


Reflections on Habermas's discourse ethics

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In this article Habermas's discourse ethics is critically interpreted. The article starts with a brief intellectual biography of Habermas (section 1), showing that his life and work has always had a strong ethical and political dimension – leading to the concept of discourse ethics. Next, it is indicated how Habermas's work in the 1970s culminated via four steps in his major philosophical work – the *Theory of Communicative Action* (section 2) published in 1981. In the next two sections Habermas *Theory of Communicative Action* is applied to ethics and morality in the form of his discourse ethics – the heart of this contribution (section 3). In this process the following four aspects of Habermas's discourse ethics are discussed: Its qualified Kantian deontological dimension, as well as its universalist, cognitivist, and formalist dimensions. In the following section (4) the discussion of discourse ethics is shifted to Habermas's theory of law, deliberative politics, and democracy which is a further application of ideas developed in his *Theory of Communicative Action*. The contribution then ends with some critical remarks on Habermas discourse ethics and sketch of law and politics (section 5) Three arguments are presented in this regard. First, Habermas argument is judged to be too closely related to abstract rationality. Secondly the distinction that Habermas makes between morality and ethics is critically investigated. Finally, the Habermasian use of justification in his argument is critically compared with the concept of application. These points of criticism, though, indicate that the debate on Habermas's discourse ethics is ongoing.

Intradisciplinary and/or interdisciplinary implications: This article deals with the concept of discourse ethics (in the Kantian tradition of ethics) as developed firstly by Karel Otto Apel and later refined by Jürgen Habermas for his own purposes. The line of argumentation developed here has significant relevance for philosophy, moral theory, law, and theology. Discourse ethics can be considered as a contemporary version of Kantian deontological ethics after the linguistic turn.

Keywords: Habermas; Karel-Otto Apel; public sphere; communicative reason; discourse ethics; deliberative politics.

Introduction

Discourse ethics is a contemporary version of morality and ethics that Jürgen Habermas developed in close collaboration with his life-long friend Karl-Otto Apel (1922–2017) (Habermas 2020:627). This contribution, although, will focus on Habermas's version of discourse ethics. Habermas is, without doubt, one of the most influential philosophers of our times. He is known for his communicative contribution to critical theory as a social and political philosophy. His work very much revolves around the concept of communicative rationality, which holds that our capacity for language and communication is the foundation of human sociality and our ability to reason. It is this very concept of communicative rationality that also relates to a further concept of Habermas, namely *discourse ethics* – a conception of morality in the Kantian tradition, which he developed, as said, in deep conversation with Karl-Otto Apel.¹ Although Apel already developed a version of discourse ethics in the 1960s, Habermas made it a central point of his philosophy from the 1970s onwards (Heath 2019:104).

The basic idea for a discourse ethics is the result of Apel's initial study of hermeneutics, the pragmatism of Charles Sanders Peirce, and a linguistic reading of transcendentalism in the Kantian tradition. In this process truth as agreement (Pierce) becomes in Apel's terms the, 'ideal communication community'. Despite differences (Apel uses the rules of argumentation to provide an 'ultimate justification', [*Letztbegründung*], for a moral principle, while Habermas follows argumentation in a more pragmatic direction), the following working definition can be

1. For his major works, cf. Apel (1973, 1980, 1988, and 1998). For good commentaries on Apel (cf. Kettner 1996; Kettner; Mendieta 2002).

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distilled for purposes of this contribution. In discourse ethics, the transcendental (subject-centred) self-reflection of practical reason (according to Kant's Categorical Imperative) yields to the pragmatic reconstruction of the normative implications of communicative rationality (Forst 2018:538; Habermas 2008:24–76).

This article starts with a brief intellectual biography of Habermas (section 'Habermas: A brief intellectual biography'), showing that his life and work has always had a strong ethical and political dimension – leading to the concept of discourse ethics. Next, it is indicated how Habermas's work in the 1970s culminated in his theory of communicative reason (section 'Communicative reason: Habermas's main [social] philosophical contribution'), which on its part, can be applied to discourse ethics (section 'The main aspects of Habermas's discourse ethics'), and to deliberative politics, democracy, and law (section 'Habermas on law and deliberative politics'). The article ends with some critical remarks (section 'Discourse ethics: Some critical remarks').

Habermas: A brief intellectual biography

Jürgen Habermas was born in 1929 near Cologne. The experience of the Second World War, and more specifically the shock of the Holocaust, had a profound influence on his development as a thinker. In many ways his whole career as a social philosopher, as well as a kind of public intellectual, can be seen as an attempt to come to terms with these traumatic events.

