to cite this article:

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Beyond the Public Sphere: Habermas, Locke, and Tacit Consent

Kirk Wettters’s *The Opinion System*, published in 2008, occupies a special place in the panorama of recent studies on public opinion.¹ Halfway between a literary and a philosophical approach, the work of this Yale Germanist searches for the keys to answers to a line of questions that are currently arising. The crisis of the universalist character of the democratic model – after the Iraq war and its impact on the world order – has revealed, according to Wettters, the ineffectiveness of the concept of public opinion that emerged as an academic and journalistic commonplace during the last decades of the twentieth century.² His rereading of philosophical and literary texts of the nineteenth and twentieth centuries (Wieland, Hölderlin, Benjamin, Derrida), which is accompanied by a series of etymological digressions on the classic texts, is intended to shed light on representations of public opinion that have become implicit or discordant with respect to common sense, and thereby to allow this phenomenon to be conceptualized in a new and more effective way. The book *Strukturwandel der Öffentlichkeit* [The Structural Transformation of the Public Sphere] (1962) has contributed the most to founding the notion of public opinion that is dominant today. In this book, Wettters draws the reader’s attention to how Jürgen Habermas reads John Locke’s “law of opinion.”

Habermas excludes Locke’s law as a *private* law and unwritten norm, emphasizing that Locke also calls it the law of “private censure.” As a private law, the law of opinion is not directly available for deliberation and reform, and for this reason Habermas disqualifies its modes of publicness.³

Kirk Wettters is probably the first of Habermas’s readers to report what can be considered a “dead end” of his speech, which is probably worth some

2. Wettters, *The Opinion System*, xvi, 244.

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attention. In this article, I propose to analyze the consequences of such an interpretation, from an essentially historiographical perspective. Half a century after its publication, Habermas’s classic work is still the subject of controversy, especially among historians of modernity. However, as Andreas Gestrich points out, historians have found no convincing alternative to the German philosopher’s “magisterial narrative,” and most of his critics ultimately seem to share the theoretical presuppositions of his argument. I would like to highlight here the idea that only a more precise knowledge of what Habermas considers unassimilable to his narrative, and therefore his theory, can be used to distinguish alternative ways of thinking about public opinion.

**HABERMAS, KOSELLECK, AND THE LAW OF OPINION**

In chapter 28 of the second book of the *Essay Concerning Human Understanding*, after describing the divine law and civil law, Locke focuses his thoughts on the “law of opinion or reputation,” which is the most universal and the most restrictive of all the laws. This is a highly debated text because Locke says that in most observable cases, individuals base their actions not on rational and lofty principles, but on moral rules and conventions subject to the dominant opinions within each human society or group. Indeed, Locke defines the “law of opinion” as:

… this approbation or dislike, praise or blame, which, by a secret and tacit consent, establishes itself in the several societies, tribes, and clubs of men in the world: whereby several actions come to find credit or disgrace amongst them, according to the judgment, maxims, or fashion of that place.

Outraged, many readers accused Locke of confusing the principles of morality and justice. James Tyrrell, a friend of Locke, informed him of the disagreement of many “thinking men at Oxford,” and observed that “the tacite and general consent of that whole nation” was not a sufficient reason to assign morally reprehensible actions the status of “virtue.” For Shaftesbury, the “law of opinion” merely confirmed John Locke’s reputation as a skeptical thinker.

For his part, Habermas addresses the “law of opinion” in a chapter of *Strukturwandel der Öffentlichkeit* dedicated to transformations of the concept of public opinion, the “prehistory” of which, he says, will be “known only in its broad outline” until the eighteenth century. It is necessary to remember

7. Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. trans. Thomas Burger and Frederick Lawrence (Cambridge, MA: MIT Press,
that Habermas’s judgment of Locke appears only a few years after that of Reinhart Koselleck in a book that influenced him significantly: *Kritik und Krise* (*Critique and Crisis*, 1959). Although often presented as complementary, both studies turn a rather different gaze on Locke. Following the example of Carl Schmitt, Koselleck focuses on the root causes of crises in modern societies. It is for this reason that in the formula by which Locke defines and legitimizes the power of the “law of opinion” (“a secret and tacit consent”), Koselleck particularly sees the expression of “bourgeois” morals formed in the Masonic lodges where ordinary citizens question the laws of the state. Instead, the young Habermas is interested in the ideal features of modern societies, namely public opinion in the sense of “a category that is typical of an epoch,” the eighteenth century, in its transformation into the state of liberal jurisprudence in the nineteenth century and, ultimately, in its degeneration in developed capitalist societies. Thus, unlike Koselleck, Habermas’s rejection of Locke’s “law of opinion” is not only political, but first and foremost concerns the nature of this opinion:

But nevertheless the expression “public opinion” was lacking here, and not without reason. Law of opinion was by no means meant as law of public opinion; for “opinion” neither arose in public discussion – it became binding instead “by a secret and tacit consent” – nor was it applied in some way to the laws of the state, because it was actually grounded in the “consent of private men who have not authority enough to make a law,” ... contributing to it, far from requiring participation in a process of critical debate, demanded nothing more than the simple uttering of precisely those “habits” that later on public opinion would critically oppose as prejudices.

Habermas’s reading of Locke thus leads him to encounter an object foreign to the “prehistory” of the concept of public opinion that, in *Structural Transformation*, provides the genealogy of modern politics. Inquiring after the real reason for Habermas’s rejection of Locke’s “law of opinion” first requires a deeper understanding of this collective opinion, the primary quality of which can be reduced to its reliance on a “secret and tacit consent.” This phrase lends itself to divergent interpretations. For Koselleck, it testifies to the secret and private character of the laws of the bourgeois morality, which aspires to

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10. The reference to Schmitt, the subject of Koselleck’s intellectual debt appears in the preface of the book in 1959, but is absent from the French translation; on Schmitt’s part in the conception of *Critique and Crisis* (*Kritik und Krise*), see La Vopa, “Conceiving a Public,” 85.


public and universal legitimacy, while according to Habermas, it is the expression of atavistic customs and prejudices, which are refractory to discourse and reason. However, both Koselleck and Habermas ignore the sources of the law of opinion, even if the latter – as we shall see – is much closer to the literal meaning of Locke’s text.

