

Discursive conditions and contextual pre-suppositions. Habermas versus Apel.

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Abstract

The terms “morality” and “ethical life” refer to the relationship between Kant’s universalistic and Hegel’s “contextualised” account of morality. In this essay, the problem of universalism and contextualism will be addressed to Apel’s and Habermas’s positions. I will divide the theme into three main topics: 1) The historical reconstruction of the rational conditions of discourse ethics within Habermas’s position: in which sense could this approach lead to a contextualism? 2) The difficulty with establishing a non-contextual justification of the discursive, rational conditions. Habermas’s reconstructive approach will be confronted with Apel’s “strict reflectional” approach which relies on stronger universalistic presuppositions. 3) This last topic will focus on the main difference between Habermas’s and Apel’s perspectives. This is connected to the double function of the rational “symmetry and reciprocity”-conditions: they are seen as consensual and simultaneously meta-normative conditions. Their meta-normative character is Apel’s main concern, and seen as vital to social criticism.

1. Introductory remarks

The combination of Kantian and Hegelian presuppositions within discourse ethics has been one of the central concerns of Habermas¹ as well as of Apel.²

¹ See for example Jürgen Habermas, ‘Treffen Hegels Einwände gegen Kant auch die Diskursethik zu?’, in *Erläuterungen zur Diskursethik*. (Frankfurt a.M.: Suhrkamp, 1991), pp. 9–31. I will be referring to the English translation: Habermas (1990a): ‘Morality and Ethical Life: Does Hegel’s Critique of Kant Apply to Discourse Ethics?’, in *Moral Consciousness and Communicative Action* (Cambridge/Massachusetts: Polity Press, 1990), pp. 195–215. This essay was added to the English translation of *Moralbewußtsein und kommunikatives Handeln* (Frankfurt a.M.: Suhrkamp 1983). However, the essay itself was published in 1986, in *Moralität und Sittlichkeit. Das Problem Hegels und die Diskursethik*, ed. Wolfgang Kuhlmann (Frankfurt a.M.: Suhrkamp, 1986). See also ‘Was macht eine Lebensform rational?’, also in *Erläuterungen zur Diskursethik*, pp. 31–49. For a more recent treatment of the topic, see Habermas, ‘Wege der Detranzendentalisierung. Von Kant zu Hegel und zurück’, in *Wahrheit und Rechtfertigung*. (Frankfurt a.M.: Suhrkamp, 1999), pp. 186–230.

² See for example Karl-Otto Apel (1988a), ‘Kant, Hegel und das aktuelle Problem der normativen

This combination has also served as a central source for a philosophical dispute between the two philosophers. The Kantian train of thought presupposes that the rational and meta-normative conditions of discourse ethics could be justified on a non-contextual basis. In discourse ethics, the categorical imperative of Kant's ethics is transformed into a dialogical principle, based on consensual conditions. These conditions presuppose the equal opportunity to take part in a discourse, implying the inclusion of each person concerned by a norm. Many different formulations of the principle of universalisation have been put forward by Habermas and Apel, but in short, it runs as follows:

(U): For a norm to be valid, the consequences and side effects of its general observance for the satisfaction of each person's particular interests must be acceptable to all.³

The Hegelian train of thought, on the other hand, points to the contextual basis of the rationality conditions. A Hegelian approach would claim that the meta-normative conditions of the discourse, expressed by the formula of *symmetry*, *reciprocity* and *individual autonomy*, cannot be seen apart from the historical and cultural development generating these conditions. The Kantian approach attempts to reconstruct and justify these conditions on a non-contextual level, in order to show their unavoidability in any discourse that attempts to justify given norms.

Several topics are linked to these two tenets within Habermas's and Apel's thinking. In the first place, the Habermas-Apel debate has been linked to the status of the unavoidable conditions. Apel claims that Habermas makes the conditions dependent on certain contextual conditions. He claims that the reconstruction of the conditions within the existing communicative practices will not give a strong enough foundation, given that the conditions could be refuted argumentatively by discursive practices.⁴ Apel calls for a reflexive

Grundlagen von Moral und Recht' in Apel, *Diskurs und Verantwortung. Das Problem des Übergangs zur postkonventionellen Moral*, (Frankfurt a.M.: Suhrkamp, 1988), pp. 69–103. See also Apel (1988b), 'Kann der postkantische Standpunkt der Moralität noch einmal in substantielle Sittlichkeit "aufgehoben" werden? Das geschichtsbezogene Anwendungsproblem der Diskursethik zwischen Utopie und Regression' in *Diskurs und Verantwortung*, pp. 103–153. This essay has also been published in: .Kuhlmann (ed.): *Moralität und Sittlichkeit. Das Problem Hegels und die Diskursethik*. (Frankfurt a.M.: Suhrkamp, 1986).

³ Habermas (1990a), p. 197.

⁴ See Apel's critical remarks to Habermas in Apel (1989), 'Normative Begründung der "Kritischen Theorie" durch Rekurs auf lebensweltliche Sittlichkeit? Ein transzendentalpragmatisch orientierter Versuch, mit Habermas gegen Habermas zu denken', in *Zwischenbetrachtungen Im Prozeß der Aufklärung*. Eds, Honneth/McCarthy/Offe/Wellmer (Frankfurt a.M.: Suhrkamp, 1989), pp. 15–65, especially p. 21.

grounding of the rational conditions, and also for an awareness of the principal difference between real and ideal levels of argumentation. He calls for a ultimate justification of the conditions on the ideal level, but for a fallibilistic approach on the real level. Counterpoising the communicative form of rationality with the strategic form: the discursive form of communication might be corrupted by economic and power-oriented interests in any real community of communication. In principle, it would be impossible to confirm that a given community conforms to the ideal community of communication. Any community on the real level could present itself as a community confirming to the ideal, leading to a consensus based on false premises.

Another difference between Habermas and Apel will therefore be of central interest. A reconstruction and justification of consensual conditions must be supplemented by a critical application. Critical approaches are necessary, in Apel's point of view, in order to make it possible to implement the ideal conditions on the real level of society. Critical approaches point to the restrictions rather than potentials within real communities of communication. Restrictions might refer to systemic restrictions on the macro-level of society, such as interests linked to the medias, in Habermasian terms, of power and economy.⁵ A self-referential critique might also be conducted. A self-referential critique makes a critical application of the meta-normative criteria within a real community of communication, leading to an awareness of the obstacles at hand that might preclude a argumentation on equal terms. A crucial difference between Habermas and Apel is at stake here. In Apel's approach, a double function is given to the meta-normative conditions of the "ideal community of communication". On the one hand, the conditions of symmetry and reciprocity, as well as the four validity claims, works as consensual conditions within a community, like a community of researchers. On the other hand, they work as a universal standard for the judgement of the symmetry- and reciprocity-potentials within another community. As such, they serve as normative standards for social critique.

