Subject for Discourse Ethics

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Abstract

This thesis examines subjectivity within Jürgen Habermas' theory of discourse ethics by overview of discourse ethics, the positions of two of its more prominent critics, and an evaluation of the arguments and disjunctions subsequent to these exchanges. The results from Seyla Benhabib suggest discourse ethics subject could benefit from more intersubjective empathy primarily through her concept of the concrete other while the John Rawls comments suggest additional precision for the description of Habermas' procedure could ameliorate abstract uncertainties of the exact procedure itself as well as in the anticipated outcomes for the norms of discourse ethics. For discourse ethics, the subject is found to be the discursive participant that is founded upon communicative ethics and in the terms of moral cognitivism. Discourse ethics iterates subjects in communication. The speaker and their reasoning are indistinguishable in theory. The permissions and exclusions contoured by discourse ethics iterate self-evident truths about how rational communication develops into consensus. These contours illustrate both the framework of discussion and the character of subjectivity therein because of the presupposed unity of the two in communicative ethics and cognitivist morality. The ideas of Benhabib and Rawls accrue to show that there are more factors that can be accounted for and more worthwhile detail for factors already considered in Habermas' theory.

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Contents

Introduction

This is a study into the question regarding to whom it is that discourse ethics is addressed; or, who is the subject of discourse ethics? The answer is argued to be the communicating participant founded upon communicative ethics and in the terms of moral cognitivism. This pursuit looks to provide an overview of discourse ethics, the positions of two of its more prominent critics, and an evaluation of the arguments and disjunctions subsequent to these exchanges. The results from Benhabib suggest discourse ethics subject could benefit from more intersubjective empathy while the results from Rawls suggest additional precision for the description of Habermas' procedure could ameliorate abstract uncertainties of the exact procedure itself as well as in the anticipated outcomes for the norms of discourse ethics. The centerpiece essay of discourse ethics occurs in Jürgen Habermas' 1983 *Moralbewusstein und Kommikatives Handeln*. This project will draw its reference from the 1990 English translation where the particular essay of interest appears as "Discourse Ethics: Notes on a Program of Philosophical Justification."[1] That essay provides the primary blueprint for discourse ethics and is thereby the basis for its ongoing critique and commentary. Also crucial is the 1991 *Erläuterungen zur Diskursethik* by Habermas which compiles and considers critics which this project relies on in the later 1993 English translation "Remarks on Discourse Ethics."[2]

Among the many participants in discussions of Habermas' discourse ethics are Seyla Benhabib and John Rawls; this project refers to both for critical perspective of discourse ethics.

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[1] Jürgen Habermas, *Moral Consciousness and Communicative Action*, translated by Christian Lenhardt and Shierry Weber Nicholson (Cambridge: MIT Press, 1990).

[2] Jürgen Habermas, *Justification and Application*, translated by Ciaran Cronin (Cambridge: MIT Press, 1993).

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Benhabib's critique of moral philosophy in the 1992 *Situating the Self* inevitably leads her to

consider Habermas and his discourse ethics with her own perspectives of humanity, society and

morality.[3] Benhabib is a sympathetic critic whose upstream criticisms actively seek productive

dialogue with Habermas' moral theory. Rawls directly addresses Habermas in 1995 within *The*

Journal of Philosophy.[4] Given that Rawls' approach is political and Habermas' moral, this study

references their multiple inevitable disagreements towards a more productive discussion about

discursive theory. This project's interest is primarily in the moral. *The Journal of Philosophy* of

March 1995 is central to this interest because it demonstrates contestation between theories of

argument. This tension sheds light on crucial factors in how we discuss what is right. Habermas

is granted the final rebuttal his 1998 "'Reasonable' versus 'True,' or the Morality of

Worldviews." In sum, these pieces define this project's area of interest regarding Rawls' role as

a critic of discourse ethics. Explication will therefore be composed in three sections to address

the composition of discourse ethics [1], then will examine the critiques by and defenses against

its critics [2 & 3], to conclude with assessment of the exchanges [4].

[1] Discourse ethics is built to answer a fundamental question in moral theory: "how can

we justify the principle of universalization itself?"[5] Immanuel Kant and Karl-Otto Apel are

sources of inspiration for discourse ethics. Morality in Habermasian systems is constructed on

Kantian foundations of formalism, deontology, cognitivism, and universalism.[6] Discourse ethics

begins with the principle of universalization (U), and the principle of discourse ethics (D). These

principles together have the core role in discourse ethics. They state: (U) A norm does not hold

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[3] Seyla Benhabib, *Situating the Self*, (New York: Routledge, 1992). This study primarily considers "The Generalized and the Concrete Other" published earlier within *Praxis International*, vol. 5, no. 4 (1985) and "In the Shadow of Aristotle and Hegel" published earlier within *Philosophical Forum*, editor Michael Kelly, vol. 21, no. 1-2, (1989).
[4] John Rawls, "Political Liberalism: Reply to Habermas," *The Journal of Philosophy*, vol. 92, no. 3 (1995).
[5] Habermas, "Discourse Ethics" 44.
[6] Habermas, *Moral Consciousness and Communicative Action*, 196.

"unless all affected can *freely* accept the consequences and the side effects that the *general*

observance of a controversial norm can be expected to have for the satisfaction of the interests of

each individual;" and (D) "only those norms can claim to be valid that meet (or could meet) with

the approval of all affected in their capacity as participants in a practical discourse." (U) "is

conceived as a rule of argumentation and is part of the logic of practical discourses" while (D)

"stipulates the basic idea of a moral theory but does not form part of a logic of argumentation."[7]

The sequence in which Habermas presents ideas in "Discourse Ethics: Notes on a Program of

Philosophical Justification" does not necessarily make the imperative role of the principles

obvious. The sequence and extent of discussion on other key factors, such as the pragmatic

presuppositions which are generally applicable to communicative actions, obscure the moral

import of both principles. Habermas affirms priority for both principles in the chapter "Moral

Consciousness and Communicative Action."[8] Despite the primacy of the principles to discourse

ethics, they depend on transcendental pragmatic presuppositions of argumentation.

Discourse ethics benefits from a great many sources. For example, Habermas finds

through Apel that "if, on the one hand, a presupposition cannot be challenged in argumentation

without actual performative self-contradiction, and if, on the other hand, it cannot be deductively

grounded without formal-logical *petitio principii*, then it belongs to those transcendental-

pragmatic presuppositions of argumentation that one must always (already) have accepted, if the

language game of argumentation is to be meaningful."[9] Or, more directly defined, when a claim

would be hypocritical to refute and begs the question when grounded, then it is a presupposed

rule for argument, a transcendental pragmatic presuppositions of argumentation. Although

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[7] Habermas, "Discourse Ethics", 93.
[8] Habermas, *Moral Consciousness and Communicative Action*, 122.
[9] Habermas, "Discourse Ethics," 82.

Habermas claims "the moral principle (U) can then be derived from the content of these presuppositions of argumentation," a more defensible view could include the integration of presuppositions into the principle because the presuppositions are observable as particular components which when considered together, comprising and legitimating the whole of the principle.[10] Discourse ethics goes beyond Kant by its inclusive deontological justice which can distinguish the structural good from the totality of specific life.[11]

[2] This study will examine the arguments of Seyla Benhabib as a potent critic of the Frankfurt School in select essays from within *Situating the Self* , particularly "In the Shadow of Aristotle and Hegel: Current Controversies in Practical Philosophy" as it directly contends with discourse ethics. As a productive critic of discourse ethics, this section's purpose is to extract and present Benhabib's key points that together illustrate effective critique of Habermas' theory. One example of her perspective holds that despite the pursuit of universalism, Habermas' discourse ethics retains an unbeknownst contextualism within realms possessing an a priori value for free expression of reason in general. The further beyond such contexts one looks, the less theoretical appeal for discourse ethics can be found.[12]

Benhabib's own moral philosophy is primarily iterated in Part II of her book and is useful for constructing a more complete view of her perspective on moral matters such as discourse ethics. Crucial to her philosophy on the subject is her concept of the concrete other. This thesis considers the plausibility of expanding the concept of subject within discourse ethics via core tenants of the concrete other. The cognitive foundations of discourse ethics make this expansion appropriate to fully consider the complexity of subjective interests pertinent to discussion.

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[10] Habermas, *Moral Consciousness and Communicative Action*, 198.
[11] Ibid., 203.
[12] Benhabib, "In the Shadow of Aristotle and Hegel," 42.

However, Habermas' foundation also problematizes this addition because the existent concept of subject therein is predisposed to favour the cognitively amenable terms of rationality which parallel the value instantiated within the contrary subject of the generalized other, as per Benhabib's portrayal. This combination of critique and perspective provide this study with further means of illuminating discourse ethics, moral theory and the subjectivity therein.

[3] The debate between Habermas and Rawls portrays their differences in an instructive way that exceeds Rawls' interest in specifically political justice and Habermas' interest in the collective cognition of norms. The difference between these theories is suggestive of taxonomic ranking within justificatory discourse, in Habermasian terms, which helps accurately situate discourse ethics. For Habermas, "it belongs to the peculiar dignity of philosophy to maintain adamantly that no validity claim can have cognitive import unless it is vindicated before the tribunal of justificatory discourse."[13] The Rawlsian and Habermasian enterprises differ modestly in some respects, at least in purpose as political vs. moral, intents of justice as substantial vs. procedural, a political theory of justice vs. a moral theory which incorporates elements of political theory; however, both value fairness, are ideological ancestors of Kant, vie for the use of a selfless perspective, favour the moral ought over the ethical good, and seek continuation for the liberal democratic project. This study will address the positions of Habermas and Rawls on morality as found in *The Journal of Philosophy* and "'Reasonable' versus 'True,' or the Morality of Worldviews."[14] Their observations and differences represent a significant contribution to the meaning of justice, consensus, and concept of person.

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[13] Habermas, *Justification and Application*, 146.
[14] Habermas, "'Reasonable' versus 'True,' or the Morality of Worldviews," *The Inclusion of the Other*, translated by Ciaran Cronin (Cambridge: MIT Press, 1998).

[4] The conclusion of this study reviews key findings within the arguments made regarding discourse ethics, Habermas' most successful defenses against critique, as well as those critiques which are most effective against discourse ethics. Universal morality through consensus may be impossible under the present day's conditions in accord with the sense by which Benhabib expresses reservations for its practicality, seeking to run a contemporary international bank or multinational corporation on the principles of discourse ethics, even when considering ubiquitous consensus alone as a challenge. However, *mutatis mutandis* the long term outlook argued for is suggested as positive by Habermas and Benhabib alike. Discourse ethics' ideal ubiquitous type of consensus requires not only the inclusion of the excluded, but also a tradition of radical inclusion whereby even the most minutely affected parties receive audience if they desire, and no less than consideration amid deliberation. While the Habermas' model is likely primitive relative to the needs of a system which could achieve such a level of harmony, it has fascinating aspects which seek to benefit contexts where consensus of all possibly pertinent participants is reasonably plausible. Discourse ethics is instructive of hermeneutic methodologies for groups or individuals, and in drawing inquiry towards pondering philosophical questions. Discourse ethics iterates subjects in communication. The speaker and their reasoning are indistinguishable in theory. The permissions and exclusions contoured by discourse ethics iterate self-evident truths about how rational communication develops into consensus. These contours illustrate both the framework of discussion and the character of subjectivity therein because of the presupposed unity of the two in communicative ethics and cognitivist morality. Further, the ideas of Benhabib and Rawls show that there are more factors that can be accounted for and more worthwhile detail for factors already considered.