**The Ethnology of Opinion**

A recent study by Daniel Carey sheds new light on the sources of the Lockean view. During the summer of 1683, while drafting the *Essay Concerning Human Understanding*, Locke delves into ethnography, reading accounts of voyages to Asia and the New World. What Locke seeks to demonstrate by reference to these new textual authorities is primarily that the idea of a single morality is constantly contradicted by an extraordinary variety of ethnic cases in which good and evil are manifested in different and contradictory ways. In this regard, he noted in his *Essay* (II, 28, 11):

> Though that passes for vice in one country which is counted a virtue or at least not vice in another yet every where, virtue and praise, vice and blame go together. Virtue is every where that which is thought praise-worthy; and nothing else but that which has the allowance of public esteem is called virtue.

Among these sources, Locke cites in his journal Pierre Martyr’s *De orbe novo decades* (1530), which chronicles the cannibalistic habits of the inhabitants of the Caribbean, and in particular the *Histoire d’un voyage fait en la terre du Brésil* (1578) by the Calvinist Jean de Léry. It is precisely while reading this text that Locke notes in his diary that “virtue is but the name of such actings as are most conducing to the goods of the society & are therefore by that society recommended by all meanes to the practise of the people.” Locke’s observation refers to chapter 14 of Léry’s narrative (*De la guerre, combat et hardiesse des sauvages brésiliens*), dedicated to the traditions of Tupinamba, a people of the Amazon forest who, according to Léry, are ignorant of any notion of God or law, and who practice war for the purpose of cannibalism. When, in the *Essay Concerning Human Understanding*, Locke speaks of the “law of opinion” as the “secret and tacit consent” that is established within different human societies, tribes, and groups, he is thinking especially of this ethnic example, which is also one of the sources of Montaigne’s famous essay

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on cannibals.\textsuperscript{18} The binding nature of the unwritten law, as Locke noted in his diary, orients collective behavior so as to distinguish what is good and virtuous for the group, especially in the emerging description of an assembly led by the elders of the tribe. In Léry’s narrative, the latter benefit from an incontestable authority: “nature has taught them (and this was also strictly observed among the Lacedaemonians) that the old men, whom they call \textit{peore-rou-picheh}, because of their experience of the past must be respected.” The elders urge the youths to join in a cannibalistic war conceived as an act of piety toward their ancestors.\textsuperscript{19}

Thus, for Locke, as a reader of Léry, the worship of ancestors, tacitly accepted by all as a form of moral obligation, constitutes a revealing example of the “law of opinion,” namely a customary opinion that guides the actions of the community, allowing them to attribute virtue to such an apparently execrable practice as cannibalism. The nature of this collective, tacit, and normative opinion becomes clearer in comparison with another testimony, dating from a few decades earlier, but located in a similar environment. Through this chronologically regressive approach, I intend to highlight a “prehistory” of public opinion that is very different, as we shall see, from that proposed by Habermas.

\textbf{THE OPINION OF THE FATHERS}

Between 1502 and 1503, the Latin translation of Amerigo Vespucci’s letter the \textit{Mundus Novus} was published, probably in Florence.\textsuperscript{20} During the exploration of the northern coast of Brazil, Vespucci enters into contact with the same people who will be at the heart of Léry’s book: the Tupinamba. The elements of similarity between the two stories are numerous and surprising, especially with regard to the description of the structure and operation of the tribal society.\textsuperscript{21} Vespucci observes, as Léry will later also do, that in a society ignorant of religion, institutions, and commerce, the elders play the determining role in

\textsuperscript{19} Léry, \textit{History of a Voyage to the Land of Brazil}, 113: “‘What!’ they will say, speaking each in turn, without interrupting each other by a single word, ‘have our ancestors, who have not only so valiantly fought, but also subjugated, killed, and eaten so many enemies, left us their example so that we should stay at home, effeminate and cowardly at heart?’”  
the process of decision making, as well as in the legitimation of the cannibal war against the neighboring peoples.

In the various editions of this letter, the reality seen by Vespucci takes on different forms. In a handwritten edition in Italian, probably earlier than all the others, the emphasis is on the persuasive power of the elders’ speech. First printed in the letter, published in Latin edition, the translator notes that this speech takes place in the context of an assembly of all of the people (contionibus). In the Venetian edition of Gian Battista Ramusio (1550), the fathers’ persuasive argumentation is defined as opinion (openione). In any case, what Vespucci seems to realize is that the decision to go to war resulting from the tribal assembly is not the product of an exchange of opinions, that is to say a debate, but of an opinion (of which the seniors are the guardians and authorized spokespersons) that precedes it, and that, by its force, validates it and renders it inevitable.

As another letter probably written in 1502 demonstrates, in this customary opinion, Vespucci discerns a law that is fundamental to the functioning of these communities. Addressing skeptical interlocutors in an attempt to validate his observations, Vespucci adopts the dialogic and agonistic form of Aristotelian disputatio:

Because when I maintain that they make war, one people against the other, and that they capture one another, it may seem to a detractor that I contradict myself, since warring and capturing can only come from a desire to dominate and from the greed for temporal goods: know that they do it for none of these reasons; and when I wished to learn from them the cause of their wars, they replied that they knew nothing but that in ancient times their forefathers had done so, and they did so themselves for the sake of their memory; nor did they offer me any other reason, and I believe they do it in order to eat each other, as they do, their common food being human flesh: a cruel and irrational practice.

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22. There is an Italian manuscript preserved in the Municipal Library of Ferrara and published by Giuseppe Ferraro: [Relazione delle scoperte fatte da C. Colombo, da A. Vespucci e da altri dal 1492 al 1506 tratta dai manoscritti della Biblioteca di Ferrara](Bologna: Romagnoli, 1875), 138: “I vecchi cum certe sue persuasione, piegano i giovani a quello che loro vogliono, et alle battaglie gli accendono.”


Obviously Vespucci feared contradicting himself, since his observation on the causes of conflict between the different indigenous populations is perceived by his interlocutors as literally paradoxical, that is to say, in contradiction with the “common opinion” that has become a commonplace, a proverbial expression, according to which money and greed are at once the origin and end of war. However, in Aristotelian terms, the “common opinion” is the premise of all dialectical discourse, and those who contradict it—as does Vespucci in his letter—risk falling into a deviant, potentially implausible opinion, that is, a paradox. It is thus in trying to circumvent an aporia that Vespucci informs his readers of the existence of a collective opinion that contradicts an opinion commonly accepted as true, an opinion which is not—or not only—the result of a speech, but rather the expression of an atavistic custom (modo), contrary to humanity and reason (crudelle e inrazionabile), yet which is inscribed within the constitutive normative heritage of this community.

The similarities between this description and Léry’s later description are obvious: in both cases, the viewer is confronted with the presence of a pre-discursive opinion that has the power to establish as necessary and virtuous for the collective what an outsider considers aberrant. In both cases, the filter used to make sense of this strange reality is probably the same.