The problematisation of this last point will include another difference in Apel's and Habermas's approaches to discourse ethics. The transcendental

⁵ See Habermas (1981), *Theorie des kommunikativen Handelns* (Frankfurt a.M.: Suhrkamp, 1981). I will be referring to the English translation, Volume I, as Habermas (1997a), and the Volume II as Habermas (1997b). See Habermas: *The Theory of Communicative Action*. (Massachusetts: Polity Press, 1997), Volume II, especially pp. 153-197, for his treatment of the systemic steering-medias of power and economy.

pragmatism of Apel brings the concerns of the practical and theoretical discourse together. On the one hand, by pointing at the common consensual ground for the practical and theoretical discourse. On the other hand, by pointing at the interlinkage between social facts and normative issues within the social sciences, and especially within the critical approaches of the social sciences. After all, critical approaches will not only depend on the treatment of normative issues, but also on factual matters. Economical and educational differences might be measured in statistical terms, and at the same time serve normative standards for the judgement of the competences of the individuals within a community. Traditional standards of authority and subordination might restrict the freedom of speech and action of individuals in traditional societies. Analogically, the educational and also economic status might inflict on the weight of the person's arguments within "post-conventional" societies.

First, I will turn to the justificational basis of the Habermasian approach. His approach might be entangled with a certain contextualism on two different levels of justification. The first level concerns the status of the meta-norms themselves: to what extent are they to be justified within the Habermasian approach? The other level concerns the generative historical development of the rationality conditions of the discourse: since the post-conventional rationality seems to be the form of rationality that allows a discursive and critical testing of norms, to what extent are the rationality conditions of discourse ethics to be detached from their historical genesis? I will pose the following question: does the reconstructive approach itself cause recourse to the Hegelian *Sittlichkeit*? In the first place, the conditions as such might not be given a firm enough justificational basis, if the conditions themselves are subjected to continual discursive tests within real communities of communication. According to the Apelian critique, the reconstructive, justificational approach might therefore lead to a weak justification. In the second place, the historical reconstruction might tie the rationality to the contingencies of a historical development, and make the discursive conditions dependent on the rationality of a specific, post-conventional culture. In both cases, the "recourse to *Sittlichkeit*" would serve as a contingent ground of justification, due to the contingencies and deficiencies of real communities of communication as well as the contingencies of a historical-generative development.

2. The two reconstructive approaches of Habermas: historical and justificational.

The historical reconstruction might certainly cause a contextualisation of the communicative presuppositions, if the rationality conditions of the discourse

cannot be detached from the rationalisation process of a given (western or non-western) society. Habermas's own treatment of Weber⁶ might serve as a good example. The differentiation of rationality into the three distinct rationality spheres of science, ethics and art is described by Weber as vital to the modernisation of the western world. These three rationality spheres have their counterpart in the Habermasian usage of the distinction between evaluative, regulative and constative forms of speech-acts.⁷ More importantly: it has its counterpart also in the difference between facts, norms and values, between theoretical, practical and explicative discourses. In a certain way, facts could be "given", but by detaching norms from facts, norms are no longer "given", but dependent on inter-subjective acceptance. The traditional world-view did not detach facts from norms: quite contrary, norms functioned as cultural values, and these were treated as "given", either by gods, a substantiated culture, or a spiritualised nature.

The problem is easily identified: if the rationality of discourses is dependent on a preceding rationalisation of a society, then discourses would only be realisable within rationalised cultures, and the discursive conditions would be made dependent on contextual presuppositions. No discourses could arise between traditionals and moderns, and any implementation of discourses would be restricted to a culturally rationalised area. Societies as well as individuals would be apt to go through a Weberian rationalisation in order to make discourses possible; individuals would be forced to go through an onto-genetic rationalisation in order to become possible participants of a discourse.

Reconstruction on this level is bound to be contextual, by taking certain factual, either collective or individual, presuppositions into consideration. However, Habermas has also got a reconstructive approach on the non-contextual level. The vital question would be: to what extent could the argumentative conditions of the discourse be detached from the contextual presuppositions? On the one hand, Habermas claims that:

Universalist moralities are dependent on forms of life that are rationalized in that they make possible the prudent application of universal

⁶ See Habermas (1997a), p. 143–173, for his treatment of Weber.

⁷ Habermas (1997a), p. 42, 71. See also Habermas (1990b): "Discourse Ethics: Notes on a Program of Philosophical Justification" in *Moral Consciousness and Communicative Action*. (Massachusetts: Polity Press, 1990), p. 107.

moral insights and support motivations for translating insights into moral action.⁸

On the other hand, in his remarks to the principle of “U”, he claims that:

Finally, an ethics is termed *universalist* when it alleges that this (or a similar) moral principle, far from reflecting the intuitions of a particular culture or epoch, is valid universally. As long as the moral principle is not justified – and justifying it involves more than simply pointing to Kant’s “fact of reason” – the ethnocentric fallacy looms large. I must prove that my moral principle is not just a reflection of the prejudices of adult, white, well-educated, Western males of today.⁹

The ambiguity inherent in Habermas’ texts gives, I believe, three possible answers to this question. Either A) certain conditions on the contextual level must be fulfilled if discourses are to be operational. These rationality conditions are conditions on the individual as well as collective level. Only rationalised individuals could take part in a discourse. These individuals are more likely to be a part of a rationalised culture. B) Certain conditions on the contextual level serve as potentials for implementing discourses, but are not necessary in any strict sense of the word. Certain rationality conditions are required on the individual level, but these are possibly, but not by necessity tied to culture. C) The strongest version: certain rationality conditions on the contextual level are required, although not necessary. The minimal rationality conditions necessary at the individual level, however, are minimal requirements in any inter-subjective communication, and therefore not restricted to any given culture.

Habermas, I believe, will be in-between the position of B) and C). The question will be: to what extent could universal communication-conditions be uncoupled from the rationality conditions of given cultures, and rendered unavoidable in the strictest sense of the word? In other words: how could justification be based on reconstruction?