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Elucidation of Discourse Ethics

This section asks: what are the details, parameters and specificities of discourse ethics, and how do these work in concert? Doing so elucidates discourse ethics with specific interest toward the subject found therein. Through discourse ethics, Habermas seeks "a secularized morality free of metaphysical and religious assumptions" via "an instrumental reason restricted to purposive rationality."[1] Here we find a concentrated interest that is self-attributed to Kantian intellectual heritage regarding the specific conditions that apply to impartial judgements when handling practical questions based in reason. Among the moral theories of his contemporaries, Habermas finds those approaches "in which an ethics of discourse is recognizable in outline form, to be the most promising" while categorizing his own approach as cognitivist.[2] This approach finds that the contents of moral norms can be understood and shaped by cognition in thought, reflection and discussion. Habermas elucidates this category by distinguishing cognitivist from non-cognitivist approaches among other programs of philosophical justification or ethics of discourse. To contrast, non-cognitive approaches suggest the content of moral norms do not primarily acquire their meanings from cognitive enterprises; instead preferring to find a basis for moral meaning in systems such as moral intuition or traditional compendiums. This chapter proceeds by discussing the context of moral cognitivism at hand, the meaning of normative communication, the principles of discourse ethics and their defense, the crucial role of transcendental-pragmatic presuppositions, how principles and presuppositions are combined into

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[1] Jürgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification," *Moral Consciousness and Communicative Action*, translated by Christian Lenhardt and Shierry Weber Nicholson (Cambridge: MIT Press, 1990), 43.
[2] Ibid., 43.

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procedure, key categories to discourse ethics, the extent of importance of cognitivism for

discourse ethics and how this iterates discourse as argument, the moral perception of the theory,

pragmatic moral autonomy, moral consciousness, and the priorities that can be abstracted from

discourse ethics.

[The Moral-Cognitive Context]

A satisfactory philosophical ethics, for Habermas, must be able to explain the 'ought'

character (*Sollgeltung*) within norms and the validity claims of regulative speech acts, those

pertaining to norms. Metaphysical, intuitionist, emotivist and decisionist approaches are

predisposed to understand moral matters inaccurately because, as Habermas describes, they

misidentify moral matters as descriptions, evaluations, experiences or imperatives.

Prescriptivism also misidentifies statements of the moral as ones of intent. Instead, in

communicative action, moral statements are validity claims. This, in conjunction with

communicative action's amenability to formal-pragmatic analysis, situates the ought-character of

moral statements as cognitive content accessible to practical reason. The result is expected to

position philosophical ethics to "assume the form of a special theory of argumentation" by

subjecting moral statements to formal-pragmatic analysis within a specific context of

communicative action that benefits from a foundation of justification built by derivation of

principles from agreement-based norms.[3]

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[3] Habermas, "Discourse Ethics," 44.

For Habermas, "the fundamental question of moral theory" is "how can we justify the principle of universalization itself?"[4] Here, 'we' refers to subjects within discourse ethics to suggest that justification of principles is fundamental to moral subjectivity, specifically justification of the principle of universalization (U) in the context of discourse ethics. The principle of universalization, noted as (U), enables agreement in argument. Differentiation from and critique of peers relative to theories on morality, justice and practical reason are frequently utilized as propaedeutic devices by Habermas. While the projects of his critics and associates share in general primary interests, their differences are informative and significant. For example, Habermas disagrees with grounding or essentially basing all justification in general on any singular foundation alone. To iterate this, the adjacent notion from another theoretician of ultimate justification that is sought through pragmatic presupposition analysis becomes specifically criticized by Habermas. Although discourse ethics is also based in derivations of pragmatic presuppositions, Habermas' approach instead finds reciprocal principles instead of a notion of ultimate justification, adding detail to the subjectivity appropriate to discourse ethics.[5]

Habermas finds the modern understanding of the world which views moral-practical questions as rationally debatable on bases of only purposive rationality to be "pathology of modern consciousness."[6] The moral experience, often which immediately precedes a moral question, can be found in examples of personal injury; further elucidated through instances where the moral trespass is perpetrated against the first person to cause fear, against the third

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[4] Habermas, "Discourse Ethics," 44.
[5] Further by Habermas' assessment, Apel, from whom the notion of ultimate justification is criticized, is also unable to categorically defend his theory of rational ethics against its skeptics. Habermas' interpretation on the primacy of ethical life (*Sittlichkeit*) over morality is based on Hegel's critique of Kant regarding morality is suggested as a means of such categorical defense.
[6] Habermas, "Discourse Ethics," 45.

person to cause outrage, or in the absence of restitution to cause resentment.[7] The provision and

acceptance of a certain kind of excuse is a possible amelioration to moral offense. Habermas

summarizes a notion to be negated wherein moral emotions are interlinked in an inevitable

network for the human condition in the first person perspectives of the moral participant.

However, from a third person perspective, the personal response of resentment is a performative

attitude that is not available as it is to the first person perspective. The concept of a third person

perspective contains a subject that is necessarily external to and separate from the core of any

given dilemma. The personalized feelings of indignation and resentment of the offended towards

the offender are affiliated with generalized suprapersonal expectations, or a generalizable sense

that what ought to be has been disregarded. This affiliation is necessary to constitute a moral

character in normative transgression. Although the generalizable expectations are available to a

third person perspective, such a perspective is inevitably sympathetically and empathetically

disadvantaged compared to a first person perspective. This preference of a first person

perspective adds further detail to Habermas' understanding for reinterpretations of moral life in

the frame of ethical theory; specifically, in regards to the moral point of view in discourse ethics.

Moral philosophy is concerned with clarifying intuitions originating from the horizon of

any ethic. Instead for Habermas, moral validity is based on a connection between "the authority

of generally accepted norms" and "the impersonality of their claim."[8] By this, the merit of a

moral violation can be evidenced via the violation of a norm which is collectively expected by

all, not merely the expectation of the one or the few because morality is not herein a matter of the

wants of specific individuals or privileged groups. Further so when the given norm has authority

in societal precedent or is otherwise articulated in the will of traditional institutions. For

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[7] This discussion by Habermas proceeds from reflection on the work of Strawson.
[8] Habermas, "Discourse Ethics," 49.

Habermas' purposes a "phenomenology of the moral is relevant because it shows that the world of moral phenomena can be grasped only in the performative attitude of participants in interaction."[9]

[Normative Communication]

Habermas finds that resolving uncertainty in either practical questions or moral questions confers a transition of perception from how the case appears for the individual towards a more universally valid interpretation. Although it is technically an assumption that normative positions can be right or wrong, Habermas finds the proposal false "that normative statements can be true or false in the same way that descriptive statement can be true or false."[10] It is rather more appropriate to understand that the adjective in a descriptive statement "plays an entirely different logical role" than a norm does within a normative statement about rightness in the moral sense.[11] While descriptive and normative claims are analogically comparable, it is incorrect to assimilate the two: The distinction between the two can be seen in that "normative statements cannot be verified or falsified… [and] cannot be tested in the same way as descriptive statements."[12] Linguistically, normative statements are more directly comparable with statements of preference or those statements having correctness which cannot be confirmed through discussion: "those sentences with which no discursively redeemable claims to validity are connected."[13]

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[9] Habermas, "Discourse Ethics," 50.
[10] Ibid., 52.
[11] Ibid., 53.
[12] Ibid., 54.
[13] Ibid., 54.

In general, theories of argumentation address the question of what makes a conclusion acceptable. Among these, discourse ethics has advantages from principles structured to tend toward finding agreement among participants, and extensive inclusivity of speech acts considered as merited. Habermas argues "that there are compelling reasons for recasting moral theory in the form of an analysis of moral argumentation" that is based on (U) because this principle "makes agreement in moral argumentation possible."[14] In discourse ethics, "moral justifications are dependent on argumentation actually being carried out, not for pragmatic reasons of an equalization of power, but for internal reasons, namely that real argument makes moral insight possible."[15]

Habermas calls "interactions *communicative* when the participants coordinate their plans of action consensually, with the agreement reached at any point being evaluated in terms of the intersubjective recognition of validity claims."[16]Agreements based in language are grounded in claims of truth, rightness or truthfulness depending on whether the respective matter is of objects, society, or self.

Discourse ethics emphasizes a separation between communicative action and strategic action. One way in which Habermas clarifies this differentiation is by noting the inherent manipulation required by strategic goal-centred action that is entirely absent in the definition he crafts for communicative actions which finds its founding basis in the bonds subsequent to mutual consensus. In teleological or goal oriented action, subjective qualities are necessarily subordinate to the object of the task; in communicative action, the alignment by rationalizing discussion of subjective qualities iterated as reason(s) is itself the object towards which discourse

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[14] Habermas, "Discourse Ethics," 57.
[15] Ibid., 57.
[16] Ibid., 58.

ethics endeavours. The distinction of teleological from communicative is particularly important to discourse ethics because otherwise the weighting placed on consensus in discourse could be easily misconstrued as a primacy rather than a priority in principle. If consensus is misconstrued as a teleological primacy, then the meaningful subjectivity of participants becomes secondary at best. Discourse ethics promotes a context in which otherwise distinct reasons can become mutual. Communicative agreements are based on the promised efforts of a speaker which ensure their claims will come to pass in the way that is understood by the hearer, not on validity alone. For discourse ethics, a harmony among participants for the understanding of reasons is necessarily prior to consensus. This priority is upheld in by the terms of communicative action but would untenable as teleological action.

The framework of communicative action illustrates three worthwhile distinctions between varieties of speech acts: between regulative and constative speech acts; between "*discursively redeemable* claims to validity" about propositional truth and normative rightness; and between normative statements and assertoric statements.[17] Given that discourse ethics presupposes a structure of communicative action, these differentiations affect subjectivity in discourse ethics. While all communicative actions make some claim to validity, assertoric statements more specifically relate facts such to purport truth within constative speech acts whereas normative statements make claims regarding legitimate orderings that are appropriate to rightness of interpersonal relations through regulative speech acts. In considering a speech act which declares 'the bolt is loose' we find an assertion about the relation between facts pertaining to a fastener and its fixture. The difference is obvious in direct comparison with a claim about appropriate interpersonal regulation such as 'that judge should be merciful.' However, the

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[17] Habermas, "Discourse Ethics," 59.

procedural character of discourse ethics requires mindfulness towards types of claims because it

is imperative to honest understanding. An important distinction for Habermas is that the

existence of a norm and its correlate validity are separate issues: "we must distinguish between

the social fact that a norm is intersubjectively recognized and its worthiness to be recognized."[18]

Where deductive arguments proceed by logical inference and do not add substantive content,

substantive arguments will refer to subjective experiences or desires. It is within the context of

argument that the anticipation of its justifiability mandates the existence of a norm.

[Principles]

The principle of universalization for discourse ethics, or (U), suggests that practical

discourse can test a norm for generalizability. (U) is sustained with regards to a norm when "*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)."[19] Some norms may be

possible to sustain in smaller jurisdictions as valid which would not be universally valid in all

realms. Here, normative validity requires practical agreement, not merely anticipated or expected

agreement. Reciprocal mutualism can be seen in the discourse ethic's central principles by the

symmetry of (U) with the principle of discourse ethics, or (D). (D) "*presupposes* that we *can*

justify our choice of a norm" and is defined by Habermas as the condition of normative validity

that: "only those norms can claim to be valid that meet (or could meet) with the approval of all

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[18] Habermas, "Discourse Ethics," 61.
[19] Ibid., 65.

affected in their capacity *as participants in a practical discourse.*"[20] In the terms of these

principles, a subject for discourse ethics can be found within the 'we' of the 'participants.'

Discourse ethics' principles are designed with the intention of regulating argument and

suggesting the perspective of argument which includes all participants. This ubiquitous inclusion

can specify Habermas' position by enunciating a difference from Rawls. For Habermas, Rawls'

original position maximizes the equalization of participants while nullifying individuality so as

to promote impartiality which suggests that Rawls' interest is not "the *contribution* of a

participant in argumentation to a process of discursive will formation regarding the basic

institutions of late capitalist society."[21] Instead, Habermas critiques, Rawls' interest is in the

production of norms in accordance with constructed theory. By contrast, for Habermas, norm

guided coordinated action requires cooperative dialogue. Instances that call for normative

correction require clarification of existing norms or the introduction of new norms. The

reconstruction of consensus cannot be achieved through only individual reflection; cooperative

argument is required for honest agreements. In order to fit these requirements, Habermas begins

with Kant's categorical imperative but modifies it to state: "I must submit my maxim to all

others for purposes of discursively testing its claim to universality."[22] This shifts focus from the

perception of non-contradiction of an individual will to an actual agreement between real

participants. The improvement becomes readily apparent when considering the influence on

interests carried by cultural values which a diversity of individuals cannot be ubiquitously privy

to. Discourse ethics is ameliorative in this regard by its capacity to reduce the distance between

individuals' subjective moral consciousness and the collective practice of communicative action.