**The Law of Opinion and Nomos**

“Nature has taught them (and this was also strictly observed among the Lacedaemonians).” Thus Léry describes the Tupinamba assembly, establishing a parallel with ancient history. This is probably an allusion to Herodotus, who, in the *Histories* (1.65) speaks of the authority of the elders (gerontes) in the constitution of Sparta. Moreover, in the context of war and war councils (7.104) similar to the one mentioned, the Greek Demaratus tries to explain to Xerxes that the Lacedaemonians’ stubborn inclination to fight is due to their respect for an ancient and tacit rule:


For though free, they are not absolutely free; for they have a master over them, custom [nomos], which they fear much more than your subjects do you. They do, accordingly, whatever it enjoins; and it ever enjoins the same thing, forbidding them to fly from battle before any number of men, but to remain in their ranks, and conquer or die.30

In the context of public deliberation, the nomos, the despotic law of custom, exerts its influence on the conscious opinions and actions of individuals. Very effective, the nomos of the Lacedaemonians, that is to say the atavistic and collective predisposition for war, is fully internalized to the point of functioning as a kind of natural law of the group. In the Histoire d’un voyage fait en la terre du Brésil, we find many allusions to classical culture, and Herodotus’s Histories, translated into French for the first time by Pierre Saliat in 1556, is probably among Léry’s references.31 However, a manuscript copy of Histories in Greek can be found in the library of Vespucci’s uncle and teacher, Giorgio Antonio, and nothing prevents us from imagining that Herodotus is one of his implicit authorities as well.32

First Vespucci and then Léry seem to make an almost ethnographic use of Herodotean nomos to make sense of a deviant opinion that refers to a standard of behavior that is ancestral and prior to discourse.33 A century later, on the basis of ethnographic sources, and especially through his reading of Léry, Locke manages to identify a baffling case of collective opinion, a case that might, by its apparent singularity, destabilize what seems obvious and shed light on what is, like the invariable laws of nature, a general law of the functioning of human societies.34

Effaced and then recovered through a process of distancing, this category of collective opinion is a kind of touchstone that enables reflections on the nature of public opinion and its still-uncertain relation to discourse and reason. It is by observing traditional customs that Vespucci discovers an exception to the...
Aristotelian common opinion, the rational and probable opinion of the scholars. Through his reading of Léry, Locke concludes that an opinion generally shared by a human group is a sovereign norm that regulates the structure of social communication, and that in the variety of locally observable cases, men without exception based their convictions on a substrate of implicit and potentially erroneous opinions.  

HABERMAS, LOCKE, AND SCHMITT

In his reading of Locke, Habermas seems to guess at the ethnological density of the law of opinion. Indeed, in *Structural Transformation*, he observes that “Opinion meint das informelle Geflecht der folkways, deren indirekte soziale Kontrolle wirksam ist als die formelle Zensur unter Androhung kirchlicher oder staatlicher Sanktionen.” This assertion is made without a citation, but it probably refers to the work of American sociologist and anthropologist William Graham Sumner titled *Folkways*. The implicit, normative, and coercive character of folkways, which are the product of purely local cultural conventions, makes this notion similar to the Herodotean *nomos*.

However, if the young Habermas is aware of the concept of *nomos*, it is probably due to the important study he devotes to Carl Schmitt in 1950: *Der Nomos der Erde*. In this book of late maturity, which attempts to define the foundations of international law, Schmitt is interested in *nomos* in the sense of “the immediate form in which the political and social order of a people becomes spatially visible.” In this case, *nomos* is anterior and superior to the mediation of speech and the written law, the “fundamental constitution of a people or a country.” More specifically, in a chapter devoted to the history of this concept, Schmitt recalls that the Herodotean sense of *nomos* is associated with the description of the “difference of customs and habits of diverse peoples,” and that it has the value of sovereign law, identifying “the divisional

35. “And if the opinions and persuasions of others whom we know and think well of, be a ground of assent, men have reason to be Heathens in Japan, Mahometans in Turkey, Papists in Spain, Protestants in England, and Lutherans in Sweden” (Locke, *An Essay Concerning Human Understanding*, 598).


and distinguishing orders whose particularity necessarily would be of interest” to the traveler as well as the historian.40

Is it possible that, without mentioning it, Habermas actually sees in the law of opinion, when conceived as the law of the irreducible cultural specificity of each human tribe, group, or society, the silhouette of Schmitt’s nomos? In works on the relations between the young Habermas and former jurist of the Third Reich, always remote and conflictual,41 we rarely find references to the influence of Schmitt’s thoughts on public opinion in the genesis of Strukturwandel der Öffentlichkeit. Habermas explicitly refers to Schmitt’s Constitutional Theory (Verfassungslehre, 1928) to corroborate his description of “publicity involved in representation,” that is to say, the form anterior to the “bourgeois public sphere,” which historically coincided with the Middle Ages, wherein “publicity” is the monopoly of political or religious authority.42 “The concept of representation in this sense” – Habermas explains, referring to the work of Schmitt – “has been preserved down to the most recent constitutional doctrine, according to which representation can ‘occur only in public.’”43 In this historical setting, says Habermas, the people’s only form of public participation is that of ritual and ceremonial consent.44 Here we are very close to Schmitt’s concept of public opinion. In fact, still in the Constitutional Theory (XVIII, 3, 3), Schmitt speaks of democracy as the “rule of public opinion,” and of the public as “the modern type of acclamation:”

Public opinion is the modern type of acclamation. It is perhaps a diffuse type, and its problem is resolved neither sociologically nor in terms of public law. However, its essence and political significance lie in the fact that it can be understood as an acclamation. There is no democracy and no state without public opinion, as there is no state without acclamation. Public opinion arises and exists in an “unorganized” form. Precisely like acclamation, it would be deprived of its nature if it became a type of official function.45

We have seen how, in criticizing Locke, Habermas emphasizes the non-public nature of the law of opinion, which “neither arose in public discussion” nor from participation in a debate of opinions, but from an agreement that is formed, on a case-by-case basis, “by a secret and tacit consent” around shared values. The indifference of these prepolitical values, which constitute the ethos of each community with regard to the practice of democratic discussion and deliberation, not only allows Habermas to place it within the field of

40. Schmitt, Nomos of the Earth, 77-78.
42. Habermas, Structural Transformation of the Public Sphere, 8.
43. Habermas, Structural Transformation of the Public Sphere, 7.
44. Habermas, Structural Transformation of the Public Sphere, 7. For observations on this point, see Patrick Boucheron and Nicolas Offenstadt, “Introduction générale: une histoire de l’échange politique au Moyen Âge,” in Boucheron and Offenstadt, L’Espace public au Moyen Âge, 6.
“prejudices,” but on a theoretical level, also makes possible a reconciliation between the law of opinion and the organic concept of public opinion discussed in *Constitutional Theory*.