3. Reconstruction as justification?

By turning to the question of justification on a non-contextual level, one is returning to the (fundamental) Kantian question: in what sense is a valid consensus based on mutual understanding possible? The non-contextuality

⁸ Habermas (1990b), p. 109.

⁹ Habermas: (1990a), p. 197.

of this question implies taking into consideration the universal conditions involved in any argumentation, apart from the different presuppositions given in any specific cultural context. The four validity-claims repeatedly discussed in Habermas's works are supposed to be unavoidable claims raised in any understanding-oriented communication, regardless of the substantial world-views of the communication partners. Traditional or modern, every participant involved in a dialogue has to conform to the intelligibility of arguments, the truth or rightness claims put forward, and the sincerity of the participants putting forward the claims.

A closer examination of the four validity claims might serve the purpose of clarification. In *Moral Consciousness and Communicative Action*¹⁰ as well as *The Theory of Communicative Action*,¹¹ Habermas only refers to the three claims of "truth, rightness and sincerity". I believe that the reason for this is the self-evident status of the first claim. The first claim, "intelligibility", refers to the basic, linguistic understanding between the participants, which means the basic, common understanding of the semantic content of linguistic expressions. Understanding will not be vindicated unless the participants understand the content of concepts unanimously. This should be the basic presupposition when we are dealing with participants from different cultural contexts, and when the participants have to rely on translations in order to communicate. This first validity-claim is quite unproblematic in that respect. A closer examination of the three other validity claims should show their unavoidability as well.

Understanding-oriented communication relies on "truth" and "rightness" as well, which refers to the alleged truth- and rightness-content of the utterances. Clearly enough within the theory of discourse: truth and rightness do not exist as separate entities ready for apprehension, but statements about facts must be considered acceptable by the participants in order to be rendered valid.¹² However,

¹⁰For rational reconstructions especially, see Habermas, 'Reconstruction and Interpretation in the Social Sciences' in *Moral Consciousness and Communicative Action*, p. 31. See also Habermas (1990b), p. 59.

¹¹ Habermas (1997a: 278).

¹² See for example Apel's treatment of the (4) validity claims in Apel (1994) 'Die Hermeneutische Dimension von Sozialwissenschaft und ihre normative Grundlage', in *Mythos Wertfreiheit? Neue Beiträge zur Objektivität in den Human und Kulturwissenschaften*, eds. Apel/Kettner (Frankfurt/New York: Campus Verlag, 1994), p. 23. Here, he stresses the consensual conditions of the claims, especially the truth-oriented one. See also Apel (1996) 'Die Vernunftfunktion der kommunikativen Rationalität. Zum Verhältnis von konsensual-kommunikativer Rationalität, strategischer Rationalität und Systemrationalität' in Apel/Kettner, *Die eine Vernunft und die vielen Rationalitäten*, (Frankfurt a.M.: Suhrkamp, 1996), pp. 17–41. Here, the presuppositions of the practical discourse are given priority within the theoretical discourse. See especially pp. 22–24.

theoretical discourses deal with questions of facts rather than norms, whereby a bridging principle of induction¹³ will be added to the consensual criterions for truth.

Claims of truth and rightness are closely linked to the last validity-claim, sincerity. In understanding-oriented communication, the participants must presuppose their own as well as the sincerity of other participants when forwarding claims to truth and rightness. Self-evidently, lies cannot be accepted within an understanding-oriented communication, since lying implies forwarding a conception of rightness contrary to what the participant himself/herself consider as right. Neither will it be rational to put forward validity claims (of the rightness of a given problematic norm, for instance) if the addressee does not himself/herself believe in a critical testing of norms. The possibility of raising validity-claims is connected to the possibility to adopt a yes- or no-position towards the alleged normative rightness of a norm, which means: it implies the possibility to reject or comply. These four minimal requirements for mutual understanding is further linked to the two fundamental conditions of symmetry and reciprocity. Reciprocity means mutuality: a one-sided understanding would evidently not be mutual. Symmetry means the equal opportunity to take part in a discourse. This requirement is built into the formulation of the universalisation-principle, by presupposing that anyone affected by a norm should have the opportunity to take part in a discourse on equal basis.

A distinction between a weaker and a stronger form of understanding could be useful in this respect. A weaker form of understanding could rise, I suppose, between asymmetrical participants in any communicative fellowship. Participants in any communicative fellowship might reach an understanding of a matter because of the authoritative arguments from a “more knowledgeable person”, simply because the “knowledgeability” of the person gives the arguments weight. This kind of understanding also arises when traditional views are given authority simply because of their general acceptance within a culture. Anyway: this “weaker” kind of understanding should not be confused with the consensus-based understanding within the practical and theoretical discourse. A “communicative fellowship” of this kind could qualify for the label “dialogue”, given that a mutual understanding did arise between the authoritative and non-authoritative person. Accordingly, a dialogue based on reciprocity/mutuality but not symmetry could not qualify

¹³ Habermas (1990b), pp. 63–64.

for the label discourse, since a genuine agreement presupposes symmetry of arguments between the participants, that means equal opportunity to take part, as well as equal weight given to the arguments put forward from the different participants. In discourses proper, arguments are considered solely because of their argumentative weight, not because of the personal and/or positional weight linked to the arguments. The alleged “knowledgeability” of the person will not be taken into consideration since it is the arguments themselves which are under investigation. Mutual understanding as well as symmetry is by necessity required, that means: even if the understanding of the position of one another leads to disagreement and not agreement, this understanding would be based on a mutual understanding of the argumentative positions of one another, not linked to the socio-economic positions.

The four validity claims and the two symmetry-reciprocity-conditions are the minimal requirements for an understanding-and-consensus-oriented communication. Clearly, these minimal requirements are formulated on a contra-factual level. In real-life arguments, it will be more or less difficult to distinguish between “symmetrical” and “asymmetrical” relationships. Research communities should form the best example, since arguments should be regarded solely because of their relevance to “the matter itself” or “the question at hand”, regardless of the scholarly positions behind the arguments. Positional authority might anyway get confused with argumentative weight. On the strictly analytical level, however, it will be possible to formulate a set of clear-cut minimal requirements, since the violation of any of them will produce defective forms of agreement, and since any consensus will depend on mutuality as well as equal opportunity.