It is interesting, although, that Habermas started his career with a Heideggerian-influenced doctorate on Schelling in 1954 at the University of Bonn (after studies at Göttingen and Zurich). It is here that he became friends with Karl-Otto Apel – a friendship as indicated that later led to work on the concept of discourse ethics. At the completion of his doctorate, Habermas soon became critical of Heidegger's philosophy and the latter's support to Nazis in the 1930s (Thomassen 2010:7). In this process, he came to the insight that the crisis of modern society should be studied from a social-scientific rather than an ontological or metaphysical perspective (Habermas 1992:96). This insight, away from Heidegger, brought him into contact with the figures of Critical Theory (Max Horkheimer and Theodor Adorno) that returned to Germany after the war.²

In 1956, he became Adorno's research assistant in philosophy and sociology at the Institute for Social Research at the University of Frankfurt. Both Adorno and Horkheimer were, as Germans with a Jewish background, sceptical about the German intellectual tradition after the Second World War. Their critical questioning forced Habermas to ask deep questions in this regard – especially about how 20th century totalitarianism was possible (Habermas 1992:46). Habermas, although, also had his differences with Adorno and

²For a biography on Habermas (cf. Müller-Doohm 2014). For a short earlier interpretation (cf. the 'Introduction' in Bernstein 1985).

Horkheimer – more specifically their deep cultural and political pessimism about modernity. Eventually differences with Horkheimer obliged him to complete his postdoctoral habilitation under Wolfgang Abendroth, in Marburg. This early work, with the title, *Structural Change of the Public Sphere* (Habermas 1989, originally 1962), soon became recognised as a modern classic. It is a detailed historical and social-theoretical reconstruction of the bourgeois public sphere from the 18th century (e.g., coffee houses in Paris and London) and its structural transformation under the influence of capital-driven mass media. The early reputation of this work played a role in Habermas being appointed in 1961 as extraordinary professor of philosophy at the University of Heidelberg. In 1964, he succeeded Horkheimer (with his full support this time) as professor of philosophy and sociology in Frankfurt (Finlayson 2005:xiv–xv).

Habermas's first Frankfurt period (1964–1971) was towards the end characterised by turbulent student unrests. After his initial sympathy for the radical students, he dismissed their criticism of any form of authority in 1967 as left fascism (Finlayson 2005:xv). From 1971 to 1983, he was director of the Max Planck Institute in Starnberg. Here, at the head of an interdisciplinary research team, further explained in the next section, he laid the foundations of a linguistic turn in social philosophy (influenced by Apel) that culminated in his magnum opus, *Theory of Communicative Action* (1981) and his work on discourse ethics (Habermas 1990, originally 1983). In his work, at this stage, it became clear that he was stating an ideal of free interpersonal interaction as it is found in ordinary life and, specifically, in linguistic communication, to serve as the key source of emancipatory impulses (Anderson 2000:50). Influenced by traditions such as philosophical anthropology, hermeneutics, pragmatism, and language-analytical theory, Habermas defended the normative self-understanding of communicatively socialised subjects against the tendency to reduce all intersubjective-practical interests to technical-instrumental ones.

These motives were all present when Habermas returned to Frankfurt in 1983 as professor of philosophy. Together with his friend and colleague Karl-Otto Apel, who was at that time also a professor there, he made Frankfurt a magnet for national and international students. In the latter part of his second Frankfurt period (from around 1987–1992), Habermas formed a Leibniz research team, on politics, democracy, and law, which led to the publication of *Facticity and Validity* (1992, translated in English 1996). This work and more specifically the concept of *deliberative politics* (see section 'Habermas on law and deliberative politics') is clearly related to his earlier work on the public sphere, communicative reason, and discourse ethics. After Habermas retired from the University of Frankfurt in 1994, he settled in Starnberg (where he is living with his wife since 1971). Here, after his retirement, he has been more active than ever as a philosopher and public intellectual through regular lectures and publications (Finlayson 2005:xvii). As a philosopher, he worked on topics such as bioethics, genetic manipulation, cosmopolitanism, religion, history (Habermas 2019) and the

new public sphere (Habermas 2022). As public intellectual he participated in debates on the European Union, 9/11, the so-called war on terror, Iraq, the new world order (Finlayson 2005:xvii), and the invasion of Russia in Ukraine.

In short: in the case of Habermas, we are dealing with a thinker who draws from a wide variety of sources and disciplines to establish a linguistic theory of society, in continuous dialogue with other thinkers and with concrete developments in society. In this process, the concepts of public reason and communicative action, discourse ethics and deliberative democracy are arguably the golden threads that run through Habermas's lengthy career that is now spanning almost 70 years (Thomassen 2010:12).

Theory of communicative reason: Habermas's main (social) philosophical contribution

As indicated above, Habermas's differences with Horkheimer and Adorno, moved him in the late 1960s and 1970s to a reformulation of Critical Theory. This reformulation, deeply influenced by his friend and colleague Karl-Otto Apel, entailed an ideal of free interpersonal interaction as found in ordinary life and, specifically, in linguistic communication, to serve as the key source of emancipatory impulses (Anderson 2000:49–50).