Ultimately, when reading Locke (perhaps while thinking of Schmitt), Habermas seems to encounter an object which, by its irreducible character, is able to tell what a “public” opinion cannot be, namely the result of an agreement that arises among a group of people independently from the use of speech and reason. In the somber historical parable of public opinion traced by Habermas’s *Structural Transformation*, the Lockean law of opinion becomes the forerunner of the opinions manifested in plebiscites, and of the degraded public of contemporary society, who are purely “receptive,” consensual, and manipulable. Thus, he remarks: “Such a group is as little a ‘public’ as were those formations of pre-bourgeois society in which the ancient opinions were formed, secure in their tradition, and circulated unpolemically with the effect of ‘laws of opinion.’”

This exclusion of the law of opinion from the “prehistory” of public opinion may be necessary and inevitable for Habermas, but it carries serious consequences, because it is from this choice that it becomes possible to identify the specific figure of collective opinion that possesses all the attributes necessary to qualify it as “public.”

**Habermasian Public Opinion**

In the prehistory of public opinion traced by *Structural Transformation*, Habermas assigns a key role to the notion of opinion developed by Pierre Bayle in his *Dictionnaire historique et critique*. Here, says Habermas, is where we first find a social use of criticism in the second half of the eighteenth century, at the end of a nonlinear lexical and conceptual path, and can eventually identify it with the “opinion of the public that put its reason to use,” that is to say with “public opinion” properly speaking.

We must note that for Habermas, the sense of public opinion as a social practice of pro-and-contra debate also constitutes an orthodoxy allowing us to judge the good or bad use of this term. Thus, among the Physiocrats, public opinion “receive[s] the strict meaning of an opinion purified through critical discussion in the public sphere to constitute a true opinion.” By contrast, in *The Social Contract* (IV, 7), Rousseau speaks of “opinion publique,” albeit this is really an “unpublic opinion,” namely “the opinion of simple morals.

46. Habermas, *Structural Transformation of the Public Sphere*, 246.
48. Habermas, *Structural Transformation of the Public Sphere*, 94.
49. Habermas, *Structural Transformation of the Public Sphere*, 95.
and of the good soul” – a meaning that reveals a surprising and dangerous proximity to Locke’s law of opinion.\(^{50}\) But it is especially in the Kantian principle of publicity (Öffentlichkeit) that Habermas recognizes his main source of inspiration. Öffentlichkeit is indeed the principle of social mediation in the Enlightenment, as the emancipation of individuals through the public use of reason can only subsist under a regime of free speech, as Habermas points out, citing Kant:

Certainly one may say, “Freedom to speak or write can be taken from us by a superior power, but never the freedom to think!” But how much, and how correctly, would we think if we did not think as it were in common with others, with whom we mutually communicate?\(^{51}\)

Critics have often called attention to the influence of Kantian philosophy on the construction of the Habermasian paradigm of public opinion.\(^{52}\) However, for a German intellectual like Habermas, educated after the catastrophe of Nazi Germany, Kant’s reflection on the socially structuring power of discursive reason probably has as much of a political as a philosophical value. As is testified, for example, by Victor Klemperer, a Jewish professor of philology imbued with the ideals of the Enlightenment, Nazi totalitarianism was imposed in everyday life through an insensible but systematic deconstruction of the discursive public sphere.\(^{53}\) And in Minima Moralia, a book that exercised a certain influence on the young Habermas, in an aphorism devoted to the unspeakable things that can be said and heard in a casual conversation in the passenger car of a train, Adorno considers consent through silence to be a primordial form of treason.\(^{54}\)

Inclinations, and intellectual and personal choices, thus lead Habermas to a specific figure of collective opinion, an opinion that is “public” because it results from a discursive process, which is also rational and critical because of its discursive character. Indeed, the core of Habermas’s theory of the public sphere is constituted by the intuition that public speech and open communication

\(^{50}\) Habermas says that “Locke’s ‘Law of Opinion’ became sovereign by way of Rousseau’s Con</noscript>trat Social.” In fact, Habermas states that the chapter devoted to censorship is “the only chapter in the Con</noscript>trat Social in which ‘opinion publique’ was mentioned. The commentary on it in fact reveals plainly an almost verbatim agreement with Locke’s ‘Law of Opinion’” (Habermas, Structural Transformation of the Public Sphere, 97–98).

\(^{51}\) Kant, quoted in Habermas, Structural Transformation of the Public Sphere, 104.


among individuals who do not share the same ideas are acts that resist power, because they necessarily initiate the ethical and cognitive processes that form the foundations of civil society.\textsuperscript{55}

In the historical perspective developed in \textit{Structural Transformation}, this type of public opinion is related to a specific configuration of the public sphere, which experiences just one fleeting epiphany in the context of the reading practices and sociability of Enlightenment Europe. However, over half a century Habermas gradually softened the pessimistic vision of the contemporary world that was characteristic of his first book; the student movements of the late 1960s and the fall of the Berlin Wall in particular strengthened him in his belief that resources are at work in all civil societies that can respond to the pressures of power and produce circuits of communication not subject to manipulation.\textsuperscript{56} In his ambitious projects of the 1980s and 1990s, Habermas consistently renewed his initial intuition while emphasizing the potential of rationality – a kind of anthropological constant – that is present in the linguistic act and in everyday communicative practices.\textsuperscript{57} In chapter 8 of \textit{Faktizität und Geltung} (\textit{Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy}, 1992/1998), his most substantive work on public opinion since \textit{Structural Transformation}, Habermas takes into account the contemporary transformations of the public sphere defined by the presence of new technologies and new social actors. This leads to a very basic and universal definition of the discursive dimension, “a network for communicating information and points of view (i.e., opinions),” and a “social phenomenon,” which depends for its survival on “everyday communicative practice” in which anyone can participate.\textsuperscript{58}

\textbf{THE SPIRAL OF SILENCE}

Habermas is the last great living German philosopher. The influence of his theories in the academic world is inseparable from the authority he has accumulated in the media as a polemical defender of modernity: it is under this title that we have seen him intervene in debates on nuclear proliferation, the Holocaust, “constitutional patriotism,” and the role of religion in

\begin{itemize}
\item \textsuperscript{55} Stephen Haber, “Pour historiciser l’Espace public de Habermas,” in Boucheron and Offenstadt, \textit{L’Espace public au Moyen Âge}, 25-41, especially 30.
\item \textsuperscript{56} Haber, “Pour historiciser l’Espace public de Habermas,” 35. On this point, see also Walter Privitera, \textit{Il luogo della critica: per leggere Habermas} (Soveria Mannelli: Rubbettino, 1996), 29-30; and Hanco Jürgens, “Habermas For Historians: Four Approaches to His Work,” \textit{Forschungsberichte aus dem Duitsland Instituut Amsterdam} 5 (2009): 158-70.
\end{itemize}
postsecular societies. This public status may partly explain the minoritarian and marginal status of the voices that, in recent decades, have highlighted the weaknesses of the model, especially from a philosophical and sociological perspective. Public opinion, conceived as the product of a rational and critical discursive space, has been naturalized to the point that it has become unusual to refer to previous or alternative concepts, or even to ask whether this powerful representation of historical and social reality does not help to conceal other possible realities.