Formulated contra-factually, these claims and conditions are formulated as ideal conditions, given at the level of the “ideal speech situation”. Habermas nevertheless claims that any participant in “real speech situations” who involves himself/herself in an argumentation directed towards mutual understanding and agreement implicitly or “naively” presupposes these conditions. This assumption forms the basis of the reconstructive approach to justification. Justification of conditions are made reconstructively, by showing the basic preconditions which have to be operable within any understanding/agreement-oriented discourse, if a valid consensus is to be redeemed. The unconditionality of these conditions can be demonstrated negatively, by showing that any participant, who (willingly or unwillingly) violates any of the claims or conditions, will violate the possibility of mutual understanding and agreement.

However: to what extent are the discursive presuppositions given a strong justification by the reconstructive approach? Apel relies on a strong justificatory model of strict reflection, which he opposes to the reconstructive model of

Habermas. By contrasting Habermas's position with Apel's, I will attempt to show some weaknesses in Habermas's model, which could possibly be solved by the approach of "quasi-transcendental", "strict" reflection.

4. Strict reflectional justification versus reconstructive justification.

The main question in this respect will be: how could one possibly prove that the conditions are unconditional? Habermas as well as Apel relies on a demonstration *via negativa*, by showing that the violation of discursive presuppositions necessarily leads to performative contradiction. Analogous to the principle of contradiction, which can reveal inconsistencies on the semantic level of sentences, the principle of performative contradiction will be used to show inconsistencies on the level of speech acts. However, Apel's criticism against Habermas is founded on the claim that Habermas makes the conditions testable on an empirical-pragmatic level, implying that the conditions can only be proved inevitable as long as they are not refuted by speech-acts in real speech-situations. Crudely formulated: participants in real speech-situations could even argumentatively refute the universal conditions of the ideal speech-situation. This would, reasonably enough, imply that participants could demonstrate a better alternative to the communicative, rational conditions of discourse-ethics. The rationality conditions and argumentative rules of discourse ethics had to be shown not coherent or consistent enough, given a better and alternative set of unconditional conditions. Habermas opposes the different versions of an ultimate justification of these rules of argumentation by saying that:

Demonstrating the existence of performative contradictions helps to identify the rules necessary for any argumentation game to work; if one is to argue at all, there are no substitutes. The fact that there are **no alternatives** to these rules of argumentation is what is being proved; the rules themselves are not being justified.¹⁴

While Apel claims that Habermas's approach causes recourse to *Sittlichkeit*, Habermas claims that Apel's version of the justificatory procedure represents recourse to the philosophy of consciousness.¹⁵

Habermas's remarks to Apel are interesting in that respect. In what sense

¹⁴ Habermas (1990b), p. 95.

¹⁵ See Habermas (1991), 'Erläuterungen zur Diskursethik' in *Erläuterungen zur Diskursethik*, pp. 192–193. See also Habermas (1990b), p. 96.

could justification of unavoidable presuppositions considered to be made on the basis of a philosophy of consciousness? Habermas claims that Apel tries to give discourse ethics an epistemological grounding by assuming that the strict reflection could be conducted from the single individual's perspective, thereby causing a turn from the pragmatics of speech to the philosophy of consciousness. Like the Kantian subject, the Apelian subject would be able to decide for himself/herself which conditions could serve as unavoidable. Discourse ethics would be turning from the inter-subjective realm to the realm of the "transcendental subject".

There are several ambiguities arising out of this critique, which I would like to elucidate further. First of all: could the presuppositions inherent in understanding-oriented argumentation possibly be treated as problematical validity-claims within a real speech situation? Habermas denies this himself, presupposing that the given claims of truth, rightness and sincerity are already at work in a given discourse.¹⁶ Any discourse conducting a discourse about the truth and rightness of the given presuppositions of truth, rightness and sincerity, would have to presuppose these presuppositions in order to make a discourse possible. In Habermas's point of view: the conditions for conducting a discourse are not to be the subject matter of the discourse. He also denies that given "meta-discourses" could perform a discursive argumentation about the unconditional status of the conditions. Like Apel, he presumes that any given discourse could examine the truth-content and rightness-content of given statements, as well as questioning the sincerity of the participants, but not start to question the unavoidability of the presuppositions themselves. So, what is the main difference between the philosophers?

The critique that each of the philosophers conducts against the other might be too crude. After all, neither Habermas nor Apel will subject the conditions to argumentation within given discourses. The conditions cannot be tested in this way. The conditions themselves could be subjected to decisionism, if *de facto* discourses were to agree or disagree about their status. Apel claims that Habermas makes the conditions dependent on empirical pragmatics, but this must be interpreted in another way, if it is to make sense. After all, using the conception of performative contradictions as a main standard for judgement, the conditions themselves are subject to a continual testing *via negativa*. As long as given discourses are conducted along with the given presuppositions, as long as violating the presuppositions are leading to performative contradictions,

¹⁶ Habermas (1990b), p. 97.

and as long as no given discourses will be able to conduct an understanding-oriented argumentation using any alternative set of preconditions contrary to the preconditions formulated within discourse ethics, these preconditions are proven unavoidable.¹⁷

Habermas claims that a transcendental grounding of these preconditions is neither possible nor needed. He also claims that any attempt to give a ultimate justification will have to choose between the three alternatives of the “Münchhausen Trilemma”: either leading to an infinite regress, arbitrarily breaking off the chain of deduction, or making a circular argument.¹⁸

Turning to Apel: a reflective grounding of the unavoidable presuppositions would take into consideration the principal difference between argumentation and reflection. Even if reflection might be conducted as a virtual discourse, the approach of strict reflection will rely on a claim to consistency that cannot itself be argumentatively refuted. A meta-argumentative level could try to refute the unavoidable preconditions, but only by using non-contradictoriness as a standard for consistency, either at a semantic or performative level. The Apelian approach might argue that this procedure itself works as an ultimate, justificatory meta-discourse, either at an intra-subjective or inter-subjective level. While actual discourses naively presuppose the preconditions in their actual testing of normative validity claims, the meta-discursive level could make the preconditions subject to investigation, and at the same time be forced to be self-reflexively aware of their own performance of the validity-claims. This meta-discourse would attempt to make a reflexive justification, not an argumentative redemption, of the truth and rightness of the claims themselves. Thought-experiments might be conducted as an exemplary device, in order to clarify the status of the preconditions. (If I, for example, try to refute the claim to sincerity, I must presuppose my own sincerity about the possibility of refutation of the claim to sincerity.) In a Apelian way, thought-experiments might serve as a device to “reflexive testing” of the preconditions, and also serve as a device for conceptual clarification. Habermas, however, could deny that a “reflexive testing” could be conducted, and may insist on an empirical-pragmatic testing *via negativa*. Apel would maintain that a conceptual clarification as well as maieutic use of thought-experiments would serve the purpose of justification through a reflexive testing of the alleged consistency of the conditions.