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[20] Habermas, "Discourse Ethics," 66.
[21] Ibid., 66.
[22] Ibid., 67.

From here it can be seen that discourse ethics "stands or falls with two assumptions: (a) that normative claims to validity have cognitive meaning and can be treated *like* claims to truth and (b) that the justification of norms and commands requires that a real discourse be carried out and thus cannot occur in a strictly monological form."[23] A semanticist approach, one which finds semantic content to be the base of validity, presents outright disagreement with (a) and that the argumentation endorsed by (b) is required only to ensure mere participation. The semanticist approach is found to be adequate for elementary claims but insufficient for substantive or counterfactual claims, referring to justifications that explicate intentionality. Determinations for collective courses of action within discourse ethics are made within the assumption that all participants have equal roles through which they fairly exchange reasons to find a conclusion which benefits all. Insofar as initiatives are shared or collective, argument is an appropriate course of action, only strictly independent concerns nullify such need. For Habermas, argument makes possible free and autonomous will. Thus, "the rules of discourse themselves have a normative quality, for they neutralize imbalances of power and provide for equal opportunities to realize one's interests" so as to shape a form of argument based on "the need for an *equalization of power*."[24]

[Defense of Principles]

As a cognitivist moral philosopher, Habermas places considerable value on impartiality and the agreeability of the principles that sustain discourse ethics. Preferring rational consensus through discussion, Habermas clarifies this should not be confused with fair compromise.

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[23] Habermas, "Discourse Ethics," 68.
[24] Ibid., 71.

Practical discourse is for clarifying shared intentionality while compromise is for balancing

conflicting interests. Without this distinction, the boundary between normative social acceptance

and validity is obscured. Habermas explains this type of misidentification more fully by pointing

out that the validity acquired through rational consensus is to remain distinct from executive

participation. The autonomous significance of normative validity is garnered from the transition

of argued norms to accepted norms because normative validity expresses the general will which

has moral quality, not merely the imperative of power. Otherwise, "justice initially means no

more than that the persons concerned have good reasons for deciding on a common course of

action, and all religious and metaphysical worldviews are good sources of good reasons."[25]

Given that the precise meaning of arguments stemming from metaphysical worldviews may not

be understood uniformly by all, Habermas adds that a means of measuring formal argumentative

positions would promote the production of consensus. A metric of this kind - if it were likewise

legitimately accepted by all participants - would provide another means of reducing the

interpretative distance between multiple points of view. Normative theory which is mindful of

these factors is required "to justify the *superiority* of the *reflective mode of justification* and the

posttraditional legal and moral ideas developed at that level" in contexts of fair pluralism.[26] By

the importance discourse ethics places on impartiality with regards to argument, it would prefer

that "moral norms should be justified through recourse to general principles and procedures."[27]

Habermas finds as questionable the scope of moral intuition embedded in the moral

categorical imperative and its derivatives including the universalization principle. This portrays

Habermas' caution of the possible moral ethnocentric fallacy that western liberal moral theory is

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[25] Habermas, "Discourse Ethics," 74.
[26] Ibid., 75.
[27] Ibid., 75.

morality par excellence. Habermas claims that Rawls' reflective equilibrium succumbs to this

because it does not justify the moral principle but rather is content with "reconstructing

pretheoretical knowledge."[28] However, "faced with the demand for a justification of the

universal validity of the principle of universalization, cognitivists are in trouble" as well.[29]

Habermas clarifies that his own approach to justification will not be limited to the semantic

justifiability between the deductive logic that entwines statements. Although justification by

rationalization of strict formal logic connections is amenable to Rawls' reconstruction and

traditional western liberal morality, Habermas' design for discourse ethics pursues more open

limits for legitimate rationale. This enables fitment with notions such as the concrete other,

discussed in the next chapter. This progressive departure from precedent has two notable effects.

For one, there is an increase in the difficulty of crafting a stalwart justification for the

universalization principle (U) because the move creates a need for a foundation on which to base

the legitimacy of otherwise dismissible rationalizations. At the same time, this addition promotes

an attribute of openness that is conducive with universality.

To reinforce the justification of (U), Habermas looks for critics. Fallibilism is one of few

approaches noted which can sew doubt to any extent about moral foundations. However,

performative contradictions occur for fallibilist approaches to critical argument due to precedent

use of assumptions. Any given resolute skeptic's determination to here deny the grounding of

moral principles suggests some minimal logic is inevitable and legitimated by the mere presence

of difference in discussion that formulates the foundation of argument: even the resolute skeptic

must assume an action is normatively appropriate before making the act of disagreement with

any expectation of its sensible reception. Argument may be as fundamental as consciousness

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[28] Habermas, "Discourse Ethics," 79.
[29] Ibid., 79.

because insofar as one can think themselves to be, so too can the proposition receive doubt,

argument thus arising in the conceptual distance there between.

[Transcendental-Pragmatic Presuppositions]

A key component of discourse ethics is its study of the presuppositions inevitably

inherent to discourse, particularly moral discourse. Habermas considers Apel's definition of

transcendental pragmatic presuppositions sufficient evidence for the possibility of justifying the

moral principle, a claim to be examined further later. Habermas concurs with Apel's definition of

pragmatic presuppositions, from which (U) can also be derived. This definition holds that "if, on

the one hand, a presupposition cannot be challenged in argumentation without actual

performative self-contradiction, and if, on the other hand, it cannot be deductively grounded

without formal-logical *petitio principii*, then it belongs to those transcendental-pragmatic

presuppositions of argumentation that one must always (already) have accepted, if the language

game of argumentation is to be meaningful."[30] That is, if a claim is hypocritical to refute and

begs the question when grounded, then it is a pragmatic presupposition. The moment a skeptic

would object (and presumably commit to the objection) they are contradicting themselves by

their involvement in the activity of argument whereby certain fundamentals must be assumed to

apply, such as the mere validity of objection.

This kind of presupposition would be found under examination to be fallacious to

disavow, but is inappropriate to view as some type of fundamental truth. Habermas finds that "it

is always possible to produce *ad hominem* arguments pointing out what any individual must

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[30] Habermas, "Discourse Ethics," 82.

actually presuppose in saying what he actually says..[these are] of little use in developing a

general ethical theory. Of far more importance are arguments pointing to what any individual

must presuppose in so far as he uses a public form of discourse"[31] Apel "wants to show that any

subject capable of speech and action necessarily makes substantive normative presuppositions as

soon as the subject engages in any discourse with the intention of critically examining a

hypothetical claim to validity."[32]

The legitimacy of freedom of opinion can be defended with the proposition that reason is

the most important aspect of argument because the outcomes of arguments in general can be

improved using the potential of all rational beings to learn to reason and then contribute those

reasons to their arguments; none of which can occur without the freedom to participate.

Habermas finds the skeptic could limit this position with the claim that "it is by no means self-

evident that rules that are unavoidable *within* discourses can also claim to be valid for regulating

action *outside* of discourses."[33] Thus compromising the realization of the determinations of an

argument where the rules thereof apply only in the context of the discussion but not beyond into

practical actualization or otherwise. Another justification is called for to ground the sensibility of

transitioning argumentative determinations into practical action. However this encounters a limit

at the point where "basic norms of law and morality fall outside the jurisdiction of moral

theory."[34] These practical discourses "make use of substantive normative rules of argumentation.

It is *these rules* alone that transcendental pragmatics is in a position to derive."[35] Such rules and

jurisdictions define the interests of discourse ethics' subjects.

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[31] Habermas, "Discourse Ethics," 84.
[32] Ibid., 85.
[33] Ibid., 85-6.
[34] Ibid., 86.
[35] Ibid., 86.

Embedded within (U), as a rule of argumentation in discourse ethics, is a stipulation of

pragmatic presuppositions holding that "every person who accepts the universal and necessary

communicative presuppositions of argumentative speech and who knows what it means to justify

a norm of action implicitly presupposes as valid the principle of universalization, whether in the

form I gave it above or in an equivalent form."[36] Habermas offers specific examples of pragmatic

presuppositions in three categories: (1) logical-semantic, (2) procedural, and (3) process:

(1.1)   No speaker may contradict himself.
(1.2)   Every speaker who applies predicate F to object A must be prepared to apply F to all
        other objects resembling A in all relevant aspects.
(1.3)   Different speakers may not use the same expression with different meanings
(2.1)   Every speaker may only assert what he really believes.
(2.2)   A person who disputes a proposition or norm not under discussion must provide a reason
        for wanting to do so.
(3.1)   Every subject with the competence to speak and act is allowed to take part in a discourse.
(3.2)   a. Everyone is allowed to question any assertion whatever.
        b. Everyone is allowed to introduce any assertion whatever into the discourse.
        c. Everyone is allowed to express his attitudes, desires, and needs.
(3.3)   No speaker may be prevented, by internal or external coercion, from exercising his rights
        as laid down in (3.1) and (3.2).[37]

The first level refers to the logic inherently required of utterances. Habermas claims "the

presuppositions of argumentation at this level are logical and semantic rules that have no ethical

content."[38] The rules of the second level navigate the interactive medium formed between the

proponents and opponents in discussion. These implicate the conditions of argument in tandem

with prioritizing truth in outcomes. Habermas finds ethical content to be obviously present

within these. The third level, of particular relevance to discourse ethics, tailors the

communicative exchanges themselves so as to maximize the mitigation of restriction to

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[36] Habermas, "Discourse Ethics," 86.
[37] Ibid., 87-9.
[38] Ibid., 87.

contributions through the balance of a communal sensitivity for all others. Values are

immediately presupposed in the categorization of rules and yet further values follow from these

rules themselves. Rules of discourse shape action therein in such a way that is unlike rules

pertaining to game scenarios constitutive of the game itself by defining precise strictures and

options available throughout. In contrast, "discourse rules are merely the *form* in which we

present the implicitly adopted and intuitively known pragmatic presuppositions of a special type

of speech, presuppositions that are adopted implicitly and known intuitively."[39]

[Combining Principles and Presuppositions into Procedure]

  Habermas finds the roles filled by discourse ethics principles (U) and (D) are equivalent

to the above portrayals when also stated as: (U) "Unless all affected can *freely* accept the

consequences and the side effects that the *general* observance of a controversial norm can be

expected to have for the satisfaction of the interests of *each individual*;" and, (D) "Only those

norms can claim to be valid that meet (or could meet) with the approval of all affected in their

capacity as participants in a practical discourse."[40] Here, Habermas specifies that (U) "is

conceived as a rule of argumentation and is part of the logic of practical discourses" while (D)

"stipulates the basic idea of a moral theory but does not form part of a logic of argumentation."[41]

Moreover, (U) is distinct from the principles and norms which may comprise the substantive

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[39] Habermas, "Discourse Ethics," 91.
[40] Ibid., 93.
[41] Ibid., 93.

topics of argument and from the pragmatic presuppositions; while "(D) is the assertion that the

philosopher as moral theorist ultimately seeks to justify."[42]

Habermas explores the category that belongs to a request for a justification of a principle

that is presupposed in such a request. This would be a transcendental-pragmatic justification of

discourse ethics. The recognition of something either presupposed or justifiable can be

considered hypothetical, instead depending primarily on prior acceptance. Thus with having been

already accepted, the skeptic of discourse ethics does not find reason to justify further. However,

discourse ethics is not as easily satiated. It requires justification to actually occur for that which

is presupposed or that which is justifiable. Habermas notes that as discursive context considered

in relation to this problem broadens, the importance of actual reasoned justification increases.