Among the dissenting voices, that of the sociologist Elisabeth Noelle-Neumann is today, for historians of the public sphere, almost inaudible. Her most famous book, Die Schweigespirale: Öffentliche Meinung. Unsere soziale Haut, published in 1980 and quickly translated in the United States, takes a clear position against a purely theoretical approach to phenomena of opinion. Noelle-Neumann's polemical intention with respect to Habermas (whom she was already criticizing in an article in 1979), while implicit, is nevertheless obvious, and it is motivated by a disagreement which is only partially philosophical in nature; indeed, the controversy between the two scholars has at times gone beyond the boundaries of the academic world. Without doubt, the reception of Noelle-Neumann's theories has been darkened by suspicions concerning her past as a collaborator with the Nazi regime. However, Die Schweigespirale is an interesting book that attempts to combine the technique of opinion polls with the reading of certain classic texts of political philosophy. The purpose of this original and debatable method is to seek traces of a measurable phenomenon in historical authors' observations through the practice of surveys that Noelle-Neumann calls the “spiral of silence;” one of these authors is none other than John Locke. The model of the “spiral of silence” gives rise to a representation of the public sphere that is the reverse of

59. Habermas subjects the influence exercised in and through the public sphere by “scientists” to a close analysis in Between Facts and Norms, 363-64.
60. For a recent anthology of these positions, see Jostein Gripsrud et al., eds., The Idea of the Public Sphere: A Reader (Lanham, MD: Lexington Books, 2010).
65. Habermas and Dews, Autonomy and Solidarity, 214.
67. Noelle-Neumann, The Spiral of Silence, x: “John Locke talks about the law of opinion, the law of reputation, the law of fashion, which is heeded more than any divine law or any law of state; this is because the individual will immediately be made to suffer for any violation of the law of fashion by losing the sympathy and esteem of his social environment. But there seems to have been little interest over the course of time in exploring the reasons why such behavior is vital if a social community is to survive.”
the Habermasian model. Indeed, in the reality that Noelle-Neumann studies, when individuals in a community make use of speech in public, they do not obey a discursive rationality enshrined in the dimension of sociability, but the primordial fear of isolation, from which she derives this seemingly paradoxical definition of public opinion: “Public opinions are attitudes or behaviors one must express in public if one is not to isolate oneself; in areas of controversy or change, public opinions are those attitudes one can express without running the danger of isolating oneself.”

Noelle-Neumann therefore postulates a link between expressed and unexpressed opinions: in her view, speech is only really public when it is the manifestation of a silent consent. Silence, more than speech, is thus constitutive of public opinion; a silent public opinion is at the heart of the processes that form the foundation of the social bond and political subordination. According to Noelle-Neumann, Locke’s discovery of the law of opinion sheds light on the obscured identity of opinions and collective behaviors within the dynamics that allow each community to identify itself with certain values and survive over time.

Noelle-Neumann does not specify whether the “spiral of silence” is only one of the historically possible forms of public opinion, but she is convinced that it corresponds to the face of that phenomenon investigated by political writers such as Machiavelli and David Hume. Here is a suggestion that deserves further study: what does it really mean to study tacit opinions from a historical perspective? In addition, with what degree of accuracy does the historical application of the Habermasian model allow us to reconstruct the realities to which certain historical agents testify? To attempt answers, we must first further analyze the conditions that led to the reception of Habermas’s theses among historians.

**Habermas for the Historians**

“The Court Society, written nearly fifty years ago, is … a book that has much to teach us,” Roger Chartier writes in the preface to the second French edition (1985) of Norbert Elias’s classic work, *Die höfische Gesellschaft (The Court Society, 1969/1983).* The verdict a historian might pronounce on

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70. Noelle-Neumann, *The Spiral of Silence*, 63: “The definition of public opinion remains to be completed; for in the field of consolidated traditions, morals, and, above all, norms, the opinions and behaviors of public opinion are opinions and behaviors that one must express or adopt if one is not going to isolate oneself.”
Structural Transformation of the Public Sphere today, fifty years after its publication, is certainly more mixed. However, there are analogies between the reception of Elias’s historiography and Habermas’s essays that are worth noting. Indeed, in both cases, we find works that were conceived as professorial theses (in sociology and philosophy, respectively), which expressed skepticism toward or even a criticism of the historiographical practices of their times. With particular reference to the history of ideas, Elias considers historiography to be a knowledge founded on arbitrary judgments that are “in accordance with the ideals and the underlying view of the world to which [the historian] subscribes among the factions of his time.”73 For his part, Habermas, who immediately asserts his distance from “the practice of historiography strictly speaking,”74 makes what might be described as a utilitarian use of historiography; the possibility of interacting with historians does not seem to be part of his intellectual project. However, these two books, which in different ways constitute totalizing enterprises, despite their late translations, arouse the interest and even the enthusiasm of historians, including historians of modernity, who find in them an influential support (perhaps because it comes from outside of their discipline) for their fragmentary empirical hypotheses.75

It is likely that Elias’s successful adaptation to the environment of the Ecole des Hautes Études en Sciences Sociales and the Annales in the early 1970s76 sets the precedent that lets us understand Habermas’s favorable reception among French historiographers in the second half of the 1980s.77 The apparent sociological evidence of the Habermasian “public sphere” is another factor that could explain the success of this adaptation in a historiography that was eager, at that time, to hear of a sociology of cultural practices. From this standpoint, Habermas’s integration into historical discourse is made under the sign of “methods” rather than concepts, favoring a pragmatic use of his theses. Indeed, Structural Transformation is adopted by historians stripped of its more troubling aspect: its observation of the decline of the public sphere as a critical forum in contemporary societies. But this is not all; unlike Elias,78 Habermas is adopted by historiography without historians feeling the need to historicize


77. As Daniel Roche notes, the French initiative to translate Habermas’s work is due to the philosopher Miguel Abensour (Roche, “L’Opinion publique,” 16).