¹⁷ Apel (1989), p. 61.

¹⁸ See for example Habermas (1990b), p. 79.

The main difference between Apel and Habermas is closely connected to their respective approaches to justification. Apel seeks the common, rational ground for all types of discourses. By connecting the justificatory reconstruction to the historical reconstruction, Habermas insists to keep a sharp distinction between normative, descriptive and evaluative questions, due to the differentiation process of rationalisation. Hence a distinction is also established between the practical and theoretical types of discourse, since normative claims differ from factual by not being empirically testable but only argumentatively refutable or acceptable. This forms an architectonic difference between Habermas and Apel that is not simply a cosmetic question. Apel is, more than Habermas, concerned with the normativity inherent in conditions of symmetry-and-reciprocity. Further on, this normativity is linked to the possibility for critique, dealing with theoretical as well as practical questions. My main point in this respect is that a sharp distinction between theoretical and practical discourses might conceal their interdependence in discursive practices. Some of Habermas's formulations might lead to the assumption that consensual conditions of the principle of "U" is only at work in practical discourses. See for example his insistence on induction as the main bridging principle in theoretical discourses:

In theoretical discourse the gap between particular observation and general hypotheses is bridged by some canon or other of induction. An analogous principle is needed for practical discourse.¹⁹

For that reason, the consensual conditions of "U" seem to refer to the "bridging principle" of practical discourses only:

(U): *All* affected can accept the consequences and the side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests (and these consequences are preferred to those of known alternative possibilities for regulation).²⁰

I assume that Habermas's intention was to point at the primary difference between the two kinds of discourses, without necessarily neglecting the consensual ground of the theoretical discourse. A principle of induction does not exclude consensual conditions within the theoretical realm. Nevertheless, Apel gives a more explicit account of their common justificational ground, by insisting on the priority of the consensual conditions within the practical as well

¹⁹ Habermas (1990b), p. 63.

²⁰ Habermas (1990b), p. 65.

as theoretical discourse. In addition, he points out their interdependence on the practical level, by insisting on the complementarity between understanding and explanation within the scientific practices of the social sciences.²¹ I believe that a fundamental insight might be at work here: a sharp distinction between the practical and the theoretical discourse might conceal that criticism consists of normative evaluations of social facts. Critical perspectives do not exclusively rely on normative considerations. Further, critical perspectives intend to implement changes in the social reality, thereby also relying on empirical and theoretical studies of the social world.

By turning to the common, communicative rationality ground of theoretical and practical discourses, Apel is also turning to the question of critique. The meta-normative conditions of the ideal community of communication do not only work as the common consensual and argumentative ground of the theoretical and practical discourse. These meta-normative conditions could also be turned into a universal standard for criticism. The question will be: how could “the ideal speech situation” of Habermas and “the ideal community of communication” of Apel possibly function as an ideal standard for critique? Meaning: how could “the ideal community of communication” work as a standard for revealing obstacles to symmetry and reciprocity within “real communities of communication”?

5. The ideal speech situation versus the ideal community of communication:

Thereby, I am introducing the third topic of this essay. The weakest version of Habermas seems to reserve the question of the practical discourses to normative problematic validity claims within a rationalised context. Practical discourses seem to be dependent on rationalisation processes of the European community, leading to the necessary differentiation between different rationality realms. Discourses might be dependent on a preceding rationality process, if they are to be implemented in a community. The uncoupling of norms from a given background is not compatible with a non-rationalised context. The practical discourse then, dealing with exclusively normative questions, is dependent on the kind of community that does allow a discursive testing of norms.

By focusing on the common rationality of discourses “überhaupt”, Apel is turning to the strong decontextualised version of discourse theory. Minimal

²¹ See for example Apel (1988b), pp. 114–116. For a more recent treatment of this topic, see Apel (1994).

conditions for understanding can be detected, reconstructed and justified on a strict reflexive basis. The strict reflexive basis should ensure that these conditions are not linked to given life forms, but must be universally operable within any communicative context, regardless of cultural background, if the communicative partners are to reach a universal, and thereby, valid consensus.²² Mutual understanding in the weak sense, as mentioned before, does not require a symmetrical relationship between the participants, although it will rely on the three validity claims and, obviously, reciprocity. This kind of understanding is operative within all kind of communities, traditional as well as modern. Consensus can also be reached within asymmetrical relationships, even if this kind of consensus will have the status as *de facto* but non-valid. However, if the participants are to reach a valid understanding and agreement about issues, regardless of normative or factual content, symmetry and reciprocity are minimal, meta-normative requirements to be fulfilled. “If” forms the keyword here, since the ideal communication community is formulated at the ideal level, and therefore contra-factual.

Apel insists on the possibility for an ultimate justification of the discursive conditions. Connected to this claim for an ultimate justification by strict reflection is also the universalist justification of the conditions given in any understanding-oriented communication as such. These minimal requirements will be the same in any argumentation, regardless of the communicative content. Hence, the main differences between the practical and theoretical discourse will rely on the distinctions between factual and normative content of the utterances, as well as the inductive part of empirical science, while both types of discourse will rely on consensual conditions. Since discourse theory deals with communication as such, these conditions will also be necessarily operable within other understanding-oriented, but non-scientific, dialogues, given on the level of the society in our as well as other cultures.