In the 1970s, at the Max Planck Institute in Starnberg, Habermas deepened his reinterpretation of Critical Theory with the help of co-researchers in a research programme.³ His work, at this stage, focused on ego-identity, communicative competence, moral development (Kohlberg 1981), societal pathologies, processes of rationalisation, legal evolution, among others. In addition, he also intensified his study of analytic philosophy of language as part of developing his universal pragmatics of communication. A theory of social evolution and systems-theoretical concepts were added to explain the logic of the development of social rationalisation.⁴ These different research projects eventually culminated in the defining work of Habermas and the second movement of Critical Theory – *Theory of Communicative Action* (1981).⁵ Here Habermas defends four aspects of the theory of communicative action (cf. the following sections): the difference between strategic and communicative action; a theory of argumentation (in which speech-act theory plays a central role); a theory of social rationalisation; and an interpretation of modernity and postmodernity.

The difference between strategic and communicative action

Habermas's *Theory of Communicative Action* is a complex and multifaceted social theory that seeks to explain the ways in

3. At Starnberg, Habermas was assisted by co-researchers such as Rainer Döbert, Gertrud Nunner-Winkler (development psychology); Klaus Eder (social evolution); Helmut Dubiel, Ulrich Rödel (Sociology); and Ernst Tugendhat (philosophy) (Anderson 2000 fn. 8).

4. For publications in this era (cf. Habermas 1976; Habermas 1979).

5. See Habermas (1981) and the essays in Honneth and Joas (1991).

which humans communicate and reach mutual understanding. In this process he makes an important distinction between strategic and communicative action. *Strategic action* refers to action that is motivated by self-interest and is aimed at achieving a specific goal or outcome. In this type of action, individuals use their own resources and employ various means to achieve their desired outcome, often at the expense of others. Strategic action is characterised by using power, manipulation, and coercion.

Communicative action, on the other hand, cannot be explained based on instrumental rationality that serves as an explanation of strategic action (TCA 1:101ff.; *Pragmatics*, 220ff.). Communicative action rather refers to action that is based on mutual (intersubjective) understanding and agreement between individuals. In this type of action, individuals engage in dialogue, exchange of ideas, and open communication to reach a common understanding and a shared goal. Communicative action involves the use of language and reason to engage in a cooperative and collaborative process. This kind of linguistic understanding can only be successful if the respective beliefs of all participants are not coerced (e.g., through violence or deception). Communicative action, thus, depends on unforced, rationally motivated agreement among all the participants. It is also an ideal form of social action, based on mutual agreement and democratic decision-making, and it allows for the integration of diverse perspectives and interests. In this regard, communicative action is a particular kind of social action that cannot be reduced to strategic action (where deception or force is means to achieve goals of action) (Lafont 2018:499–500).

Against this background it is exceedingly difficult to envisage something like a society without communicative action. Additionally, without coordinate action, society would fall apart, and social interaction would break down. Overall, no society can exist based on strategic action including lies, deception, and violence alone (Habermas 1993:163). In defending his concept of communicative action, Habermas, follow three argumentative lines: the theory of argumentation and rationality (cf. 'The difference between strategic and communicative action'); a theory of society, and an interpretation of modernity/postmodernity (cf. 'A theory of social rationalisation' and 'Interpretation of modernity and postmodernity').⁶

A theory of argumentation

According to the speech act theory, there are culture-invariable validity claims – such as truth, normative correctness, and sincerity. Each of these claims represented an aspect of rationality and a part of reality – the objective, the social, and subjective worlds. The aim of understanding [*Verständigung*] is to arrive at an agreement [*Einverständnis*] and mutual trust regarding validity claims. If impossible, the level of discourse allows for resolving doubtful validity claims by way of the forceless force of the better argument.

6. The interpretation of the theory of communicative action in the next few paragraphs is influenced by Honneth (1995:98).

This is the case in our everyday, theoretical, practical, and aesthetic discourses.

A theory of social rationalisation

In a next step, Habermas links his views on rational language communication with a model of *social rationalisation*. In the heart of this model, the historical differentiation between *lifeworld* and *system* is situated. This differentiation consists of the communicative understanding (in the lifeworld) as a fundamental reproduction mechanism of modern society, on the one hand, and the development of norm-free action spheres that are accessible by way of system-theoretical analysis, on the other. The interplay of communicative reason and system theory is an essential component of Habermas's social-philosophical theory of *modernity*.

Communicative understanding (in the lifeworld) is a fundamental reproduction mechanism of modern society, together with the historical development of norm-free action spheres that are accessible by way of system-theoretical analysis. According to Habermas, social reproduction takes place in both the communicative infrastructure of the lifeworld and the historically developed norm-free systems (e.g., money and bureaucracy). In short, the interaction of communicative rationality and system theory is the framework in which a modern social theory conducts itself.