When a claim can be neither justified without *petitio principii* nor disputed without performative

contradiction, that claim could be argued to be "an absolutely secure basis of unerring

knowledge" under at least some contexts and conditions.[43] Insofar as one argues, certain rules

have already been no less than implicitly assumed to apply. Thus such rules warrant proof, not

justification, for they do not have alternatives. For Habermas, a transcendental pragmatic

justification need not be an ultimate justification, nor does moral philosophy require an ultimate

justification. Habermas' discussion of Apel's claim to an ultimate justification will be reviewed

later. Instead, philosophy would do best to pursue the "the rational bases of knowing, speaking,

and acting" while recognizing but without trying to clarify "the *moral* intuitions of everyday

life."[44] Habermas places further specific emphasis on the need to examine presupposed

argumentative rules themselves as well as the methods for realizing such rules.

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[42] Habermas, "Discourse Ethics," 94.
[43] Ibid., 95.
[44] Ibid., 98.

Habermas' "programmatic justification of discourse ethics requires all of the following":

1. A definition of a universalization principle that functions as a rule of argumentation.
2. The identification of pragmatic presuppositions of argumentation that are inescapable and have a normative content.
    a. to make the skeptic who presents an objection aware of presuppositions he knows intuitively,
    b. to cast this pretheoretical knowledge in an explicit form that will enable the skeptic to recognize his intuitions in this description,
    c. to corroborate, through counterexamples, the proponent's assertion that there are no alternatives to the presuppositions he has made explicit.
3. The explicit statement of that normative content (e.g., in the form of discourse rules).
4. Proof that a relation of material implication holds between steps (3) and (1) in connection with the idea of the justification of norms. [45]

Habermas finds the skeptic of discourse ethics may still doubt how well the moral

principle is derived and justified in discourse ethics and could further accuse discourse ethics of

being a bare skeleton of mere formalism that does not develop the philosophical discipline.

Habermas agrees with Hegel's claim that "morality is always embedded in what Hegel called

ethical life (*Sittlichkeit*)."[46] For Habermas, discourse ethics does not "strengthen the skeptic in

his role as an advocate of a counterenlightenment."[47] The more astute skeptic could proceed to

doubt not as an opponent in debate, but as an ethnographic observer of philosophical matters.

The mute skeptic can reject morality, but the conditions of the circumstance inevitably sustains

even such type of skeptic as a subject of discourse ethics insofar as they continue to exist. Not

without consequence, however, as without the will to argue and reflect, moral theory dissolves.

Social life necessarily implicates communication in any effort which pursues concurrence or

resolution between differing perspectives. Within this, argument is "a special form of rule-

governed interaction … [and] a reflective form of action oriented toward reaching an

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[45] Habermas, "Discourse Ethics," 96-7.
[46] Ibid., 99.
[47] Ibid., 99.

understanding" that is derived from communication's procedural pragmatic presuppositions.[48]

Given these communicative roots, collaboration and exchange are implicated a priori, thus the

"refusal to argue is an empty gesture" that "leads to an existential dead end." [49] In some cases, it

is not entirely beneficial for the justification of discourse ethics to occur on the basis of defenses

against skeptics.

[Categories Pertinent to Discourse Ethics]

A moral theory of discourse can be considered as "a presuppositional analysis that traces

discourse back to action" that "can be properly characterized as formal." [50] Habermas finds

analysis of teleological action will not lead to justified transcendental pragmatics; however, use

of the same analysis communicative action does. Although it is technically possible to assume

"that action oriented toward success and action oriented toward reaching an understanding are

mutually exclusive types of action," this argument favours the skeptic, not the cognitivist.[51] For

Habermas, it is exclusively communication that has the capability of maintaining lifeworld

symbolisms. Identity is sourced therefrom through tradition, groups, and socialization. The

incapacity of teleological action for the same is used by Habermas to further resolve and clarify a

notion of action that is oriented toward the development of shared understanding. As a practical

philosophy of discourse, discourse ethics is for testing the validity of, not generating, norms.

Practical discourse necessarily requires the content provided by the lifeworld and its actors.

Occasions disruptive to normative agreement queue such procedure of discussion. If consensus

oriented discourse discards of particular values, questions of the suitability of discursive

procedure towards practical questions may rightly be raised. This implicates the ethical

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[48] Habermas, "Discourse Ethics," 100.
[49] Ibid., 100; Ibid., 102.
[50] Ibid., 101; Ibid., 103.
[51] Ibid., 101.

formalism of the universalization principle for clearly distinguishing between ethically evaluated goodness and universally just norms. Cultural values can occasionally be found embodied within norms; however, at this point Habermas sees these as distinct entities sharing common essence insofar as a general interest is sustained therein.

As an applied deontological ethics, discourse ethics addresses rationally debatable practical questions about the "normative validity of norms of action" while leaving aside value preferences.[52] The principle of discourse ethics implicates standards for norms which hermeneutical approaches find as necessarily prior to a discursive scenario in order to be legitimate. However, a hermeneutic approach is predisposed to be less constrained than the perspective of a subject of discourse ethics. A transcending validity claim is sustainable as such only when joined with its pragmatic presuppositions and after the first person insider perspective of a debating communicator is assumed by participants. The collaboration of participants on the grounds set out by discourse ethics in concert with the transparent legitimated a priori norms of pragmatic presupposition forms the possibility of a shared validity claims having a transcendental character. The pragmatics of human rights can evidence the transcendental validity of principles vetted discursively, albeit via cruder formulae than discourse ethics.

Practical discourse is subject to limits. As a type of argument, practical discourse can be grouped alongside critique of aesthetics and therapeutics. However, the success condition in these latter two is not precedent on consensus. The sociocultural history of reason presents a liability for practical discourse through association with less demanding argumentative forms. Practical discourse is more prone to controversy through the burdens of real conflict than theoretical or explicative discourse, thus discourse ethics cannot justly neglect these

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[52] Habermas, "Discourse Ethics,"104.

implications. Seeing as "the means of reaching agreement are repeatedly thrust aside by the instruments of force," discourse ethics would be irrelevant without adaptation to strategic necessity in order to attempt its apt parry to power and force coercion.[53] The potential of moral judgements to "provide demotivated answers to decontextualized questions" is an opportunity for such adaptation to "look at the relationship of morality and ethical life as part of a more complex whole."[54] Discussions of institutions and aesthetics within a productive framework stimulate the verification of facts and legitimacy of norms which might otherwise be misused or obscured.

Such decontextualization in favour of the complex whole regarding conflating value spheres gives reason to progressively reflect and resolve with mediation by theory. This conflation presents ethical questions of justice that are always also concerned with questions of the good life which "have *always already been answered*."[55] The perspective of moral discourse does not accept such answers de facto. Through discourse, traditional norms can evaporate leaving justifiable norms as their remainder. Appropriate argumentation replaces typical authority with the force of the better argument. Habermas wants the practical component of life, that which is sustainable through justificatory discourse, to be distinct from the particular components, which cannot and need not be sustained through the same. Towards this effort, cultural values inform the ethical stipulations embodied within the good life and lead to questions of an evaluative character. These are not moral questions which must honour the universalizable 'ought' character of justice in order to attain validity. Evaluative questions and their answers are contextually sensitive; moral questions and their potential consensus are not.

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[53] Habermas, "Discourse Ethics," 106.
[54] Ibid., 106-7.
[55] Ibid., 108.

Moral abstraction clarifies the improvements to rationality by focusing on matters of justice and the difficulty of balancing the moral and the ethical. The concreteness and motivational power of these practical judgments occur by embodying ethical values. The moral point of view does not presuppose assent to any ethical substance which can only "appeal to the naive validity of the context of the lifeworld."[56] Instead, morality is motivated only by insight. The anticipated decrease of ethical content subsequent to a focus on the moral right over the ethical good is worthwhile for "the cognitive advantages attending it."[57] The moral point of view requires rational ethics to provide it with content; however, the moral view will have a decontextualizing and demotivating effect because it is presupposed as decentered from the immediate ethical community to which the short sight of individual ego is otherwise bound within. The intention is to have ethical systems persevere to reiterate their context and motivations in terms amenable with justice along the following form:

> Essentially the [program of philosophical justification proposed for discourse ethics] involves two steps. First, a principle of universalization (U) is introduced. It serves as a rule of argumentation in practical discourses. Second, this rule is justified in terms of the substance of the pragmatic presuppositions of argumentation as such in connection with an explication of the meaning of normative claims to validity.[58]

For Habermas, the "deontological, cognitivist, formalist, and universalist" attributes of Kantian moral philosophy are significantly foundational to this, the form of discourse ethics.[59] Additionally in this sense, Kant holds that "moral judgements serve to explain how conflicts of action can be settled on the basis of rationally motivated agreement" based on valid norms and

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[56] Habermas, "Discourse Ethics," 109.
[57] Ibid., 109.
[58] Jürgen Habermas, "Moral Consciousness and Communicative Action," *Moral Consciousness and Communicative Action*, translated by Christian Lenhardt and Shierry Weber Nicholson (Cambridge: MIT Press, 1990), 116.
[59] Jürgen Habermas, "Morality and Ethical Life: Does Hegel's Critique of Kant Apply to Discourse Ethics?" *Moral Consciousness and Communicative Action*, translated by Christian Lenhardt and Shierry Weber Nicholson (Cambridge: MIT Press, 1990), 196.

their justification by relation to worthy principles.[60] "A priori transcendental deduction[s] along

the lines of Kant's critique of reason… ground only the fact that there is no identifiable

alternative to our kind of argumentation;" thus "discourse ethics, like other reconstructive

sciences, relies solely on hypothetical reconstruction."[61] Moral philosophy's primary task is the

explanation of normative validity, such is deontology. Deontological ethics treats rightness and

truth analogously, while remembering they are not identical. To forget this would be analogous

to confusing "theoretical with practical reason."[62]

[Cognitivism as Foundation for Discourse Ethics]

In the cognitivist terms of Habermas and communicative action, claims of truth and

normative rightness analogously make validity claims. The metrics of justice are a primary

concern for cognitivist ethics; that is, how the justness of a validity claim is assessed. The

Kantian moral imperative is a grammatical form of a discriminating principle based on

universalizability. Its formalist ethics is of service in answering how to measure the justice in a

validity claim. Habermas quotes the imperative as "act only according to that maxim by which

you can at the same time will that it should become a universal law."[63] Habermas' program of

philosophical justification replaces Kant's imperative with "a procedure of moral

argumentation."[64] This procedure is founded on the principle of discourse ethics (D) and the

principle of universalization (U). Together, these aim for universality in their discernments such

that they would not be contextually liminal. Habermas notes the potential presence of

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[60] Habermas, "Moral Consciousness and Communicative Action," 196.
[61] Ibid., 116.
[62] Habermas, "Morality and Ethical Life," 196.
[63] Ibid., 197.
[64] Ibid., 197.

ethnocentric fallacy in this paradigm and finds that justification of the moral principle would

limit or nullify that potential fault. Further, serious voluntary participation in argument infers

acceptance of the pragmatic presuppositions' normative content. Acceptance of the moral

principle is then eased as it derives from those same presuppositions. Key within this is the moral

point of view as a theoretical impartial perspective for contemplating moral questions. Rawls'

original position (where for Habermas "those concerned meet as rational and equal partners who

decide upon a contract, not knowing their own or each other's actual social positions") is an

example of such; G.H. Mead's 'ideal role taking' is another example.[65] Discourse ethics for

Habermas finds Rawls' original position and veil of ignorance unnecessary and Mead's ideal

role taking already included but transformed from a private version into a public one "practiced

intersubjectively by all involved."[66]

[Discourse as Argument]

      Habermas looks to answer the question of how well discourse ethics conceives of moral

intuition. "Practical discourse is an exacting form of argumentative decision making" and thus

differs from Mead and Rawls for it includes all concerned as participants while excluding all

coercion except that of presented argumentative positions.[67] For Habermas, moral intuitions are

as those which are thoughtful and considerate, later noting the importance of adjectives of

sympathy and compassion for other specific moral philosophies. He proceeds to provide

anthropological reinforcement: subjective individuation in the lifeworld occurs by self-

actualization in the cultural mosaic made possible by secure societies. Morality is tailored to the

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[65] Habermas, "Morality and Ethical Life," 198.
[66] Ibid., 198.
[67] Ibid., 198.

human fragility of individuated society, having the double task of safeguarding both the individual subject's dignity and the network of intersubjectivity: "to these two complementary aspects correspond the principles of justice and solidarity respectively" for which "both principles have one and the same root: the specific vulnerability of the human species, which individuates itself through sociation."[68]

"Justice in the modern sense of the term refers to the subjective freedom of inalienable individuality" while morality protects individual rights and communal well-being.[69] The safety of either requires the other. Ethics of compassion can link justice and solidarity whereas they historically have been the differentiating locus between theories of duty for justice, and theories of the good for solidarity. "All moralities coincide in one respect" of "linguistically mediated interaction" which in turn serves as a double-source of individuated society's vulnerability and protection such that "every morality revolves around equality of respect, solidarity, and the common good."[70] Communicative action reduces and presupposes these in symmetry and reciprocity within its subjects.