Within Apel’s position, there is a stronger emphasis on the meta-normative character of the unavoidable conditions. Conditions for mutual understanding oriented towards consensus also work as meta-normative conditions for

²² See Apel’s remarks to Habermas in ‘Openly strategic uses of language: a transcendental-pragmatic perspective (a second attempt to think with Habermas against Habermas)’, in *Habermas. A Critical Reader*, ed. Dews (Oxford/Massachusetts: Blackwell Publishers, 1999). Here, he argues that Habermas’s positions makes the conditions dependent on empirical testing. See especially footnote no. 5. See also Habermas’s remarks to his own reconstructive approach, in Habermas (1990b), p. 97.

consensus. The meta-level of normativity makes it possible to identify a stronger, universal set of conditions for critique. While norms with a substantial content are dealt with within the real level of discourses, these meta-norms function as conditions for dealing with norms at a *de facto* level. At the same time, meta-norms are formulated as a set of conditions within the ideal community of communication. Real levels of communication could thus be confronted with the possible lack of conformity with the ideal conditions. Apel claims that there must be a principal difference between the ideal and the real community of communication, and that this clear-cut difference makes critique possible. The principle of “U” must be supplied with “D”,²³ understood in terms of a principal difference between ideal and real communication. Consequently, he presupposes that there will never be a full-scale conformity with the conditions at the real level, and that the real communities of communication will only approximately, and to different degrees, be able to fulfil the conditions of the ideal community of communication.

Apel states the internal connection between Kant and Hegel in his own position in the following way: the unity of theoretical and practical reason is appropriated from Hegel. Kant’s philosophy is, on the other hand, based on the sharp distinction between knowledge and action, actually reserving the term knowledge to the theoretical accomplishments of empirical, meaning natural, science. The transcendental element in Apels position is the appropriation from Kant. Justification by means of strict reflection makes it possible to formulate the common ground of practical and theoretical discourses by explicating the unavoidable set of conditions within any consensus-oriented communication, which at the same time will work as an ideal standard and a regulative ideal. Hence, he maintains that the ideal community of communication must be understood as 1) a regulative ideal that will 2) never have a full-scale correspondence with the empirical, real community and communities, and 3) hence, the realisation of the ideal community of communication within present and future life-contexts will be tangled with uncertainty.²⁴

6. The ideal versus the real community of communication.

The last point of the preceding section will be the point of departure of this chapter. The uncertainty with deciding whether the ideal conditions are realised

²³ Not to be confused with the discourse-principle, “D” of Habermas. For the principle of “D” of Habermas, see Habermas (1990), p. 197. For the principle of “D” as “principal difference” in Apel, see Apel (1988b), pp. 147–149.

²⁴ See Apel (1988a), pp. 100–101).

or not on the real level, is due to a principal fallibilism at the real level. After all, if we consider the community of researchers to be the real community of communication that might be approximately closest to vindicate the given conditions of discourse, it would still be difficult to establish, once and for all, that the conditions as well as the validity claims are vindicated within the scientific community. This can never be done with full-scale certainty, neither from first, second, nor third person perspectives. The claim to sincerity might be the most difficult to judge, since any participant might be concealing his/her genuine motives from the other participants.

Sincerity can only be judged by certainty from the intra-subjective first person perspective. From a second person perspective the insincerity might be revealed through a lack of consistence between the different utterances from the first person, or through a lack of consistency between speech and action. A skilled manipulator might conceal the genuine motives behind an intended consistency between different utterances, and between utterances and actions. A community of researchers might consider itself to be the instantiation of symmetrical and reciprocal relationships, but still, the assistant-researcher might feel compelled to agree with the more authoritative senior researcher, in order not to lose confidence. Differences in positions are not relevant on the ideal level of communication, since symmetry and reciprocity are conditions defined in pure argumentative terms. On the real level of communication, however, these socio-economic differences might be the dominant obstacles to a full-scale realisation of the ideal conditions.

Dealing with the two other validity-claims, the internal connection between the claims is revealed. Truth and rightness are dependent on a discursive vindication, and this can only lead to a valid consensus given that the relations between first and second person are established on symmetrical and reciprocal terms. Asymmetrical and non-reciprocal relations might be concealed as symmetrical and reciprocal, given a lack of sincerity from one of the participants. Here, the communicative rationality is counterpoised with the strategic one. Strategic forms of rationality may distort any understanding-oriented communication, since understanding is not the primary goal of strategic speech and action. Understanding then rather serves as a means for achievement of external goals. Alleged symmetrical and reciprocal discussions might conceal different forms of socio-economic asymmetries, which might undermine the symmetry of communication. Strategic actions in this respect point to interests connected to the Habermasian formula of “language” versus “economy” and “power”. More specifically said by use of an example: agreement with different aims of a research project might rise out of each person’s “egocentric” wish

for professional and economical success, not because of a primary interest in the matter itself. Struggles for power might become more important than the “struggle for recognition”.

Turning to the third person perspective, the matter gets more complicated. Drawing a crude analogy to the double hermeneutics of Giddens discussed by Habermas in *The Theory of Communicative Action*:²⁵ the research-community might form one real community of communication studying another real community of communication. Given the sources to fallibilism within the first real community, it will be hard, if not impossible, to establish a valid consensus about given equalities or inequalities at the second, real level. A critical application of the ideal conditions of discourse theory will therefore have a vital function within Apel’s thinking, since the aim of a critique will be to point at given obstacles to the realisation of the ideal conditions.

The principal difference between the ideal and the real community has got an intrinsic connection with the principal difference between justification and application within Apel’s thinking. The difference between justification and application forms a theme in Habermas’s thinking as well, but in Apel it is accentuated by the strong claim for an ultimate justification. On the justificatory level, it is possible to formulate the conditions of the ideal community of communication in a unitary way. On the applied level, the conditions can only be approximated. This approximation is partly due to the principal fallibilism connected to the difficulty of stating whether a real community is close to approximating the conditions or not. The approximation is also due to the fact that few real communities of communication might be able to get a high degree of approximation to the ideal conditions. The main aim of a critical application will be to point to obstacles within real communities of communication, obstacles to the realisation of the conditions of the ideal community of communication.

The difference between the Habermasian and Apelian approach could also be described in the following way. For the last ten years, Habermas has, roughly speaking, mainly been concerned with the possibility of reconstructing the potentials within the post-conventional society; the potentials for developing institutional frameworks that could be instantiating a procedural and discursive form of rationality.²⁶ His approach has been mainly “affirmative” or “positive”,

²⁵ Habermas (1997), p. 110.

²⁶ Exemplified by Habermas [1992], *Between Facts and Norms. Contribution to a Discourse Theory of Law and Democracy* (Cambridge/Massachusetts: MIT Press, 1996) Another example is Habermas [1996], *The Inclusion of the Other. Studies in Political Theory*. (Cambridge/Massachusetts: MIT Press, 1998).

meaning that his main concern has been the positive potentials within the post-conventional society, not the vast amount of obstacles that works in disfavour of a discursive community. Apel, on the other hand, has been concerned with the obstacles, and has been developing his perspectives by taking into account the many “critical conceptual tools” within Habermas’s theories. His approach has mainly been “negative”, since a critical use of the concepts of communication theory implies pointing to restrictions rather than potentials.

