Blues fostered cultural diversity through frank confrontation with sexual desire and consideration of alternatives to middle class marriage. This is a major liberating contribution of African-American culture. And blues was labeled as the devil's music not because of its content but because the blues culture constitutes a competing institution for established churches.

This is a thoughtful and stimulating reading of blues lyrics. It includes an excellent chapter on Billie Holiday and "Strange Fruit." Davis exhibits the ambivalence and irony in blues lyrics, the use of coded messages, and the emergence of blues as secular spirituals. The discussion of sex does not explain why fidelity remains such a concern to women who celebrate sexual choice and ridicule matrimony. And the author's concern to exhibit the continuity of spiritual perspectives between African religion and blues needs to be extended to include the blending of African and Christian perspectives in blues.

Anthony Graybosch
Institute of English
University of Gdansk, Poland
angag@univ.gda.pl

**Between Facts and Norms.** Jurgen Habermas (William Regh, translator) MIT Press, 1996
515 pp.

This book develops the "legal, political, and institutional implications" of Habermas's "conceptual architectonic," previously elaborated in *The Theory of Communicative Action*. A key question, particularly for those who sympathize with Habennas's project of salvaging the emancipatory potential of modernity, has concerned the precise role of law and legal institutions. In this new work they are given a central and idealized place, which may overreach their potential effectiveness. Can the monumental theory of discourse, bearing its formidable and historic burden, be advanced through an imperfect medium, of which much is claimed by constitutional theorists, while much yet relies on lawyers, technical language, and the ultimate sanction of coercion?

As his title signifies, Habermas approaches the subject of law in terms of an innate tension between "facts and norms," or between "facticity and validity." That is, Habermas posits a *built-in* tension between the "social reality" of concrete or positive" law, and its need for overall validation. The *innateness* of this tension is implied by its pervasiveness in society and the timeless perplexity about the relation of law and morals, exemplified by the 3000-year-old question about positive versus natural law ("whether law is law by nature or by enactment and convention").

Habermas's overall aim is twofold: to address this tension by providing a 44 postmetaphysical" and fallibilistic theory of validation for law (9, 60), and "to demonstrate that there is a conceptual or internal relation, and not simply a historically contingent association, between the rule of law and democracy" (449). By his own statement of purpose, then, Habennas is committed to two assumptions: one, that the tension between fact and norm is somehow "internal to law," and two, that there is a necessary relation, described as "conceptual
and internal," between the rule of law and democracy. We should ask (1) whether these assumptions are themselves fallible, and (2) whether Habermas's reconstructive program may still be feasible without them.

As part of resituating modernity in discourse, Habermas sees western civilization as needing reassurance that, despite the tension between fact and norm at its root, warrant can nevertheless be found for carrying on with the enterprise of rule-of-law democracy. Given his era and intellectual background, he has abandoned any transcendental strategy, instead to discover validation within a concrete, actualizable reality. To do this, Habermas removes the idealizing character of validity claims from earlier "foundationalist" schemes into a generalized account of concrete social contexts.

His path arrives at more or less the same place as Dewey, holding communication to be crucial. But Dewey puts less reliance in legal procedures associated with what for him were the "mere mechanics" of democracy. If reassurance is needed, it is that representative institutions will promote the mobilization of a comprehensive effort toward a pervasive, organic vision of the democratic way of life. It is significant that Dewey gave to education the massive attention that Habermas now devotes to law.

There is a constant danger in using the term "law" as a comprehensive subject; subject and relevant general predicates alike may take on misplaced concreteness and imply "internal" or "inherent" relations (see e.g., Dewey at LW 14:117). Recurring real problems with common traits related to law's interpretation and enforcement come to be viewed as "located" in relation to the generalized entity "law," and to call for a systemic explanation rather than a program of case-specific or problem-specific melioration. Within the actual problems, not in detached system diagnostics, lie the real obstacles to the communication necessary for pervasive democratic patterns of thought and conduct.

Moreover, the set of problematic situations that give continuing occasion to the notion of an innate "tension" are themselves in flux. Early approaches to the issue were made by Plato and Aristotle. Aristotle located the problem in the innate generality of rules, which must always overlook the unforeseen exceptional case; Plato had previously sought to bypass this problem in the Republic with a regime of specific decrees. In both cases, the nub of the problem lay in power relationships implied in implementation. Plato's scheme overrelied on the mythical perfect dictatorship, which led only to disastrous results in implementation, while Aristotle at least suggested the official recognition of exceptions and implied a possible improvement, the establishment of a branch of law called "equity," eventually adopted by British common law.