Even so, "there is only one reason why discourse ethics… is a promising strategy: discourse or argumentation is a more exacting type of communication, going beyond any particular form of life."[71] Moral argumentation aims to insure both individual interests and intersubjectively uniting social bonds though insightful will formation. For Habermas, "the consensus required of all concerned transcends the limits of any actual community" while leaving intact communal bonds.[72] Honestly universal consent is impossible without empathy.

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[68] Habermas, "Morality and Ethical Life," 200.
[69] Ibid., 200.
[70] Ibid., 201.
[71] Ibid., 202.
[72] Ibid., 202.

Also of import is the capacity granted in defining the general interest and matters which concern

it. Discourse ethics goes beyond Kant by its inclusive deontological justice which can distinguish

the structural good from the totality of specific life to explicate the moral point of view from

pragmatic presuppositions of argument.[73] Determinations of what is justifiable to a case and the

follow through of application in practice are left to the practical activities of the discourses of

justification and application which rely on the preceding distinctions of a sustainable moral view

point.

[Moral Perceptivity]

Critique of ethical content can occur without damaging it by objectification. This

possibility arises from the hermeneutic position or ethical self-reflection that "ethical knowledge

[can] become reflective from the perspective of the participants;" a process which can be aided,

but not replaced, by philosophy.[74] In this effort, philosophy should be able to at least detect the

possibility of differentiating moral matter from ethical matter. However, the outcomes of moral

or ethical deliberation cannot be known before participating subjects themselves find agreement.

The moral point of view necessarily makes generalizations in the service of transcending these

obstacles. By the correlate means of reflection, moral universality can be derived from the

ethical, just as the ethical can be derived from the mundane lifeworld. This guides discourse

ethics' theoretical characteristic to iterate reconstructed knowledge, not explanatory knowledge,

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[73] Jürgen Habermas, "Remarks on Discourse Ethics," *Justification and Application*, translated by Ciaran Cronin (Cambridge: MIT Press, 1993), 19.
[74] Habermas, "Remarks," 23.

which is analogous to objectifying "sciences that reconstruct the intuitive knowledge of

competent judging and speaking subjects."[75]

For Habermas, such procedure is discovered rather than invented. Agreement-based

procedure promotes the acceptability of its determinations for its subjects whereas argument-

based justification does not as clearly distinguish moral cognition from a form of knowledge.

Claims to justification based on ethical virtues are considered weaker than those based on

consensus. The latter is more amenable to the conceptualization of constative speech acts raising

a claim of propositional truth, as distinct from regulative speech acts which raise a claim of

normative rightness that is not more than analogous to a truth claim. Here, propositional truth

"can be redeemed discursively only under the exacting communicative presuppositions of

argumentation" while "a *validity claim* is of a higher level of generality" than a truth claim or a

claim of normative rightness and "cannot be shown by direct appeal to decisive evidence but

only through discursive redemption of the claim."[76] The import of these distinctions stems from

validity claim argumentation pervading across physics, morality, mathematics, or art criticism.

For Habermas as a moral cognitivist, moral insight is insufficient motivation for moral

action; "justified moral commands and corresponding moral insights only have the weak

motivating force of good reasons."[77] Validity stemming from moral judgement signifies

conformity obligations; however, acceptably valid moral judgment establishes no more than that

one "has no good reason to act *otherwise*" – thus the purported weakness of such force.[78]

Perhaps of greater import than the force of such reason is that for Habermas and "for Kant too,

only a will determined by moral insight counts as autonomous… [such will] that lets itself be

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[75] Habermas, "Remarks," 25.
[76] Ibid., 29.
[77] Ibid., 33.
[78] Ibid., 33.

bound by moral insight, though it could choose otherwise, is autonomous."[79] The reflection of

universal adherence to moral commands in general practice remains necessary for the validity of

such commands because impartiality would be lost without shared adherence. However, some

extent of asymmetric adherence is inferred by Habermas' suggestion that morality can go further

through supererogatory acts which "can be understood as attempts to counteract the effects of

unjust suffering in cases of tragic complication or under barbarous living conditions that inspire

our moral indignation."[80]

[Pragmatic Moral Autonomy]

        A principle of appropriateness applies to applicatory discourse that iterates how the

principle of universalization can produce fairness amid asymmetry through justificatory

discourse: "only the two principles taken together exhaust the idea of impartiality."[81]

Justificatory discourse is concerned with the potential applicability of a norm to all cases

pertaining to it while applicatory discourse is concerned with the relation of pertinent norms to

an actual, singular, given case. Discourses of application give occasion to further embed or

otherwise edit the role of a norm in society insofar as "future actions will be determined by rules

accepted at present."[82] Asymmetry between applicatory questions (empirical-theoretical) and

justificatory questions (moral-practical) results from the distinction between the objective world

and the social world. The moral point of view itself depends on neither the historicity which

defines the social world nor the sense of the historical which applies to objectivity: "neither our

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[79] Habermas, "Remarks," 33-34.
[80] Ibid., 35.
[81] Ibid., 37.`
[82] Ibid., 39.

understanding of this fundamental intuition, nor the interpretations we give morally valid rules in applying them to unforeseeable cases, remain invariant."[83] Here, the perspective of the moral 'ought' is a constant while the surrounding understandings and interpretations will tend to vary.

For Habermas, moral duty directs the moral subject but does not compel it to specific action: "the noncoercive binding force is transferred from the validity of a valid norm to the duty and the act of feeling obligated."[84] The validity of a norm, such that the norm incites a sense of duty, results from the potential of that norm to be justified. This potential conforms to "that reason is practical which conceives of everything that is justified in accordance with its impartial judgment as the product of a legislating will;" however, "even Kant could not ultimately give a satisfactory explanation of this perplexing interrelation" between the freedom of autonomous will and practical reason.[85]

[Moral Consciousness]

For Habermas, the self is the result of society presupposing reciprocal recognitions, not a primary phenomenon because insofar as the self is one among others, the self is not apparent without others. Consciousness and identity are two important features with respect to the moral secular transcendental self, freed of presupposed obligations to any given ethic. "The unforced force of the good reasons in terms of which moral insights impress themselves on consciousness as convictions" iterate a leading indicator of moral inclinations while sanctions are a similar but

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[83] Habermas, "Remarks," 39.
[84] Ibid., 41.
[85] Ibid., 42.

lagging indicator.[86] Additionally, "in modern societies, moral norms must detach themselves from the concrete contents of the plurality of attitudes toward life… they are grounded solely in an abstract social identity that is henceforth circumscribed only by the status of membership in *some* society, not in this or that particular society."[87] This initially empty morality is fed by the contents of ethical life that are formalized by principles (D) and (U), pragmatic presuppositions, and reciprocating perspective-taking in the pursuit of a domain of universal and egalitarian norms. Benhabib, as can be deduced from the arguments of the following chapter, would disagree to find instead that (D) and (U) have innate values which succeed with their gradual diffusion into social communicative foundations.

For Habermas, the moral point of view is shaped by moral consciousness and social identity as "the standpoint from which moral questions can be judged impartially."[88] Justice and solidarity are presupposed by communicative action which is itself presupposed in discourse ethics. By discourse ethics, an argument is an a priori extension or projection beyond the individual lifeworld or ethical horizon. The purposing of pragmatic presuppositions within communicative action forms a relation to the "ideal communication community encompassing all subjects capable of speech and action."[89] Though, a pragmatic presupposition's "ideal content can only ever be approximately realized, [they] must *as a matter of fact* be made by all participants every time they assert or dispute the truth of a statement and undertake to justify this validity claim in argumentation."[90] Among these subjects, the bridge between collective agreement and individual reflection must be completed to make determinations of normative validity. Truth can be explicated to show that a moral principle can produce normative validity

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[86] Habermas, "Remarks," 47.
[87] Ibid., 47.
[88] Ibid., 48
[89] Ibid., 51.
[90] Ibid., 53.

via a moral point of view in communicative practical discourse. While such truth is social thus

dependant on social orders which are both discovered and constructed, it is the ideals resulting

from the social and their role to which we appeal that "is, of course, in need of further

explanation."[91]

For Habermas, argument has "essential components of reflective learning processes" and

is "a procedure for the exchange and assessment of information, reasons, and terminologies (or

of new vocabularies that make a revision of descriptions possible)."[92] As procedure, argument

organizes these pieces, it does not create them. Habermas notes the fallibilism built into

discourse ethics is to account for changes in facts and contexts over time, metrics and evidence

can always be subject to validation by argument. If everyone agrees to the correctness of a claim

and that correctness is socially determined, then in that moment the accuracy of the

determinations of discourse ethics is assured. Of course, liminal factors will determine how

subject to change outcomes of discourse are. However, if the interests of the matter of discourse

are not generalizable, "then one should not look for moral solutions but instead for fair

compromises."[93]

Under Habermas' stipulations (of the individual as social and using reciprocal

recognition as basis for the moral point of view), the distinction between private and public is

formed succinctly by "the degree of organization and institutional mediation of interaction."[94]

For Habermas, positive and negative rights are coeval and should not be hierarchized towards

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[91] Habermas, "Remarks," 54.
[92] Ibid., 58-59.
[93] Ibid., 60.
[94] Ibid., 60.

one another, "only the universalistic privileging of what is equally good for all brings the moral

point of view to bear in the justification of norms."[95]

[Priorities within Discourse Ethics]

The impartiality of values would degrade the moral quality of a norm grounded thereon

because moral action is norm guided while values instead guide purposive action. Thus, "from a

deontological viewpoint, therefore, moral deliberations must be kept completely free from goal-

directed reflections."[96] From this, Habermas wants to show "that positive norms of action can

also ground duties in the strict sense."[97]

The intercessory nature of positive norms of duties subjects them to more conditionality

than applies to the negative norms of rights. Truthfulness demonstrates a justifiable positive

norm because it enables the interpersonal mutual recognition on which morality depends. For

any given norm, there is positive correlation between the ends intended by the norm and the

challenge of applying the norm. For this reason as well, negative norms are less difficult to

justify than positive ones.

> These duties regulate precisely the necessary pragmatic presuppositions of communicative action from
> whose normative content discourse ethics derives the basic substance of morality by analyzing the
> universal and necessary communicative presuppositions of the practice of argumentation –that is, the
> reflective form of communicative action.[98]

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[95] Habermas, "Remarks," 69.
[96] Ibid., 63.
[97] Ibid., 63.
[98] Ibid., 67.