In short, modern societies are functionally differentiated between the economic and political subsystems, on the one hand, and the lifeworld, on the other, devoted to the '... tasks of the transmission of knowledge and interpretive patterns (culture), social integration ("society" in the narrower sense of normative orders), and socialisation (personality)'. In this sense, Baynes (1998) indicated one can:

[... A]lso trace a differentiation among the three values spheres of science and technology, law and morality, and art and aesthetic criticism as each becomes independent of the other and develops its own internal standards of critique and evaluation. (n.p.)

Interpretation of modernity and postmodernity

Through the division of lifeworld and system (as discussed here), Habermas (1981, II:293) describes the invasion of systematic steering mechanisms in the sphere of communicative praxis as a particular pathology of modernity. This dualistic construction enables Habermas to develop a different interpretation of 20th century society than Horkheimer and Adorno. Where they judged systematically organised complexes as the last step in the logic of instrumental reason, Habermas presents a distinctly different view of the role of systems in the lifeworld. The social pathologies of contemporary societies are hence not the inevitable consequence of instrumental reason *per se*, but rather the result of a one-sided process in which the market and administrative state invade the lifeworld, displacing modes of integration based on communicative reason with their own form of functional rationality:

Habermas describes this dramatically as the *colonization of the lifeworld*. The primary task of a critical theory is to draw attention to this process of colonization and indicate the ways in which various social movements are a response to it. (Baynes 1998)

Discourse ethics: Habermas's main aspects

The central argumentative lines in Habermas's *Theory of Communicative Action*, as discussed above, all find their way to his discourse ethics. Here the public, or discursive, use of reason has a peculiar force when it comes to practical and moral question.⁷ In addition, discourse ethics is also a crucial part of Habermas's reformulation of Critical Theory – or critical theory of society.

It is interesting, that although Habermas considers a wide array of thinkers on ethics and morality (including Hegel, Horkheimer and Adorno), its animating idea (a principle of universalisability, which functions as a rule of argumentation for testing the legitimacy of contested norms) resembles Kant's deontology in many respects. There is, although, an important qualification here in the sense that Kant's transcendental reflection of practical reason, becomes in Habermasian terms a pragmatic reconstruction of the normative implications of communicative rationality. Discourse ethics is thus based on the general pragmatic presuppositions of communicative reason in the form of validity claims (as explained in the previous section), and it points in the direction of an *ideal speech situation*, freed from all external constraints, and in which nothing but the counterfactual force of the better argument prevails (Thomassen 84–85). Habermas's qualified Kantian ethics has four dimensions: it is deontological, universalist, cognitivist, and formalist (Habermas 1990:120–1222; 196–198, 1993:49).⁸

Discourse ethics dimension: Deontology

Deontology is normally distinguished from teleology. Teleology is concerned with a *telos* or goal. In ethical terms, teleology is concerned with the good, and justice is relative to a given good, whether to the benefit of society (utilitarians) or the maintenance of a tradition (communitarians) or the good life [*eudaimonia*] (virtue ethics) (Thomassen 85).

The term deontology stems from the Greek [*deon*], meaning duty or obligation. In the Kantian sense deontological ethics means the duty or obligation to provide reasons for one's action. It further stipulates what we are reasonably obliged to do irrespective of our particular goals [*telos*] or interests. Ethics is deontological in the sense that justice (the right) is independent of, has priority, and trumps the good (Thomassen 85–86). In other words, deontological ethics endorses a narrow concept of morality, one limited to the norms of correct (or just) action and not addressing questions of 'the good life'. Here a distinction between 'morality' and 'ethics' – or moral norms and ethical values – is made (Forst 2012:chap. 3). While the validity claims of moral norms are

7.For his major texts on discourse ethics (cf. Habermas 1990:43–115; Habermas 1993).

8.Baynes (1998).

strict, categorical, reciprocal and generally binding, the claims of ethical values are redeemed in closer relation to forms of life and individual biographies (Forst 2018:538).