One of my main reasons of taking Apel’s critique into consideration is based on the ironical fact that a plain “affirmative” approach might serve as an ideological defence of the present. If the existing conditions are judged and evaluated as good enough, and in a high enough degree approximating the ideal conditions, it would be no need for pursuing any further critique. The post-conventional “tradition” would be considered to be critical enough in itself, since a post-conventional rationality opens up for criticisable validity-claims from anyone “competent enough”, that means, “post-conventional-rational enough” to put forward such claims, as well as criticising the claims from another fellow-citizen. Anyway, this post-conventional setting might also be producing obstacles to a full-scale realisation of the communicative potentials. Blindness to these obstacles could produce new forms of command and obedience, created by the belief that existent relations on a real-community-level are fulfilling the conditions of symmetry and reciprocity to an acceptable extent. A critical approach is therefore needed in order to make the discursive potentials realisable. This critical approach will not exclude the affirmative/positive use of the conditions of Habermas’s approach discussed above, but will serve as a valuable and necessary correction to it, given that the ideal community of communication forms the standard worth to strive for. The following remark from Habermas does not necessarily contradict Apel’s critical intention:

...any universalistic morality is dependent upon a form of life that meets it halfway. There has to be a modicum of congruence between morality and the practices of socialization and education.²⁷

The main aim of critique will be to point at restrictions inherent in life forms that preclude the formation of communicative communities approximating the ideal community of communication. After all, the purpose of critique is not to leave the social reality as it is, but to promote the changes needed in order to create more symmetric and reciprocal relations between people. This is what

²⁷ Habermas (1990a), p. 207.

Apel calls the long-term strategy of discourse ethics.²⁸ I would like to add a short-term strategy to this: a self-reflective form of critique (from the first and second person perspectives) might be conducted within real communities of communication like a research community, in order to make the participants aware of possible obstacles to a valid consensus. The observational (and long-term) form of critique might be conducted from one real community (of researchers) studying another, exemplified with “society as a whole”.

However, given the principal fallibilism resulting from the impossibility to give a final answer to whether given relationships are symmetrical or not, the critical application of the discursive conditions will be tangled with fallibilism as well. Therefore, it is necessary to distinguish between the “necessity of justification” and “fallibilism of application”. In what sense, given Apel’s perspective, will the necessary conditions for mutual understanding and agreement be regarded as universal meta-norms and guidelines for any critical perspective?

7. Meta-norms and norms:

In this last part, I would like to conduct a thought-experiment in order to explicate how meta-norms could form the universal standard in (any) critical thinking. A focus on three of the specific human rights will be useful in that respect, since this connects the abstract level of meta-norms to the level of specific norms. This will connect the question of justification to (critical) application, leaving the question of validation aside. The main reason for this is given by my former remarks about the validation-problem. The question of validity would include the procedural approach of Habermas, and reserving the question of (the legitimacy of) human rights to the different “real communities of communication” representative of humanity as such. Justification at this level is left to the *de facto* consensus in different representative organs. The validation problem arises out of the plain fact that not “everyone concerned” is to take part in given discourses handling the human right questions. This validation problem also concerns the representative practices of modern democracy.²⁹ The discourse ethics is based on a participatory, not representational model, and

²⁸ See Apel (1988b), pp. 145–147.

²⁹ See for example Adela Cortina’s essay ‘Diskursethik und partizipatorische Demokratie’, in *Transzendentalpragmatik. Ein Symposium für Karl-Otto Apel*, Dorschel/Kettner/Kuhlmann (Frankfurt a.M.: Suhrkamp, 1993), pp. 278–296. Here, she points at the participational preconditions of the discourse ethics, suggesting that this gives discourse ethics a slightly utopian content. However, she also stresses the importance of retaining this participatory model as a regulative ideal, for normative-critical purposes.

“everyone concerned” should in principle have the opportunity to take part as a non-representational individual. This forms the main reason for the sharp distinction between real and ideal levels of communication. The real level could approximate the idea to differing degrees: in representative democracies by for example including (representatives of) minorities in political decisions concerning them. But in principle, in Apel’s version, the real community would probably never be able to realise the ideal conditions to the fullest degree.³⁰

Human rights could, however, be justified without taking the validation problem into account. This would be done by critically examining particular human rights in light of the ideal conditions of symmetry and reciprocity. This brings back the most basic condition of discourse ethics: the non-dispensable precondition of individual autonomy. A symmetrical and reciprocal relationship is unthinkable without the autonomous status of each individual taking part in a discourse. A non-autonomous individual would be an individual in an asymmetric relation to someone else. Symmetry and reciprocity also works as basic, minor conditions also within the human rights. “Freedom of speech” and “freedom from discrimination” cannot be practised without a minimum of mutual respect between individuals. These rights might lead to a slightly different application in different cases, since some cases might favour freedom of speech and other freedom from discrimination. On the real level courts might be judging in favour of the freedom of speech in one case, and freedom from discrimination in another. The applied level could fluctuate slightly from case to case. On the justificatory and ideal level these can be balanced towards each other: freedom of speech presupposes the respect for the freedom of speech of each other, but also presupposes certain reciprocal limits when it comes to freedom from discrimination. Anyway, a total relativism cannot prevail on the real level. Giving unconstrained priority to the freedom of speech might violate the rights of individuals or groups. An unconstrained freedom of speech would therefore violate the condition of mutual recognition, and work in favour of the rights of the solipsistic individual. But again: the justificatory level would give the balanced version of individual freedom through mutual recognition.

³⁰ For the Norwegian contributions to the debate, see for example Gunnar Skirbekk (1982), ‘Rationaler Konsens und ideale Sprechsituation als Geltungsgrund? Über Recht und Grenze eines transzendental-pragmatischen Geltungskonzepts’, in *Kommunikation und Reflexion. Zur Diskussion der Transzendentalpragmatik. Antworten auf Karl-Otto Apel*, eds. Kuhlmann/Böhler (Frankfurt a.M.: Suhrkamp, 1982.), pp. 54–83. See also Audun Øfsti, ‘Ist diskursive Vernunft nur eine Sonderpraxis? Betrachtungen zum ‘Verbindlichkeitstransfer’ von transzendental-reflexiv (letz-)begründeten Normen’ in *Zur Anwendung der Diskursethik in Politik, Recht und Wissenschaft*, Apel/Kettner (Frankfurt a.M.: Suhrkamp, 1992), pp. 296–316.