Protecting the integrity of persons is a fundamental purpose of morality because the protection of the individual is reciprocally necessary with protecting societal integrity. "For this reason, we sometimes risk death rather than live a life devoid of freedom. This insight is indeed open to ideological misuse, but its truth is not thereby denied as such."[99]

Discourse ethics is both liberal – principled on freedom and moral conservatism – and communitarian – which finds individuation through socialization. This notion of the social community takes shape through the "truth, rationality, and justification [that] play the *same* role in *every* language community."[100] However, the reasonable expectation of variance in criteria and application justifies a method of reuniting society with the just morality they should already have. For Habermas, ethical judgment is a priori nested in an identity context that is more specific than for moral judgment, and moral judgment can be universalized to find agreement amongst differentiation. Rawls' notion of overlapping consensus is found to get this right by its understanding of the ongoing reciprocal presupposition between specific and generalized interpretative viewpoints. Habermas offers an anthropological perspective of morality and a more generalized concept of the moral that contrasts with the more affective moral theory of Benhabib that will be discussed in the next chapter.

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[99] Habermas, "Remarks,"   67.
[100] Ibid., 105.

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Including the Critical Other

How could subjectivity in discourse ethics be expanded? This section argues that Seyla Benhabib can offer theory and concepts pertinent to the foundation of discourse ethics which detail its notion of subjectivity as it is and demonstrates potential improvements. In 1981, Seyla Benhabib published "Modernity and the Aporias of Critical Theory" in *Telos* where she addresses the origins of communicative ethics. The work of Habermas becomes the primary object of critique in the last of the three cases. The first two of Benhabib's three described aporias are primarily found within the context of the Frankfurt School of critical theory; although insightful and fascinating, these will not be our focus. Discourse ethics is implicated by legacy to the philosophical tradition of the Frankfurt School thus too the factors involved in the identified aporias. The third aporia is our focus because of its implications on the subject role in discourse ethics. This section later reviews similar opportunities resulting from Benhabib's essays on being and modernity. This chapter proceeds by discussing one particular aporia found by Benhabib regarding subjectivity in discourse ethics, the concept of the concrete other and how its differentiation from the generalized other informs upon the moral subject, and the additions and clarifications of that stem from Benhabib's critical perspective on discourse ethics.

[Aporia in Discourse Ethics]

The most pertinent aporia for our purposes is the third found by Benhabib and is within Habermas' theory of discursive rationality that results from its counterfactual attribute:

D Boswick   Subject for Discourse Ethics

The more the theoretical conditions for the fulfillment of modernity are elaborated in the form of an evolutionary theory of discursive rationality, the further removed does the prospect of an emancipated society appear, for a counterfactually conceived structure of discursive rationality articulates an emancipatory ideal that cannot guide emancipatory praxis, since it belongs to the concrete life-history of no social subjects, but to the evolutionary potential of the species in general.[1]

For Benhabib, beginning to resolve this aporia would require that "the claim that there *are no* social and historical agents to whose self-understanding critique *can* be addressed must be distinguished from the claim that there are no social and historical agents to whose self-understanding theory in its present form *could* address itself."[2] Benhabib further observes that "the aporetic structure of Habermas' work is rooted in the dichotomy between a diffuse crisis potential and a counterfactual emancipatory ideal in which no social agent can recognize" the self.[3] Benhabib sees Habermas as replacing "the monologic procedure of universalizability through a dialogic one of communication."[4] Further, she refers to needs similarly as Rawls would refer to primary goods. Reference is made to Rawls' procedure for locating Habermas' theoretical location in the discipline. Benhabib prefers communicative ethics for what differentiates it from other theories in its field. An aspect of this is its centralization of needs within moral discourse which align it more with natural ethics than formal universalism. Another is found by discourse ethics' positioning to reject authoritarianism and the authority of tradition, its way forward is instead paved by reason in argument.

Habermas is noted by Benhabib as tending to discuss "politics not as political praxis, but in terms of an enlightened public whose praxis consisted in critical reasoning."[5] This can apply to that which "the women's movement insists, oppressed groups have no history until they begin

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[1] Seyla Benhabib, "Modernity and the Aporias of Critical Theory," *Telos* 49, vol 14, no. 3 (1981): 54; Italics throughout only as per author's original.
[2] Benhabib, "Aporias," 55.
[3] Ibid., 55.
[4] Ibid., 56.
[5] Ibid., 58.

to write it themselves," as it is with the role of the subject as author of philosophy.[6] New

identities in the design of truth, beauty, justice, or our concepts of persons are entailed here as

determining factors in reason's potential. Otherwise, a stagnated identity system cannot come to

possess knowledge beyond the precedent of past tradition. The result is a multifaceted cessation

societal advancement when the goals possible with yesterday's ideas have been exhausted and

the potential stemming from new identities is absent. Discourse ethics provides a description of

context which is ameliorative of this subjective stagnation. Caution may perhaps be likewise due,

as was the case in the shift from critical theory's focus on purposive strategic rationality and its

restricting effects to the emancipating effects of communicative rationality. The inverse in the

case of the rationale applied to the political identity context suggests identity dynamics may

suffer a lack of objective grounding in the norms and history in the immediate community and

broader society while the prior status quo thereof has such grounding, but comes to lack vision.

Benhabib notes movements for women's rights and ecological rights offer challenges to

autonomous identity akin to those which might spur discursive evolution. These movements

evoke a reopening of concepts and names motivated by conditions of post-enlightenment reason.

This develops from the position that the subjugation of nature by people is both a fundamental

motive of the enlightenment as known by the Frankfurt School, and is deeply contrary to these

movements. These factors are as well crucial aspects to progressing beyond the enlightenment

for the Frankfurt School. This complements with critical theory's aim to redeem "past hope in

the name of the future by revealing the as yet unrealized potentials of the present," and accords

with Aristotle as with Benhabib in that "possibility is posterior and not prior to actuality."[7]

Through this, Benhabib suggests that the aporias of critical theory may be possible to resolve by

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[6] Benhabib, "Aporias," 58.
[7] Ibid., 59.

"developing a conception of emancipatory politics" which combines solutions sought by "modernity and its discontents" to the legitimation of institutions, culturally embedded hierarchy, and the exploitation of nature.[8] The aporias address the dispensation of reason in the enlightenment context, the antiquity of identity categories which can be rationalized by this prior reason, and the potentiality of actual emancipation resulting from rationalizing communication. Benhabib posits that emancipatory politics describes the evolution of context that proceeds out from the enlightenment. This is apparent on the basis that emancipatory politics seeks the liberation of entities towards which the enlightenment pursued subjugation and dominion over. Doing so thus requires an approach to reason and identity categories which differ from their iteration in the past; otherwise, if kept constant, there would be no logical basis to expect different results because these (reason, identity, hierarchy) are key variables to this matter. By and large, argumentative reason is accountable for this task, an approach to which is developed by Habermas in discourse ethics.

Utilizing concepts from Rawls, Benhabib proceeds by distinguishing "between justice as the basic virtue of a social system and the domain of moral theory at large in which a full theory of the good is at work."[9] On the other hand, "Habermas is committed to the stronger claim that after the transition to modernity and the destruction of the teleological world-view, moral theory in fact can only be deontological and must focus on questions of justice."[10] Such questions include judgments of justice which for Habermas "possess a clearly discernible formal structure

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[8] Benhabib, "Aporias," 59.
[9] Seyla Benhabib, "Autonomy, Modernity, and Community: Communitarianism and Critical Social Theory in Dialogue," in *Situating the Self* (New York: Routledge, 1992), 72.
[10] Ibid., 72.

and thus can be studied along an evolutionary model, whereas judgments concerning the good

life are amorphous and do not lend themselves to the same kind of formal study."[11]

"Habermas maintains that the evolution of judgments of justice is intimately tied to the

evolution of self-other relations. Judgments of justice reflect various conceptions of self-other

relations, which is to say that the formation of self-identity and moral judgments concerning

justice are intimately linked. This is because justice is the social virtue par excellence."[12] To

detail Habermas' approach to intersubjectivity, Benhabib makes a contrasting reference to

Rawls' original position. The original position subject is one fully behind the veil of ignorance,

which for Benhabib is an "unencumbered concept of the self" defined "independently either of

the ends they cherish or of the constitutive attachments which make them what they are."[13]

Benhabib further addresses Rawls concept of overlapping consensus which show it to convey a

sense of community based on ethics and history in the theory which is similar to Hegel's

sittlichkeit.

[The Concrete Other]

Benhabib's approach to the self-other relations of community can be described through

her concept of the concrete other, a notion originating from insight from cognitive moral

development that is foundationally restructured relative to the comparable notions of subject

found from Habermas or Rawls. These findings suggest that earlier models of developmental

moral psychology and judgment can measure the development of the moral orientation for only

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[11] Benhabib, "Autonomy, Modernity, and Community," 72.
[12] Ibid., 72.
[13] Ibid., 73.

rights and justice, however Benhabib sees more. When examined, anomalies surface regarding

regression over aging and between genders. If context and perspective are added as factors, the

logical conclusions from the data shift to suggest that the "propensity to take the standpoint of

the "particular other"" and the capacity for "feelings of empathy and sympathy" are not well

accounted for by earlier models while defenses made thereof are dependent on *ad hoc*

arguments.[14]

The concept of the concrete other is developed from feminist critique which includes

premises of: "the gender-sex system is the grid [essential to feminism] through which societies

and cultures reproduce embodied individuals;" and "the historically known gender-sex systems

have contributed to the oppression and exploitation of women."[15] Her "critique of universalistic

moral theories from a feminist perspective" addresses definitions of the moral domain and moral

autonomy "in universalistic, contractarian theories" which privatize and exclude women's

experiences and perspectives.[16] For Benhabib, Rawls is a proponent of such universalist social

contract theories. The concrete other departs from the moral self as defined within such theories

as the generalized other. Benhabib argues that the generalized other renders universalistic moral

theories vulnerable to "epistemic incoherencies that jeopardize its claim to adequately fulfill

reversibility and universalizability."[17] Benhabib accuses "universalistic moral theories... from

Hobbes to Rawls" of substitutionalism based on their tendency to reference: "a specific group of

subjects as the paradigmatic case of the human as such."[18] In contrast to substitutionalist

universalism, interactive universalism is instead preferred for its conveyance of meaningful

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[14] Seyla Benhabib, "The Generalized and the Concrete Other: The Kohlberg – Gilligan Controversy and Moral Theory," in *Situating the Self* (New York: Routledge, 1992), 149.
[15] Ibid., 152.
[16] Ibid., 152.
[17] Ibid., 152.
[18] Ibid., 153.

pluralism while retaining value in rationality, procedure, and fairness. Further, Benhabib argues

for the development of a point of view for morality and politics that is sympathetic to interactive

universalism such that religious terminologies could be more meaningfully considered. For

Benhabib, "interactive universalism acknowledges the plurality of modes of being human, and

differences among humans, without endorsing all these pluralities and differences as morally and

politically valid."[19]

Benhabib emphasizes the distinction between the interactive universalism that promotes

the concrete other from the substitutionalist ethics embedded in the generalized other found in

medieval moral systems. These systems are noted as a tripartite between man-as-he-is, man-as-

he-ought-to-be, and rules which lead from former to latter, all "embedded in a more

encompassing conception of the good life."[20] For the enlightenment, justice is central to moral

theory with autonomously reciprocated respect enabling preservation of private ethics. However,

this results in excluding care and responsibility relations from the public sphere of justice. These

relations become contained within the private sphere and include the domestic household,

"nurture, reproduction, love and care."[21] Benhabib cites enlightenment era philosophers to

demonstrate how early bourgeois narrative subjugated the private sphere to the male household

head role while confining the feminine and many of their interests to the private sphere. The

early bourgeois notions for the state-of-nature affect the human condition narrative with further

segregation between individuals in general as well as between masculinity and femininity. In the

early modern narrative "female has no place. Woman is simply what man is not… the world of

the female is constituted by a series of negations… the narcissistic male takes her to be just like

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[19] Benhabib, "Moral Theory," 153.
[20] Ibid., 154.
[21] Ibid., 155.

himself, only his opposite."[22] This promotes a narcissism which renders foreign the other and the possibility of understanding their perspective. When the autonomy of ego is elevated to sufficient extent, one's consciousness forgoes capacity to identify aspects not of its own self, seeing in the other only that which is already attributed to the self.