78. See Chartier’s contextualization of Elias’s work (Chartier, “Social Figuration and Habitus,” 75).
him, that is, to explain him in the light of the German intellectual context of the 1960s. Perhaps this is because, as Keith Baker notes, *Structural Transformation* often appeared as an untimely book, paradoxically more relevant at the time of its reception by historians than it was at the time of its first publication.  

The season of studies initiated by the bicentenary of the French Revolution is the background for the philosopher’s successful incursion – favored by the English edition of *Structural Transformation* in 1989 – into the world of specialists in eighteenth-century history. Read in the light of the debate on the social and cultural origins of the French Revolution, the work of Habermas, which deals with the “literary public sphere” and is interested in the various forms of cultural consumption under the Ancien Régime, does indeed seem to anticipate the objects and historiographical issues of renewal (then current) by some twenty years.  

The social history of the book was one of the most favorable grounds for the reception of Habermas. In fact, this discipline, after experiencing an identity crisis, tends in the 1980s to become a history of practices of reading. One of the main proponents of this shift, Roger Chartier, dedicated a chapter of *The Cultural Origins of the French Revolution* to an analysis of Habermas’s theories, stressing the discursivity and rationality of Enlightenment public opinion. In his reading, the Habermasian ideal type is a tool for thinking in a unitary way about a series of processes that have in common the circulation, reading, and discussion of printed texts. In a 1995 article summarizing recent developments in the historiography of the book, Chartier emphasizes the complementary, but also legitimating and perspectival role of the Habermasian/Kantian paradigm with respect to new trends in historiography.  

With a rapidity that seems to compensate for its long period of latency in the intellectual debate, Habermas’s book became a “classic,” and was considered one of the founding narratives of the collective imaginary of the
Enlightenment and the birth of democratic political culture.\textsuperscript{85} One of the major consequences of this particular reception of \textit{Structural Transformation} is that the history of public opinion therefore became almost entirely intelligible only in the light of questions and methods belonging to the history of reading. However, in this context, the historian can recognize only this discursive, critical form of collective opinion as “public opinion.” Thus, inevitably, an entire reality observed by other ancient, modern, and even contemporary authors is condemned to remain in the shadows of historical discourse.

\textbf{Beyond Habermas}

Over the past twenty years, the historiography of the public sphere has indeed been shaped by its dialogue with Habermas. In truth, the conditions for a genuine dialogue between the philosopher and historians have never been established. On the one hand, Habermas has limited his responses to historians’ criticisms to reaffirming the validity of his theory, the core of which has, in his view, been confirmed by recent developments in historical research.\textsuperscript{86} On the other hand, for historians of the public sphere and public opinion, criticism of Habermasian theses has become a commonplace, even a preliminary exercise, and an obligation for any research that aspires to publication. A typology of the critical literature, especially with regard to modern history, has been attempted several times.\textsuperscript{87} The attitude of historians towards the Habermasian model, if we may simplify it, is characterized by a deep ambivalence.

First, there are historians who, while criticizing this model, are inclined to recognize its validity. In this case, it is more a matter of correcting than of going beyond Habermas, whose theses are explicitly or implicitly the theoretical tool capable of rendering the public sphere and public opinion thinkable and plausible. From this perspective, which we might call Habermasian or post-Habermasian, some historians have criticized Habermas for being too restrictive, and for failing to account for a number of actors or phenomena constitutive of the public sphere in the modern era. Essentially, this critique seems to charge Habermas with having developed only part of the intellectual potential of his project. For example, during the 1980s and 1990s, Habermas was accused of not having taken into consideration the role of women – as writers or facilitators of salons – in the constitution of the “bourgeois” public

\begin{itemize}
\item \textsuperscript{85} Stéphane Van Damme, “‘Farewell Habermas?’: Deux décennies d’études sur l’espace public,” in Boucheron and Offenstadt, \textit{L’Espace public au Moyen Âge}, 47.
\item \textsuperscript{86} Jürgen Habermas, “Further Reflections on the Public Sphere,” in Calhoun, \textit{Habermas and the Public Sphere}, 421-61. On this connection, see Gestrich’s comments in “The Public Sphere and the Habermas Debate,” 414.
\item \textsuperscript{87} In addition to the works already mentioned by Van Damme and Gestrich, see Harold Mah, “Phantasies of the Public Sphere: Rethinking the Habermas of Historians,” \textit{Journal of Modern History} 72 (2000): 153-82; and Massimo Rospocher and Rosa Salzberg, “‘El vulgo zanza’: Spazi, Pubblici, Voci a Venezia durante le Guerre d’Italia,” \textit{Storica} 16 (2010): 83-120.
\end{itemize}
sphere. It was also demonstrated that the word “bourgeois” does not do justice to the role of the working classes, and that the history of public opinion really consists of the history of the critical “capacities” belonging to any individual, beyond any distinction of gender and social group. The Habermasian model has seen various attempts at feminization and democratization. More recently, historians have also sought to verify whether the model applies to contexts earlier than the eighteenth century, at the beginning of the modern era, in the Middle Ages, or in antiquity. In this regard, the proposition of “backprojecting” Habermas on the basis of a “controlled anachronism,” which allows his theories to be adapted to other periods, remains within this perspective, while at the same time helping to modify it. Far from presupposing a chronological or teleological linearity, the historian is interested here in the emergence of “occasional public spaces” in early-modern Europe which, as “unachieved promises,” let us envisage public space under its truer aspect as a “potentiality for political development.”

Second, there are historians who, unconvinced by Habermas, do not stop at criticizing him: they consider that the gap between the research data and the model that is supposed to sublend them is an indication of its inability to properly restore the historical dimension to the phenomena of opinion. In this case, the critique of the Habermasian model does not lead to its correction or adaptation, but to the partial or total refutation of its founding principles. Among these principles, that of the autonomy of the public sphere has been the focus of a large number of studies, especially since the late 1990s. In this regard, it now seems hard to argue that political (or religious) power, particularly through the apparatus of a flexible and negotiated censorship, plays a key role in the processes that give rise to the periodical press and, more generally, of a publishing market and a reading public. Even the Habermasian assumption

of the rationality of the public sphere has been harshly probed in recent years. What has thus emerged is that to consider the practice of communication in places of public and private sociability as being structured by reason or tending to a rational consensus is a matter of pure abstraction, constantly contradicted by the research data.\(^{93}\)

However, despite the evident discrepancy between the model and the empirical reality, constructing an alternative to Habermas’s way of thinking about the public sphere and public opinion has turned out to be a difficult task for historians. One possible direction could be to explore other theoretical proposals. In this regard, Niklas Luhmann’s overall explanation of social systems could be considered as a relevant theoretical framework within which to understand the plurality and interconnection of public spheres in the modern era.\(^{94}\) The direction I would take here is different: it consists in inquiring into the historical dimension of nondiscursive opinions, which is to say rendering objective the Habermasian assumption of the inherently discursive nature of the public sphere, to which historians have not yet turned their attention. Indeed, to say that an essential part of the process of social communication (which includes the production of collective opinions) stops short of discursive articulation seems to fly in the face not only of historiographical common sense, but of common sense as such.\(^{95}\) From this point of view, then, the impasse to which we are led by Habermas’s reading of Locke seems paradoxically to allow us to consider the question of public opinion from an angle previously neglected by historians. A reading of a classic author will perhaps clarify this hypothesis.