Discourse ethics dimension: Universalist

In this sense it works with two principles. These principles can, rather, be seen as two attempts at getting at the same underlying idea about the relationship between discourse and morality. The two principles are as follows: the first, known as the discourse principle (D), states that 'only those action norms are valid to which all possibly affected persons could agree as participants in rational discourse'. This principle claims '... to transcend culture and to articulate a correspondingly general structure of morality'. The point is that norms justified in practical discourse may substantially only ever anticipate general acceptability; they are also subject to discursive evaluation under all circumstances (Forst 2018):

Therefore, as much as discourse ethics stresses the necessity of the implementation of real practical discourse(s), it still incorporates an element of idealism into the process, which presumes a corresponding measure of moral sensitivity and imagination on the part of morally reflecting parties. (pp. 538–539)

The second principle, known as the 'moral principle,' is commonly understood to be stronger than the discourse principle. It is the *principle of universalisation* (U), a kind of replacement for Kant's categorical imperative, and reads as follows (Habermas 1990):

For a norm to be valid, the consequences and side effects that its general observance can be expected to have for the satisfaction of the particular interests of each person affected must be such that all affected can accept them freely. (p. 120)

The underlying point here is that this principle can be derived from the general pragmatic presuppositions of communication and argumentation. In the previous section, we have seen that when speakers make utterances they raise distinct types of validity claims, for example, to truth, normative rightness, and sincerity or truthfulness:

These validity-claims, in turn, point to the notion of an ideal speech situation freed from all external constraints and in which nothing but the force of the better argument prevails. The principle of universalizability represents an attempt to formulate this counterfactual ideal as a constitutive rule of argument for moral-practical discourses. (Baynes 1998)

Discourse ethics dimension: Cognitivist

An ethicist must also be cognitivist, Habermas argues. Accordingly, there are sufficient similarities between moral discourse and scientific discourse to make it possible to speak, for example, of progress in learning or of a comparable notion of 'good reason' or argument in both. This means that practical questions about how we should act can be treated in such a way that the answers we produce are rational. Habermas writes: 'normative rightness must be regarded as a claim to validity that is analogous to a truth claim'

(Habermas 1990:197, 1993:49). In other words, Habermas does not think that truth and normative rightness are the same; they are analogous. What is right is right because it has been established as such through discourse; this is so in a way that is not the case with claims to truth about the world. However, both kinds of validity can be treated as a matter of discursive vindication of validity claims. In this way, Habermas (1990:120) talks about rationality and *knowledge (cognitivism)* in relation to ethics: 'moral-practical issues can be decided based on reasons' (Thomassen 86). This is the basis upon which moral norms may be discussed in practical discourses on the (ideal) presupposition that a 'correct' justification exists. Thereby, the essential criterion is their capacity for generalisability – or their 'ideal warranted acceptability' (Forst 2018:539; Habermas 2003:248).

Discourse ethics dimension: Formalist

Finally, discourse ethics is formalist (and proceduralist) in the sense that it restricts itself to specifying a procedure of moral argumentation based solely on *principle*, which holds that 'only moral rules that could win the assent of all affected as participants in a practical discourse can claim validity' (Habermas 1993:50). In contrast to Kant's conception of moral law (*Sittengesetz*) and Apel's approach of transcendental pragmatics, Habermas does not grant this principle a moral or 'ultimately justified' power of validity. Rather, it possesses only the force of 'must in the sense of weak transcendental necessitation', which does not correspond to the 'prescriptive must of a rule of action' (Habermas 1993:82; Wellmer 1991).

Given the pluralism of moral views that exist in today's societies, Habermas believes that an ethics for modern societies cannot give substantive answers to moral questions. That is, an ethics cannot be a set of substantive norms telling us how to act. In this sense the formalist character of his ethics must be understood. For Habermas, there should be a procedure for deciding moral questions – a *procedure* that Habermas reconstructs by asking what the structures of argumentation are:

[... T]hat will yield rational and legitimate answers to moral questions. His discourse ethics is, then, not meant to say what the answers should be, only how we should find them. It is procedural and minimalist. (Thomassen 2010:86–87)

Deliberative politics, democracy, and law: Habermas's application

Like discourse ethics (as discussed), Habermas's theory of law, deliberative politics, and democracy can also be seen as a translation of ideas developed in his *Theory of Communicative Action* (Habermas 1981). Habermas's work in this latter area was developed from the late 1980s onwards in interaction with members of a Leibniz-research group, and eventually published as *Faktizität und Geltung* in 1992 (translated in 1996 as *Between Facts and Norms*; and *Contributions to a Discourse Theory of Law and Democracy*). In a report at the end of the activities of the Leibniz research-group, Habermas refers to four interdependent areas to understand his work in this

regard.⁹ Firstly, the relationship between morality and law. Secondly, 'a de-substantialized concept of popular sovereignty', and thirdly and fourthly, the status of law as a mechanism for integration in complex societies (Muller-Doohm 2014:328–329).

As a starting point, the German title, *Faktizität und Geltung* expresses for Habermas the basic problematic of modern law: a tension between law's facticity and law's validity. In political terms it means, firstly that law cannot be reduced to legality or social facts (facticity) but must also have a dimension of legitimacy to them (validity side of law). The latter implies that although we act in an instrumental and strategic way towards law, we also act out of respect for the legitimacy of the law. This means, secondly, that we can treat laws as legitimate (Habermas 1996; Thomassen 2010)

[... A]s far as we have arrived at them through discourses that are rational, which is to say characterized by inclusion, equality, and sincerity in such a way that only the better argument will carry the day. This is, in essence, what Habermas purports to show with his discourse theory of law and democracy. (pp. 26, 30, 198; 112)

In short, for Habermas, modern law claims both facticity and validity.