By Benhabib's interpretation of Rawls and universalist social contract theories at large, "the autonomous self is disembedded and disembodied; moral impartiality is learning to recognize the claims of the other who is just like oneself; fairness is public justice; a public system of rights and duties is the best way to arbitrate conflict, to distribute rewards and to establish claims."[23] Of chief importance in this matter for Benhabib are the public and private realms of discourse because of the exclusion of the private sphere from some important matters and the confinement therein of femininity. The boundary between these realms is also critical for the protection of religious tolerance. Attributes of early modern masculinity are included to clarify the utilized definition of the generalized other. For Benhabib, contemporary moral theory identifies an antagonistic dichotomy between the generalized and concrete other representative of divisions "between autonomy and nurturance, independence and bonding, the public and the domestic, and… justice and the good life."[24]

The generalized other is defined with similarity to Rawls' original position as "a rational being entitled to the same rights and duties we would want to ascribe to ourselves… we assume that the other, like ourselves, is a being who has concrete needs, desires and affects."[25] The generalized other "is governed by the norms of *formal equality* and *reciprocity*" in interactions

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[22] Benhabib, "Moral Theory," 157
[23] Ibid., 157.
[24] Ibid., 158.
[25] Ibid., 158-159.

that "are primarily public and institutional," having moral values of "right, obligation and entitlement" with moral norms of "respect, duty, worthiness and dignity."[26]

The concrete other is: the "rational being as an individual with a concrete history, identity and affective-emotional constitution;" defined by their individuality, motivations, and desires; governed by "norms of *equity* and *complementary reciprocity*" similarly expressed as "friendship, love and care" in interactions that "are usually, although not exclusively private, non-institutional ones."[27] The concrete other has moral values of "responsibility, bonding and sharing" with moral norms of "love, care and sympathy and solidarity."[28]

Benhabib clarifies that universalist social contract theories utilize a notion of the moral point of view which is not identical to the generalized other, merely similar. The prevalence of similarly defined perspectives for the moral point of view in contemporary theory is an implied justification for shaping a category for them. In turn, the similitude of the moral point of view between universalist social contract theories validates Benhabib's using the generalized other notion to categorize distinct species of the same genus.

Benhabib criticizes using the original position behind the veil of ignorance as a means for perspective taking and questions whether excluding an entity's motives and specific history results in a more appropriate moral point of view. The intent is "to show that ignoring the standpoint of the concrete other leads to epistemic incoherence in universalistic moral theories."[29] This leads to the problem that "under conditions of the 'veil of ignorance' the *other as different from the self disappears*" despite universalistic theories intent for moral reciprocity

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[26] Benhabib, "Moral Theory," 159.
[27] Ibid., 159.
[28] Ibid,. 159.
[29] Ibid., 161.

to include "the capacity to take the standpoint of the other."[30] Benhabib questions whether the concept of self which occupies the original position is a human self at all. For Benhabib, Rawls' original position is an "attempt to do justice to Kant's conception of noumenal agency" wherein "selves cannot be *individuated*."[31] To contrast, the attributes of embodiment, affectivity, suffering, memory, or history apply to their phenomenal realm. Benhabib finds that by choosing this format, Rawls implicitly subscribes to "a metaphysics according to which it is meaningful to define a self independently of *all* the ends it may choose and all and any conceptions of the good it may hold."[32] Benhabib expresses multiple bases on which to doubt the extent to which the self of the original position is a human self. In Habermas' debate with Rawls discussed in the next chapter, Habermas has similar criticisms for the original position. "The conception of selves who can be individuated prior to their moral ends is incoherent. We could not know if such a being was a human self, an angel, or the Holy Spirit."[33] Such a type of self cannot include real perspectives, it is definition only. Despite having a similar critique, the concept of being as participating subject in discourse ethics does not clearly exceed the limits of the definition of the generalized other. A clear inclusion of the concrete other notion within the subject role for discourse ethics would facilitate exceeding the limits of the generalized other. However, the human condition is inescapable for all to whom conceiving of the original position is discursively possible. The original position's omission of the selfish ego nested within the inevitable human self is a condition which its conceptual success is precedent upon. The original position is a self*less* perspective, thus to accuse the notion of failure for lacking that attribute may at first seem paradoxical. This is not to demerit Benhabib's theoretical intent to embed or

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[30] Benhabib, "Moral Theory," 161.
[31] Ibid., 161.
[32] Ibid., 161.
[33] Ibid., 162.

include the concrete other in our moral point of view. However, the method on this point of

doing so is imperfect because it neglects the integrity of the concrete other to the human

condition as it always already is. Each human being possesses at least all of the previously

mentioned concrete and generalized attributes of norms, values, needs, desires, affects,

individuality, and motivation. The original position does not disregard these attributes as such for

the concept of self it forwards. What the original position theoretically voids of attributes such as

these are their specific characterizations and their magnitudes which only each and any

individual can uniquely themself possess that iterates their corporeal intimate being in the ego of

the self. Even so, to omit these details from a moral point of view is still disagreeable to the

concept of the concrete other. Although the original position does omit in this way, it is

momentary and imaginary. Rawls' theory is not culpable for this lack because the attributes of

the actual person gain consideration through the proceedings of the veil of ignorance. As can be

seen from the debate between Habermas and Rawls, however, the content of being to which the

concrete other draws focus are oft not given their warranted consideration, thus the concept is

crucial to consider and remember in moral discourse.

For Benhabib, identity refers "to how I, as a finite, concrete, embodied individual, shape

and fashion the circumstances of" birth, family, language, culture and gender.[34] Our agency and

capacity for choice could be included as well, however these are mutually inclusive in both

generalized and concrete others while the self is for her "the protagonist of a life's tale."[35]

Benhabib finds that for Rawls, the self as individual is defined by "wants and desires, aims and

attributes, purposes and ends that come to characterize human beings in their particularity."[36]

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[34] Benhabib, "Moral Theory," 161-2.
[35] Ibid., 162.
[36] Ibid., 162.

However if so, and these are entirely excluded in the original position, the original position could not render a notion of what desires, wants, or aims are particular and which are common. Likewise, Benhabib questions "how individuating characteristics can be ascribed to a transcendental self who can have any and none of these, who can be all or none of them."[37] For Rawls, there is a common individual behind the veil; while for Benhabib, the individual is entirely effaced by the veil.

Using a "definitional identity leads to *incomplete reversibility"* because reversibility requires distinction between one and another, and without reversibility there cannot be universalizability, according to Benhabib's argument.[38] Rawls would disagree due to the conditions of the original position which aims to provide just outcomes for all perspectives of a given case. However, Benhabib questions if moral situations are independent of the involved agents. This is determined by the extent to which moral liability depends on the specific 'who' component of a matter. Benhabib would prefer this extent to be significant, though conventional universalistic moral theory would not. Abundant preference for either can lead to absurd positions. The pursuit of fairness and universality balances these approaches, including sympathy for requirements of role, while excluding inclinations of individual preference. Benhabib pursues a moral point of view suitable to a conversational model that is responsive to differences in preference over the icy characters operating behind the veil. The priorities of the concrete other also improve avenues for finding similarities insofar as those attributes are invisible to or disregarded by approaches correlating to the generalized other.

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[37] Benhabib, "Moral Theory," 162.
[38] Ibid., 162.

The faults of the generalized other largely derive from "Kant's error [which] was to assume that I, as a pure rational agent reasoning for myself, could reach a conclusion that would be acceptable for all at all times and places."[39] Benhabib reasserts that the generalized other "cannot individuate among selves" however the concrete other can, and this is required for universalizability because it provides "the necessary epistemic information to judge my moral situation to be 'like' or 'unlike' yours."[40]

The concrete includes many factors for understanding another human self, perhaps more than are necessary or than are appropriate for an operable moral point of view aspiring to universality. Benhabib reviews the causes and consequences of the privatization of women's experience and the exclusion of the concrete other. For Benhabib, "our identities as concrete others are what distinguish us from each other according to gender, race, class, cultural differentials, as well as psychic and natural abilities" while the generalized other enables a basis of shared experience whereas the more concretely some other is viewed, the more isolated they become.[41]

Benhabib reiterates the distinction between substitutionalist universalism which includes the generalized other while excluding the concrete other, and interactive universalism which includes both the generalized and concrete other. Benhabib finds Rawls' theory is defended by the argument that the theory's parameters permit for the cooperation of substitutionalist ethics and interactive universalism. Benhabib further cites Rawls to show the existing bonds between "reason and feeling, justice and care" and that agency is maintained as disembedded and

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[39] Benhabib, "Moral Theory," 163.
[40] Ibid., 163-164.
[41] Ibid., 164.

disembodied "under the epistemic conditions of the 'veil of ignorance.'"[42] Benhabib reiterates

that without the details included in the concrete other, the original position does "not have

adequate information about the interests of relevant others."[43] Only the most general interests are

possible to calculate therein, resulting in a large risk for overlooking particularized concerns and

thereby dire consequences for many.

Benhabib disagrees that the original position is not the absence of the concrete other, but

is rather the inclusion of all possible concrete others without prioritizing any one in particular.

This leads to doubt in the efficacy of the original position and veil of ignorance to iterate a moral

point of view. Instead, Benhabib argues that the concept of the concrete other is a better means

of achieving morally legitimate circumstances than the veil of ignorance sequence. This is

indicative of a vulnerability for Rawls' theory because it does not articulate an effective method

for transiting from the state of mundane ego to the vantage point of the original position.

Effectively, Rawls' indicates a destination without providing an accurate map for arriving there.

In contrast, the concrete other can be known only through the given other's own communication.

Empathy and benevolence can do no more than assist in this type of learning process. As well,

"one needs principles, institutions, and procedures" to understand the perspective of another at

the depth described by the concrete other.[44] Benhabib criticizes Rawls for lacking a metric for

the advantageousness of individuals' lifeworld positions, and furthermore for having "an

implausibly restricted process of individual deliberation rather than as an open-ended process of

collective moral argumentation."[45]

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[42] Benhabib, "Moral Theory," 166.
[43] Ibid., 166.
[44] Ibid., 168.
[45] Ibid., 169.

[Critical Perspective of Discourse Ethics]

Benhabib prefers discourse ethics to Rawls' theory even though both "are idealizations intended to make vivid to us the ideal of impartiality" for four reasons: first, for the fundamentality of communication to discourse ethics; second, the absence of epistemic constraints in discourse ethics resulting in a positive correlation therein between communicated information and the rationality of the outcome; third, the breadth of the valid domain for moral subject matter in that "both the *goods* they desire and their *desires* themselves can become subjects of moral disputation;" and fourth, the openness of the parameters for discourse to question and revision.[46] While Benhabib applauds discourse ethics' versatility and openness, she emphasizes the inclusion of "needs, interests, as well as emotions and affects" as "properties of individuals which moral philosophy recoils from examining on the grounds that it may interfere with the autonomy of the sovereign self."[47]

Given her favouring of discourse ethics, Benhabib offers a more detailed study of Habermas' theory in her later publication "In the Shadow of Aristotle and Hegel: Communicative Ethics and Current Controversies in Practical Philosophy." The interests here are the occasions of increases in demand for ethical insights. This demand is said to increase when the moral bonds of a social order are sensed to weaken and moral inheritance is impoverished. Under these conditions, moral philosophy and theology tend to be sought for remedy. The conditions leading to this increased demand may also relate to a weakening of these disciplines themselves as well. However, a "program of ethical universalism and formalism in the Kantian tradition… is considered a part of the Enlightenment project of rationalism and of the political

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[46] Benhabib, "Moral Theory," 169.
[47] Ibid., 170.

project of liberalism… [which] are an aspect, if not the main cause, of the contemporary crisis."[48] This claim challenges discourse ethics to resolve the given crisis and defy the categorical attributions which cast initial doubt on its viability.