\(^{95}\) “Society can tolerate freedom of expression and argument because, and only because, so little of what is essential to the securing of social order crosses the threshold of discursive articulation. Thus, however ‘rational’ public debate may be, its efficacy is always limited by the range of issues and topics that are raised within it” (Crossley, “On Systematically Distorted Communication,” 100).
Historicizing Modes of Thought

As Elisabeth Noelle-Neumann recalls, Machiavelli was one of the earliest and most perceptive political observers of collective opinion. But what can the study of Machiavelli contribute to the debate on historiographical models of the public sphere? These are obviously two very distant fields of study, characterized, in both cases, by a legacy of questions apparently unrelated to one another. However, as Pierre Bourdieu notes in an article on “the academic unconscious,” historicizing thought patterns allows one to distance categories and discursive constructions that are rooted and naturalized in scholarly and disciplinary common sense. From this perspective, the study of the political texts of the past can be useful in order to objectify categories – such as that of public opinion – that have become opaque due to excessive and often implicit historical use. In other words, it is possible to interrogate Machiavelli not so much in order to find in his writings a sense of collective opinion that appeals to us because of its familiarity, but to gain access to forms of experience of opinion that have been partially or totally obliterated because of the one-dimensional view of this phenomenon that has become dominant.

For obvious reasons, it is impossible to enter into an analysis of the Machiavellian lexicon of collective opinion here. I shall therefore confine myself to briefly take into account a written category in which Machiavelli makes use of a narrative device based on the description of a past or present reality: the writings on government (1498–1512) and the History of Florence (1520–1524). The phenomenology of opinion that emerges from a reading of these texts suggests that Machiavelli is not only aware of the decisive role of collective opinion in the dynamics of the stabilization (or destabilization) of political systems, but he is also able to distinguish different types of opinion. If we may simplify, Machiavelli first recognizes in the public places of the city a diverse set of verbal opinions. Their nature varies depending on where they are uttered and by whom. There are thus what could be called political opinions arising from discussion or deliberation within republican assemblies. For obvious reasons, it is impossible to enter into an analysis of the Machiavellian lexicon of collective opinion here. I shall therefore confine myself to briefly take into account a written category in which Machiavelli makes use of a narrative device based on the description of a past or present reality: the writings on government (1498–1512) and the History of Florence (1520–1524). The phenomenology of opinion that emerges from a reading of these texts suggests that Machiavelli is not only aware of the decisive role of collective opinion in the dynamics of the stabilization (or destabilization) of political systems, but he is also able to distinguish different types of opinion. If we may simplify, Machiavelli first recognizes in the public places of the city a diverse set of verbal opinions. Their nature varies depending on where they are uttered and by whom. There are thus what could be called political opinions arising from discussion or deliberation within republican assemblies.

96. Pierre Bourdieu, “L’Inconscient d’école,” Actes de la Recherche en Sciences Sociales 135 (2000): 3-5: “The illusion of self-evidence separates us from ourselves, from our own historical unconscious, thus, from all those, contemporary or not, near or far, who have not shared it with us. This is why we must historicize our modes of thinking, not in order to relativize them, but paradoxically, to tear them away from history.” Bourdieu explicitly refers to the technique of estrangement. See especially Carlo Ginzburg, Wooden Eyes: Nine Reflections on Distance (New York: Columbia University Press, 1998/2001); on estrangement see L’estrangement. Retour sur un thème de Carlo Ginzburg ed. Sandro Landi, Essais. Revue interdisciplinaire d’humanités (http://www.u-bordeaux3.fr/fr/recherche/ecole_doctorale/la-revue-essais/les-numeros-de-la-revue.htm).


but apart from these, the majority of opinions verbally express the feelings of an anonymous multitude. Like his contemporaries, Machiavelli calls this category of opinion “fama,” “public voice,” “rumor,” “universal opinion,” and so forth. This glossary indicates the presence, within the space of the city and the state, of an ambivalent verbal phenomenon that encompasses at once the reputation of an individual, that of a group, or that of an institution, which is to say the substrate of protean orality that propagates or spreads, more generally, all kinds of information.\(^99\)

Now, if by a voluntary anachronism we try to picture Machiavelli’s “public sphere,” it is clear that this reality, constitutive of the experience and knowledge of government, consists in a large part of “public” opinions that are neither the result of a rational exchange or a critical procedure, nor of a properly discursive character. Indeed, this reality more broadly contains values, feelings, and intentions – such as the individual and collective sense of honor, a sense of identification with a place or a group – which, while being capable of translating themselves into words and actions, are situated within a prediscursive and implicit layer of the process of political communication. To describe this reality, Machiavelli and contemporary political observers do not use the term “opinion,” but rather a term of medical origins: “humour.”\(^100\) In the *History of Florence*, Machiavelli uses this term to define partisan solidarity (factions) or social aggregates that feed urban conflicts. “Humour” is also used to name the root causes of these conflicts and, in this sense, it is synonymous with the fixed disposition and characteristics of a human group. These usages are found to be consistent with the governmental lexicon of the city of Florence and its territory, as knowledge of the specific humors of each people under the dominant city is, in the opinion of Machiavelli, one of the crucial rules for the preservation of the state.\(^101\)

For Machiavelli, in short, the category of “humour” is used in circumstances that have the description of the political and social body in common in order to affirm the existence of crystallized opinions, nonnegotiable as


they are nonverbal in nature, which act with the power of an implicit norm. It is a kind of opinion rooted in the behavior of the plebs or of the “great.” It is even indicative of the character of each people; not just those that make up the mosaic of the Florentine territorial state, but also of the nations with whom legates and ambassadors of the republic enter into contact. “Humour” is thus a pragmatic concept that becomes fully accessible through a continuous practice of observation of urban populations, subject peoples, and distant populations. These observers know that this collective opinion can interact with the verbal dimension of public opinion, and produce consensus or conflict. They also know – as indicated by a fragmentary and seemingly marginal text like “On the Nature of the French” (1500) – that in a diplomatic exchange, correctly interpreting the words of one’s foreign counterpart always requires a knowledge of his nation’s behavioral constants. In essence, according to the terms already mentioned, for these observers, of whom Machiavelli is one, the logos, discursive and rational opinion, necessarily recalls the nomos, its local and tacit normative counterpart.