In addition, Habermas also addresses the relationship between morality and law. Discourse ethics gave Habermas a way to account for the validity of moral norms, that is, for the moral bindingness of norms. However, morality alone cannot coordinate action in modern, complex societies. It is thus necessary to complement morality with law, according to Habermas. For example, law is the only medium through which a 'solidarity with strangers' can be secured in complex societies' (Thomassen 2010:113). Although law and morality are different, Habermas links them through the discourse principle (D) – as discussed in the previous section:

Like moral norms, it is rational discourse that bestows legitimacy on legal norms. Thus, in the context of law, Habermas translates discourse ethics into a discourse theory of democracy – in short, a *deliberative* democracy. (Thomassen 2010:114)

Habermas distinguishes his idea of deliberative democracy from other theories of law and democracy. Regarding other theories of law, Habermas positions deliberative democracy as an alternative to both legal positivism and the natural law tradition (Baynes 1998). In terms of democracy, Habermas considers the debate between liberalism and communitarianism (republicanism) that raged mainly in the United States (in the 1980s and 1990s). This was a debate between the liberalism of John Rawls (2005), on the one hand,

⁹Just as in the case of law and politics, Habermas's theory of communicative action can also be applied to religion. Here the issue is context-transcending validity, without being *otherworldly* – it is *innerworldly* or *thisworldly*. Habermas's formulation of 'transcendence from within' is one of the cornerstones of his description of a post-metaphysical philosophy. Such a philosophy refrains from judging the validity of a particular conception of the good (cf. Cooke 2007:224). It is important to observe the following qualification here. Conceptions of the good are always conceptions of the good 'for me' (individual) or 'for us' (collective), while religious beliefs, though, are deemed to have a cognitive content that is of potential relevance for everyone. Thus, a critical engagement with religious traditions does not '...cast light on the truth of religious beliefs but ... [it contributes] ... to the semantic regeneration of postmetaphysical thinking' (Cooke 2007:225–226).

and the communitarian positions offered by philosophers such as Michael Walzer, Charles Taylor, and Michael Sandel, on the other hand. Habermas's alternative of deliberative politics steers between these schools of thought (Möllers 2018:419).

This middle ground implies that Habermas takes a distance from the liberal presupposition of stable individual preferences, which must simply be integrated into democratic will formation (This critique of liberal empiricism – which treats democratic will formation as a matter of aggregation and views individual voices as 'facts' – can easily apply to positivism, as well.). In short: Habermas rejects the vision of the political process as primarily a process of competition and aggregation of private preferences. Equally, Habermas objects to views that directly assign legitimating value to traditions and conventions – views, that is, that reify real (or putative) forms of cultural identity; here, too, his early critiques of institutionalised thinking are affirmed (Möllers 2018:419). In addition, Habermas views the republican vision of a citizenry – a united and actively motivated by a shared conception of the good life – as unrealistic in modern, pluralistic societies (Baynes 1998).

In his alternative to the liberal and communitarian positions, Habermas writes that (Habermas 1996):

[... T]he success of deliberative politics does not depend on a collectively acting citizenry [or an aggregation of private preferences – PD], but on the institutionalization of the corresponding procedures and conditions of communication, as well as on the interaction of institutionalized deliberative processes with informally constituted public opinions. (p. 298)

This formulation of deliberative politics basically refers to procedures and conditions of communication that goes back to his theory of communicative action and discourse ethics. The basic feature of this is a rational discourse that involves stringent conditions of dialogic equality where no one may be excluded and everyone has an equal right to speak, question, make assertions, and express needs and desires. No form of coercion (internal or external) may be used (Habermas 1996:305–306). The core intuition here is articulated in one of Habermas's well-known phrases: 'the unforced force of the better argument' (Chambers 2019:94; Habermas 1996:306). Apart from the 'institutionalization of procedures and conditions of communication' the quote above also refers to 'the interaction of institutionalized deliberative processes with informally constituted public opinions'. In this regard Habermas (1996:304) adds in more politically concrete terms a *two-track process* in which there are an interplay between the following institutions in the public sphere. On the one hand there is *weak publics* (the informally organised public sphere ranging from private associations to the mass media located in civil society) and, on the other, *strong publics* (parliamentary bodies and other formally organised institutions of the political system in the form of representative democracy).¹⁰

¹⁰Habermas gets the formulation of weak and strong publics from Nancy Fraser (Habermas 1996:307 footnote 26). Elsewhere he characterises the relationship between representative institutions and public opinion as one between core and periphery (Habermas 1996:354–355).