It has taken time to get to where democratic discourse can now emerge as the central concern. The enterprise of law has, since the Greek city-state, encountered diverse changing dimensions of fission between fact and value. New twists have emerged from each new development: the administration of monarchy and empire, conflicts of church and state and among emergent nations, the rise of classes and representative political institutions, and
eventually constitutional democracy and the division of powers. Meanwhile, validation has followed a variety of related forms, as power relationships have changed.

To posit a tension between fact and norm within law is to bracket the changing sources of tension and "fix" the concepts of tension itself, and of an entity "law," such that fundamental aspects of the relation of law to private and noncoercive ordering cannot be altered freely and experimentally. Democracy may now be the guiding purpose; but the idea of it may vary. That idea becomes a confined, and confining, one in Habermas's system. Positing an internal relation between the rule of law and democracy comes perilously close to insisting on it, with the result that alternatives for democracy's attainment are limited.

Subjects who want to legitimately regulate their living together by means of positive law are no longer free to choose the medium in which they can realize their autonomy. They participate in the production of law only as legal subjects; it is no longer in their power to decide which language they will use in this endeavor. (455) (italics in original)

Yet the language of law is technical and only marginally accessible to most of these subjects. Habermas depicts law as an enabling "medium," and takes pains to emphasize its service to private autonomy and freedom, but a theoretical commitment to autonomy does not assure its realization. He continues:

Consequently, the desired internal relation between "human rights" and popular sovereignty consists in the fact that the requirement of legally institutionalizing self-legislation can be fulfilled only with the help of a code that simultaneously implies the guarantee of actionable individual liberties. (455) (italics in original)

Note the word "actionable;" here, legal enforcement of individual liberties is made critical to the entire system. Habermas places profound reliance on lawyers and judges not just to support but to carry the burden of democratic discourse. Yet they act to define democratic liberties amidst a politically charged environment, in heated controversies that have resisted compromise.

Habermas appears to seek built-in validation where the actual validating mechanism may be no more than the tentative faith that the public places in the practice of restraining political power through judicial intervention. At issue is whether validation should be viewed as already immanent or as an inherently incompeleted project. The danger of the former is that the public may go on about its Business may go on about its business with insufficient attention to the inadequacies of both representative and judicial institutions in realizing the full potential of democracy.

1. The broader implications of the rights so interpreted may be lost in this process. All this is not to suggest that law's supporting role is not an important part of the overall equation—only that its role may be overstated here.
Habermas gives little attention to the obstacles to coherent interpretation of the constitutional rights that have concerned legal scholars since the constitutional power of the federal courts mushroomed in the United States after the turn of the century.

Frederic R. Kellogg Sabre Foundation Fellow in Legal Philosophy


Kelly Parker's The Continuity of Peirce's Thought provides an excellent account of Peirce's philosophy. It is not, as one might expect from the title, a chronological account of Peirce's thought, showing there are no sharp transitions justifying a separation into distinct periods. Instead, Parker focuses on Peirce's classification of the sciences, and does so in a way that presupposes rather than argues for a continuity of Peirce's thought. This can be seen clearly from the quite casual way in which he combines texts from different dates. Parker's motivation is a different one, however. With a reference to MS 949 (c.1902), where Peirce declares the principle of continuity to be the "master key to philosophy," he sets himself the task of showing that Peirce's mature philosophy is "best understood as an extended exploration and application of his novel concept of the mathematical continuum" (p. xiv). This makes the book primarily a discussion of Peirce's principle of continuity.

A second, parallel motive lies behind the book, however. This is to provide a fresh indepth introduction to Peirce's work. Guided by this, Parker gives lucid and quite extensive accounts of Peirce's contributions to mathematics, logic, phenomenology, value theory, semiotics, philosophy of mind, philosophy of science, metaphysics, and cosmology. In all these areas Parker has valuable things to say, which makes this book valuable for specialists as well.

If we take these two motives to make up the purpose of the book, however, I am not entirely convinced that Parker is successful. The desire to provide a general introduction, although never unrelated to his cause, not only diverts the attention away from the issue of continuity, but also hampers a more thorough discussion of it.

Let me run briefly through the main argument presented in the book. The book is divided into four parts. Part I is devoted to Peirce's architectonic philosophy and the principle of continuity. Parker shows that, for Peirce, a philosophy that fails to account for continua will run into Zeno-type paradoxes. He explains that Peirce interprets a continuum as a sequence that cannot be broken down into discrete parts, but in which each part can be further subdivided into parts of the same kind, and so ad infinitum. Parker then applies this notion to space, time, the categories, inference, and semiosis.

Peirce's conception of continua raises immediately the issue of infinitesimals. This brings us to the second part of Parker's book, dealing with mathematical hypotheses. Parker shows that Peirce conceives of mathematical reasoning as a process that takes place in a vacuum: it is