CONCLUSIONS

Nomos or “humour” are certainly obsolete or extravagant terms for contemporary historians who are interested in the public sphere and public opinion. Nonetheless, they seem to name the same thing that Locke identifies and defines as the law of opinion. To try to translate these words into a common vocabulary, we can try to associate them with another concept that has so far remained foreign to the debate on the public sphere: that of the “moral economy,” which was introduced into historiography by Edward P. Thompson in a famous article on the riots in England in the eighteenth century. To my knowledge, no study has examined the relationship between the law of opinion and the moral economy. However, there are similarities between these two tools for the interpretation of reality. First, like Locke, Thompson constructs his category on the basis of a process of distancing and in dialogue with the ethnographic literature, including Malinowski’s studies on the Trobriand islanders. In this case, just like the law of opinion, the moral economy refers to a normative dimension of social life, that is, “a system of norms and obligations” that “guides judgments and acts, distinguishes between what is done and what is not done,” and ultimately justifies consent or revolt.

It is probable that, if no historian has hitherto spoken of the moral economy as one of the possible faces of public opinion in modern times, this is because, like the law of opinion, it refers to a traditional heritage and shared experiences, perceptions, and values, and if it does not necessarily exclude discursive activity, it in any case precedes it. From a Habermasian standpoint, this category is also rightly relegated to the sphere of atavistic “prejudices,” to which public opinion properly speaking is critically opposed.

The impasse at which Habermas arrives in his reading of Locke is indicative of a philosophical and ideological choice, the historiographical effects of which ought to be made more explicit. The perspective Habermas uses to distinguish and isolate one aspect of the phenomenon of collective opinion seems, in fact, to have prevented the historians who subsequently adopted it as a criterion for the interpretation of reality from recognizing that the opinions exchanged by individuals are also and especially tacit and consensual – supported by local and arbitrary conventions – and not just discursive, rational, and critical. Moreover, one of the major consequences of adopting the Habermasian model has been to distort historical perception such that the history of the public sphere in the modern or premodern era is reduced to a history of the forms, sites, and agents of social criticism and dissent. However, Locke’s intuition helps us to understand that political attitudes often go beyond the dualistic logic of consent and dissent, and at every moment and in every society there are at work a number of values that are nonspeakable, nonnegotiable, and therefore indifferent to the public practice of pro-and-contra debate. Conversely, Locke’s intuition invites us to further investigate the historical process of the formation of the public sphere at a level where verbal opinions circulate alongside tacit opinions, giving rise to practical and political languages that sometimes justify submission to a central authority, sometimes revolt. The recent attention to the communitarian and territorial dimension of opinion that we find at work in identification with regional and local political cultures (in the form of partisan or sectarian community, and solidarity),106 shows the effectiveness of historical approaches that are now emancipated from the Habermasian model, but are ultimately consistent with a parallel questioning of the public sphere that has been emerging among specialists of the contemporary world.107

106. Michael Braddick, “Loyauté partisane durant la Guerre Civile et histoire des relations sociales en Angleterre,” in S’exprimer en temps de troubles: Conflits, opinion(s) et politisation de la fin du Moyen Âge au début du XXe siècle, eds. Laurent Bourquin et al. (Rennes: Presses Universitaires de Rennes, 2011), 95-114; and Christophe Duhamelle, “‘Il ne manque plus que le bonnet rouge’: La Formation de l’opinion publique villageoise dans les conflits contre les réformes éclairées (Thuringe, fin du XVIIIe siècle),” in Bourquin et al., S’exprimer en temps de troubles, 131-44.

107. See all of the contributions collected in Corner, Popular Opinion in Totalitarian Regimes.
The Habermasian paradigm, based on transcendental deductions, and abstract and decontextualized models of communicative action, is proving increasingly inadequate to explain the complexity of the processes of communication that take place in contemporary societies.\(^\text{108}\) Thus, conceptualizing the historical knowledge of the public sphere in modern times on the basis of other theoretical and empirical references can also help us to imagine a deeper understanding of the transformations that affect the present time.

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Abstract / Résumé

Sandro LANDI
Beyond the Public Sphere. Habermas, Locke and the Tacit Consent

In his Essay Concerning Human Understanding (1690), John Locke defines the “law of opinion” as “approbation or dislike, praise or blame, which, by a secret and tacit consent, establishes itself in the several societies, tribes, and clubs of men in the world.” In his 1962 study Strukturwandel der Öffentlichkeit, Habermas specifically excludes the “law of opinion” from the public sphere, relegating it to the “prehistory” of public opinion as such. This essay will first attempt to clarify the characteristics and sources of Lockean opinion, and to understand the reasons for Habermas’s rejection of it. Second, in the light of this excluded notion of public opinion, we will present a tentative analysis of certain aspects of the historiographical reception of the Habermasian paradigm, identifying its impasse, the criticisms made of it, and possible alternatives to it. By examining the reasons for this impasse, we will address the current question of whether the Habermasian model has been surpassed.

**Keywords**: Historiography, 20th Century, public sphere, public opinion, consensus, Habermas, Locke

Sandro LANDI
Au delà de l'espace public. Habermas, Locke et le consentement tacite

Dans l’Essai sur l’entendement humain (1690), John Locke définit la « Loi de l’opinion » comme « cette approbation ou cette désapprobation, cette louange ou ce blâme, qui par consentement tacite et secret s’installent en diverses sociétés, tribus et associations humaines à travers le monde ». Dans son ouvrage de 1962 (Strukturwandel der Öffentlichkeit), Habermas écarte la « loi de l’opinion » de la « préhistoire » de l’opinion publique proprement dite. Cet article entend tout d’abord préciser les caractéristiques et les sources de l’opinion lockéenne et comprendre les raisons de son refus de la part de Habermas. Puis, à la lumière de cette autre notion d’opinion collective, il s’agit de reformuler la question de la réception historiographique du modèle habermassien, de sa critique et de son dépassement.

**Mots-clés** : historiographie, XXe siècle, espace public, opinion publique, consensus, Habermas, Locke