Freedom of religion might be the most difficult one of the human rights to handle, given that religious groups might be collectivistic and hostile to the “modern” idea of individual freedom. Freedom of religion can only be implemented if each religion takes the autonomy of its individuals into consideration on a minimal basis. On the one hand, a person might choose to convert to an authoritarian religion, based on a hierarchical structure of command and obedience, thereby depriving himself/herself from the freedom of choice (individual autonomy). Hence, paradoxically enough: freedom of religion includes the right to subordinate oneself to another. On the other hand, the autonomy of the individual must be acknowledged if a member decides to withdraw. Freedom of religion presupposes the right to convert, implying the choice of a religious world-view on an individual, autonomous basis. This choice can clearly not be handled on a collectively or authoritarian given decisional level on behalf of the individual. The basic principle of individual autonomy cannot be violated without ridiculing the freedom of religion. The individual might choose to subordinate himself/herself to religious beliefs and practises at one moment, but might also choose to resign the next. A collectivistic account of the freedom of religion could only be compatible with the freedom of religion of the individual, if religious authorities and collectives did acknowledge this basic, individual freedom of each member, meaning: the freedom to comply or refrain.

This human right of freedom of religion, as well as the freedom of speech and freedom from discrimination, therefore presupposes the very condition of individual autonomy which is built into discourse ethics. The choice of any norm concerning oneself must be made on a non-coerced basis. These human rights also presuppose symmetry and reciprocity, since freedom cannot be practised without acknowledgement from others. A fundamental, Hegelian insight is therefore at work in discourse ethics: that the freedom of the individual is dependent on the acknowledgement of this very freedom from other, equally free and acknowledged individuals.

These examples will only have a tentative function, given the limited space of this paper. Other examples could be chosen to demonstrate how the higher-level meta-norms of symmetry and reciprocity could be applied to lower-level norms like the specific human rights in order to explore their possible conformity and non-conformity with the higher-level norms. Given the abstractive levels of discourse-theoretical thinking, examples will serve the purpose of specification and clarification of the conditions themselves, as well as serve as a prudent application on specific cases.

These examples could also illustrate the main difference between the Habermasian and Apelian approaches. While the reconstructive approach of

Habermas will concentrate on contextual issues of procedural validation and institutional implementation, the strongly de-contextualised version of Apel will concentrate on the issues of justification and application, concentrating on the possibility of using the ideal level of justification as critical, universal standard on the level of application.

One of Habermas's other remarks to Apel, is that his claim for an ultimate justification involves a deductive approach,³¹ implying that a specific normative content could be deduced from the meta-normative level. Meaning: the specific content of norms could be deduced from abstracted meta-norms. Actually, I understand Apel in a different way. Meta-norms can indeed successfully be applied to a normative level, for the purpose of exploring whether more specific norms are coherent with the meta-norms or not. This would amount to a Kantian "testing procedure", but inspired by his account of practical, not theoretical, reason, and therefore not by the kind of transcendental deduction conducted in *The Critique of Pure Reason*. On the level of society, this Apelian "testing procedure" could be conducted as a social critique, taking into consideration the social differences at a *de facto* level that may or may not be conceived as contrary to "ideal conditions". The ideal conditions would serve as the ideal standard for working out alternative normatively formulated solutions to the given social settings, with the aim at bringing the real level closer to the ideal. A social critique of this kind could however not be validated within Kant's philosophy of consciousness, but has got to be discursively vindicated. Thereby, this form of critique will, in spite of the universalistic character of the meta-norms, also be apt to fallibilism on the real level.

A clarification of the meta-norms on the reflectional, justificatory level could nevertheless lead to a more unitary application on the level of norms and facts. At the justificatory level, one could even make critical, reflectional usage of meta-norms in order to clarify the symmetry- and reciprocity potentials inherent in given norms, as exemplified in my tentative treatment of the human rights. This meta-discursive level should, however, not be confused with the level of real discourses. Justification on a reflexive level should be distinguished from validation on the real level. The norms of human rights might be conceptually clarified and even justified in terms of their consistency with the meta-norms, but might still lack acknowledgement within given discourses. Given that a clarification and justification could be reflexively conducted, and not be dependent on a discursive vindication, this would call for the approach of Apel rather than Habermas.

³¹ Habermas (1990b), p. 95.

8. Final remarks:

One of the main differences between Apel and Habermas discussed in this paper, has been concerning the status of the meta-normative conditions. Habermas insists on the validating function of the meta-norms, and is for that reason ignoring their critical function. Quite contrary, he points out that:

One cannot demonstrate a transfer of this kind as Peters and Apel try to do, namely by deriving basic ethical norms *directly* from the presuppositions of argumentation. Basic norms of law and morality fall outside the jurisdiction of moral theory; they must be viewed as substantive principles to be justified in practical discourses.³²

Working out the examples of human rights, I have been attempting to show that the meta-norms can in fact be applied on lower-order norms, and that lower-order norms can be reflexively justified by using higher-order norms as a critical standard. By reflexively justifying lower-order norms in this way, one could abandon false interpretations of lower-order-norms. After all, leaving the judgement of religious freedom to different religious groups, could be leading to a consensus on false premises. Any religious group could consider the freedom of religion to be a collective right, and attempt to legitimize oppressive practices against individual members. The autonomy of individuals as well as the mutuality of recognition are indispensable characteristics of a consistent conception of freedom. Freedom held by collective participants could legitimize the oppression of individuals. On the other hand, freedom conceived in purely individual terms would violate the principles of symmetry and reciprocity, and thereby violate the freedom of other individuals. A *de facto* consensus could produce false conceptions of freedom, while the reflexively justified version have to comply to the commands of consistency and performative non-contradictoriness. A justified norm by transcendental-pragmatic means could work as a critical correction to *de facto* versions of the norm. Likewise, it could work as a critical device in the analysis of socio-economic freedom-constraints within the social world, thereby also connecting the practical discourse to the theoretical.

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³² Habermas (1990b), p. 86.

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