In this division of labour *weak publics* assume a central responsibility for identifying, interpreting, and addressing social problems. Decision-making responsibility, as well as the further filtering of reasons through more formal parliamentary procedures, remain the task of a *strong publics* (e.g., the formally organised political system) (Baynes 1998). Strong publics issue authoritative decisions: they rule. Weak publics, although home to a great deal of discourse and deliberation, do not issue authoritative decisions; they do not rule. Freed from the burden of authoritative decision making, weak publics have the space to become 'contexts of discovery'. Their wild and even anarchic nature allows for new claims to emerge, hidden injustices to be unmasked, received truth to be questioned, and new forms of political participation to be tested (Habermas 1996:307):

Creativity, innovativeness, and progressive energy require a medium of unrestricted communication. The anarchic nature of the informal sphere plays an important discursive and epistemic function by holding out the possibility of learning, revision, correction, and change through criticism of and opposition to stands taken and claims made by those who rule. (Chambers 2019:96)

In conclusion, it must be said that Habermas's model of law and democracy, in the early 1990s, focused almost exclusively on the nation-state, as opposed to transnational or supranational institutions. Since then, though, Habermas has presented the nation-state as perhaps just a special case or nonfinal historical stage in the development of constitutional democracy. He writes: 'We must detach the fading idea of a democratic constitution from its roots in the nation-state and revive it in the post-national guise of a constitutionalized world society' (Baxter 2019:241; Habermas 2008:333).

Some critical remarks

Jürgen Habermas's discourse ethics (and related ideas of law and politics), as discussed in this article, aims to provide a foundation for an ethics and politics based on rational communication and discourse. While the theory has been influential in contemporary moral philosophy (and wider), it has also faced criticism from various quarters, that will be discussed in the following three points: (1) the limits of abstract rationality, (2) the difference between morality and ethics and (3) the issue of justification and application.

For some critics Habermas's procedural and cognitive formulation of communicative action and discourse ethics neglects the 'concrete and particular social-historical circumstances of the reasoning subject' (Yar 2003:103). For another, Habermas's idea of communicative reason is too narrowly attached to rationalist premises. In this process his version of Critical Theory in rational terms becomes '...less bound by or beholden to the historical and existential exigencies of modernity' (Kompridis 2006:232). As a result of this refashioning, as Dallmayr (2009) puts it, his work moved in the direction of an abstractly rational universalism critical of cultural and practical modes of pluralism and pre-cognitive

experience. Consequently, there was a growing 'insensitivity to particularity', justifying the suspicion that the basic concepts of communicative rationality had from the start been 'rigged in favor of the universal' (Kompridis 2006:234).

There are at least two candidates, also open for criticism, can come to the defence of the particular here. The one is the role of the subconscious (and emotions) in rational human life. Carol Gilligan (1982), for example, argues that Habermas's use of Kohlberg's development model of moral consciousness (culminating in the highest stage of post-conventional, universalistic justification of norms) not only has a gender bias but also fails to account for the particularity of moral experiences and judgements. In particular, she claims the aspect of 'care' for the other does not receive due consideration (Forst 2018:389). In addition, other critics, in opposition to Habermas's focus on the individual's capacity for rational self-determination, have emphasised the creative power of the subconscious (the *other of reason*) via psychoanalysis (Winnicott, Stern, and Castoriadis). A position similar to Adorno's concept of non-identity.¹¹ Within Critical Theory, Axel Honneth (2007) has taken a similar route by considering the other as a unique being and to adopt a form of care (*Fürsorge*) that is not bound to considerations of symmetry and reciprocity.¹² Then there is also the critiques of people such as Levinas, Derrida, or Lyotard, that the abstract Kantian universalism of discourse ethics does not do justice to the particularities, uniqueness, and differences among persons, nor does it seem able to account for the quality and particularity of social connections between people. To this can be added diverse theories of difference and communitarianism. In response, various efforts were made to affirm the perspective of the 'concrete other' in contrast to acknowledging only a 'generalized other' (Seyla Benhabib [1992], who borrowed the terms from George Herbert Mead). Accordingly, 'interactive universalism' held that the other should be acknowledged and included both as an equal party and as someone who is different and unique (Forst 2018:389). In aesthetical debates, the possible emancipatory role of the other has also been articulated by French philosophers such as Merleau-Ponty, Foucault, Derrida, and Lyotard (in the wake of the older German tradition of Schelling, Hegel, Nietzsche, and Adorno).¹³

Habermas (1990, 1993 and 1998) has reacted to these points of criticisms at various occasions in essays on Kant, Hegel, and Kohlberg (including discussions on Aristotle). For him solidarity as the 'other' of justice and equal treatment are not two separate things. But still, this conception of solidarity is not tied to forms of belonging. For Habermas,

11. For Anderson (2000), the other of reason in Honneth still remains committed to the Enlightenment heritage of emancipator reason.

12. This stance, according to Forst (2018:390), stands in a tense relation with the Kantian conceptions of morality. For a similar position, cf. Lutz Wingert (1993) for whom the other must be respected (*geachtet*) both as an irreplaceable individual and as a member who enjoys equal rights (179).

13. On aesthetical themes in the third movement, see the work of Seel, Menke, Früchtel, Fink-Eitel, and Koch. It is widely known that aesthetics plays a peripheral role in Habermas's work (cf. Duvenage 2003).

it is a specific merit of discourse ethics (and post-conventional morality) to accentuate discursively individual perspectives – and this not in a way that is merely abstract (Forst 2018:390).¹⁴

The abstract nature of Habermas's use of reason and its relation to the other, as discussed in the previous point, relates to the distinction he makes between morality and ethics. One of the main issues with this distinction is the tension between the universality of morality and the particularity of ethical norms – an issue that is characteristic of all forms of deontological ethics.

In other words, Habermas emphasises the importance of moral principles that are universally valid and applicable to all individuals regardless of their social, cultural, or historical context. These principles are derived from the basic human interests of autonomy, equality, and rational discursivity – shared by all individuals. It is about what is 'just' (or 'binding') 'for all' – which follows its own mode of validity (*Justification*). On the other hand, Habermas recognises that ethical norms are shaped by cultural and historical factors and are therefore contingent on specific social contexts. Ethical norms are developed within communities and are often based on shared values, traditions, and practices. It is about what is good 'for me' (or 'for us') – which does not need to be asserted in general or universal terms.¹⁵

This tension between universality and particularity, as discussed, raises questions about the relationship between moral principles and ethical norms. How can we reconcile the universal validity of moral principles with the contingent and context-dependent nature of ethical norms? How can we apply moral principles in concrete ethical situations without disregarding the particularities of the context?

In answering these points of criticism, Habermas proposes that ethical norms should be subject to critical scrutiny and justification through rational discourse to ensure that they are compatible with moral principles. This means that ethical norms should be evaluated based on their compatibility with universal moral principles and the reasons that support them.¹⁶ On similar lines, Forst (2018:390) indicates that the notion of 'two spheres' between values and norms is dynamic in nature, and it remains always the object of discourse – including those discourses in which it remains controversial

14. Other points of criticism against Habermas's discourse ethics that cannot be dealt with here in detail is: The normative status of moral validity claims into truth claims made in the realm of theoretical reason.

15. In his critique of Habermas, Seel (1995) argues that deontological morality presupposes an idea of the good as they seek to afford – to all individuals and in equal measure – to live properly. This allows for a formal theory of the 'good life' or the 'succeeding life'. For Forst such a perspective of an objective ethical theory that antecedes discourse is not possible (*Inclusion*, 21ff.). Such an idea of the good as a claim must still prove itself in moral discourse among free and equal persons (Forst 2018:391).

16. Putnam (2002:111–134) has criticised Habermas here by emphasising the cognitive validity of ethical values (doing justice to religious value orientations and 'thick' ethical judgements). Habermas has reacted that (2003) contextual ethical values do possess cognitive content, albeit in a different way than holds for moral norms (Forst 2018:391).

whether an ethical or moral response is called for (Forst 2018:390). In addition, it does not mean that ethical questions cannot be answered rationally or that they are 'purely subjective' or 'private' in nature; rather, it means that moral obligation must be justified in strictly reciprocal and general terms.¹⁷

Finally, Wellmer (1991:148, 158) has offered interesting arguments about the relationship between morality and democratic legitimation in discourse ethics. His point is that morality does not concern the general justification of norms, as discussed here but concerns justified ways of acting that are to be determined in specific situations (201ff.). Whereas Wellmer understands moral discourses primarily in a kind of hermeneutical way as 'discourses of application', Habermas follows Günther's (1993) distinction between discourses of justification and discourses of application (*Justification*, 30ff.). On this view, the latter cannot replace the former, but they are still necessary to apply abstract norms to circumstances from the point of view of appropriateness. Here the principle (U), however, remains central to the dimension of moral justification (Forst 2018:389).

These points of criticism are an indication that Habermas's discourse ethics is an important theory in contemporary ethical and moral debates and that the final word has not been spoken in this regard.

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17. Forst himself, although, has an internal critique of Habermas by finding his position on moral motivation as ambivalent. In this sense, Habermas's notion of a 'communicative form of life' includes both ethical and moral motives; its inherent ambivalence is evident, for example, when Habermas writes that affirming the truth capacity of practical questions involves the 'self-understanding of subjects acting communicatively' and 'is intertwined with ethical motives' (*Truth*, 274) (Forst 2018:391).

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