To illuminate the field in question, Benhabib references Rawls' theory given that "above all, it is in John Rawls's neo-Kantian constructivism… that Apel and Habermas have found the most kindred projects of moral philosophy in the Anglo-American world."[49] Benhabib sees discourse ethics as derived from "modern theories of autonomy and of the social contract."[50] Here, the validity of norms and institutions comes from consent determined through conversation. Similarities between the universalization principle of discourse ethics and Kant's moral imperative are noted, though with the exception of the inclusion requirement for the communicative perspective of others in conclusions rather than only on one's own expectations for others. Benhabib describes her own approach as neo-Aristotelian and neo-Hegelian because both she finds both Aristotle and Hegel to have challenged "formalist and universalist ethical theories… in the name of some concrete historical-ethical community or, in Hegelian language, of some *Sittlichkeit.*"[51] She notes Habermas and Apel, likewise as herself, regard Hegel's critique of Kant as merited.[52]

Using "a universalist ethical theory, which presupposes neither the methodological individualism nor the ahistoricism of traditional Kantian ethics" in conflation with "a hermeneutically inspired neo-Aristotelianism," Benhabib argues that several conventional

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[48] Seyla Benhabib, "In the Shadow of Aristotle and Hegel: Communicative Ethics and Current Controversies in Practical Philosophy," in *Situating the Self* (New York: Routledge, 1992), 23.
[49] Ibid., 24.
[50] Ibid., 24.
[51] Ibid., 24.
[52] Among three listed possible interpretations for the category of neo-Aristotelian, one in particular specifically applies to Benhabib. Approaches to neo-Aristotelian moral theory are located in neoconservative, communitarian, and hermeneutic philosophies.

positions in moral philosophy are instead unconvincing.[53] Her goal with the oppositions

"between universalism and historicity, between an ethics of principle and one of contextual

judgement, or as between ethical cognition and moral motivation" is "to indicate how such false

oppositions can be transformed into a more fruitful set of contentions."[54] In so doing she offers

many points which could strengthen the legitimacy of discourse ethics.

With reference to Hegel, Benhabib argues that the categorical imperative of Kant is

"inconsistent at best and empty at worst" on the grounds that "the test alone whether or not a

maxim could be universalized could not determine its moral rightness."[55] By this reading, moral

maxims are premised on conditions exterior to Hegel's notion of the moral. For Benhabib, the

materialism in Hegel's critique of Kant "runs the risk of weakening the distinction between

Kantian and other types of utilitarian or Aristotelian moral theories;" however, rejecting Hegel

risks losing "sight of the question of intersubjective moral validity" if focus is "exclusively on

the conditions of rational intending."[56] Neo-Aristotelianism tends to maintain a position

following similarly to the rejection of Hegel in that one cannot be obligated to not hinder another

from enjoying the required fulfillment of the conditions of their actions. Benhabib reflects this in

the terms of Habermas: "the analysis of the rational structure of action for a single agent

produces an *egological* moral theory which cannot justify intersubjective moral validity."[57] The

attribute of universalizability often sought by herein referenced is also implicated on this point.

In most senses deriving from Kant, universalizability means that generated moral maxims are

recognizable as valid by all. However, when rejecting Hegel's critique of Kant and grounding

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[53] Benhabib, "Practical Philosophy," 26.
[54] Ibid., 26.
[55] Ibid., 26.
[56] Ibid., 28.
[57] Ibid., 28.

moral validity in consensus through discourse, as Habermas does with discourse ethics, universalizability becomes an argumentative procedure for agreement through communicating.

The pragmatic communicative presuppositions are the means by which discourse ethics can pursue universality because they are imperative in the definition of a communicative context. Benhabib summarizes these presuppositions as recognitions of rights to participate for all those who can speak and act, as well as rights to act communicatively such as by initiating new topics or questioning conversational presuppositions. For Benhabib, the former rights typify a "*principle of universal moral respect*" and the latter a "*principle of egalitarian reciprocity*."[58] These can be verified as pragmatic presuppositions because the norms they stipulate can be neither challenged without hypocrisy nor grounded without *petitio principii*. The procedural dimension of moral justification here is enabled by pragmatic presuppositions and the communicative context. Benhabib cites several moral theoreticians to iterate a general reoccurring relation between procedure and the capacity for moral justification. However, there is not universal consensus in the field on this matter because although procedure is necessarily the only legitimate means of determining valid norms for Habermas and Benhabib, a claim about justice can be legitimated on substantive grounds for others such as Rawls.

A "historically self-conscious universalism" is preferred by Benhabib which is based on her principles of respect and reciprocity from "a process of 'reflective equilibrium,' in Rawlsian terms."[59] Her principles produce six requirements that include demonstrating how justifications are grounded or premised, the pursuit of reasonable agreement in actions of justification, exclusive use of fair debate toward reasonable agreement, defining the process of fair debate in

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[58] Benhabib, "Practical Philosophy," 29.
[59] Ibid., 30.

terms of pragmatic presuppositions, promotion of universal respect for moral perspectives by each pragmatic presupposition, and the promotion of egalitarian reciprocity for concrete others by each pragmatic presupposition. Benhabib refers to this as a weak justification because it allows for many routes through reason to arrive at the principles, rather than only "a single *deductive chain* of reasoning."[60]

Respect is a central component of communal identity and is negatively correlated with animosity between identities based on Benhabib's formulation. Modern ethical theory includes "all beings capable of speech and action, and potentially with all of humanity" within the moral community, whereas premodern ethical theory does not.[61] Benhabib thereby identifies communicative ethics as modern. Pragmatic presuppositions are permissible, even encouraged, to be argumentatively challenged within the parameters of communicative ethics. Challenging a presupposition confirms the standing legitimacy of active pragmatic presuppositions to present participants, thereby further affirming communal identity as Benhabib describes.

For Benhabib, the task of excluding "some individuals on account of certain characteristics" from moral conversation belongs to the critics of communicative ethics.[62] In the terms of this thesis, the critics of communicative ethics are also subjects of discourse ethics. Perhaps certain morally grievous crimes would warrant exclusion insofar as a given crime substantiates a basis for a subject's lack of perception or consideration for moral conditions. However in many cases, the inclusion of perpetrators and accused into the moral conversation could be warranted. This could produce a more complete societal understanding of the causes of injustices leading to a more just society over time which could be reasonably expected to suffer

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[60] Benhabib, "Practical Philosophy," 31.
[61] Ibid., 32.
[62] Ibid., 33.

less criminal action. However, inclusion of the irredeemable would be catastrophic to the project

of communicative ethics if their actions are fundamentally distorted by an antisocial will for

destruction without suitable moderations. Particular pragmatic presuppositions may be required

in certain categories of controversial inclusion in order to determine how to make such inclusions

and what to consider from them. This task raises the philosophical concern of the critical social

theorist towards the "unmasking of such mechanisms of continuing political ideology and

cultural hegemony" and of the moral theorist "to clarify and justify those normative standards in

the light of which such social criticism is exercised."[63] In distinguishing the production of morals

from moral testing, Benhabib finds through Hegel's critique of Kant that "as a procedure for

testing the intersubjective validity of moral principles and norms of action, communicative ethics

is neither trivial nor inconsistent."[64] Although moral conversation is a necessary condition for

generating valid morals, it is not a sufficient one. The definitions of these tasks discern the

appropriate action of subjects for discourse ethics.

Habermas is quoted by Benhabib on the universalization principle of discourse ethics

which is then compared with Kant's example of deposits and property. Kant's example posits a

situation wherein a bondsman is entrusted with the security of a principal's assets and ponders

the moral favourability of the existence of a context in which such trust is possible. The result

finds that "numerous forms of property arrangements are morally permissible."[65] Thereby,

Hegel's critique is validated by Habermas' universalization principle of discourse ethics for

Benhabib because the triviality and inconsistency of Kantian meaning for property cannot

morally legitimize general property relations. Using this, Benhabib reiterates positive moral

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[63] Benhabib, "Practical Philosophy," 33.
[64] Ibid., 34.
[65] Ibid., 35.

action is not the product of the universalization principle of discourse ethics. Although her

argument on this point appears critical, no more than observations of coincidence result insofar

as the criticisms do not affect discourse ethics. The problem is that this critique of Benhabib

accuses discourse ethics of failing to achieve an objective which is not a goal of its own. This is

confirmed by her position that the universalization principle in discourse ethics "must deliver

criteria for distinguishing among the morally permissible and the morally impermissible,

without, however, being able to yield adequate criteria of the morally good virtuous or

appropriate action in any given circumstance."[66]

Benhabib argues that the universalization principle of discourse ethics "is either too

indeterminate, or too complex or too counterfactual."[67] For one, discourse ethics can be viewed

to be "a theory of 'legitimation rather than one of validation'" that "is a *substantive limitation*

placed on our intellectual intuitions" from which "we cannot obtain any positive guidance."[68]

Though Benhabib disagrees that necessary but insufficient substantive conditions on moral

intuitions would not be a worthy goal. Instead, such conditions could appropriately define

universal moral theory. For another, discourse ethics could "make justified moral judgment a

total chimera (*Ein Ding der Unmöglichkeit*)."[69] This stance follows to posit that consensus is best

realized as a principle and that we can only validly project attributes onto others (such as

goodness, competence, or reasonability) in order to anticipate or understand them if those

attributes are true of the others in case. In Benhabib's view, a critique of this sort assimilates

contextualization and justification while depending on phronesis. Benhabib's critiques and

reflections of her neo-Aristotelian peers here lead to at least three contentions regarding

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[66] Benhabib, "Practical Philosophy," 36.
[67] Ibid., 36.
[68] Ibid., 36.
[69] Ibid., 36.

discourse ethics which suggest a problematic interpretation of discourse ethics: the

universalization principle (U) is considered redundant to the principle of discourse ethics (D); the

notion of consent is equated with consensus; Habermas' notion of consensus is interpreted in the

context of liberal enlightenment philosophy. These together suggest that there is significant

philosophical distance between the projects of Habermas and Benhabib. Conflating the concrete

other with the notion of subject for discourse ethics is potentially problematic if the terms and

conditions of only those two theorists are exclusively considered. This question is further

explored in the final chapter of this thesis.

The distance between the theories of Benhabib and Habermas can be found through how

Habermas defines the universalization principle in discourse ethics and in his particular focus on

consensus. The mutually inclusive importance of the principle of discourse ethics and the

universalization principle iterate a clear system which generates reciprocity which bind

participants and their norms together. Without both principles, reciprocity is left problematically

abstract by Benhabib. For Benhabib, the "core idea" of discourse ethics is "the processual

generation of reasonable agreement about moral principles via an open-ended moral

conversation" and "consent is a misleading term for capturing the core idea."[70] Instead, the

accurate application of confirmed procedure is the more important factor. Even so, when

discussing the role of agreement in discourse ethics she addresses consent instead of consensus.

However, 'consensus' confers a liability for agreement without limit, whereas the liability

accounted for by 'consent' could be read as being quite more limited and accepting of

compromise where consensus does not. Only consensus is an honest representation of discourse

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[70] Benhabib, "Practical Philosophy," 37.

ethics which understands its unlimited communication community as the context in which agreement must exist to sustain a norm.

Whether a norm "would or could be freely adopted by all" is "the central idea of the modern natural right and social contract traditions" wherein this idea is generally merited as a means of rendering political legitimacy, but less merited in regards to moral validity.[71] On the other hand, Benhabib finds discourse ethics merited as a substantive test for moral intuitions because it "promotes a universalist and postconventionalist perspective on all ethical relations."[72] In regards to foundations in substantive ethics, Benhabib refers to communitarian neo-Aristotelian critics of discourse ethics that consider principles of legitimacy as dependant on a substantive ethical foundation. This iterates the debate between the right and the good within moral theory. This debate centers on the disagreement as to whether a moral theory can be formed "without presupposing some substantive theory of the good life."[73]

Benhabib's major critique shares certain precepts with those positions which consider that "philosophical meta-ethics, including a theory of moral justification, has substantive moral implications."[74] Benhabib grounds her view of discourse ethics similarly in that she finds discourse ethics is not morally neutral because it privileges "a secular, universalist, reflexive culture in which debate, articulation and contention about value questions," justice, and ethics while having "a single cognitive virtue… namely comprehensive reflexivity."[75] In discourse ethics for Benhabib, "conventional morality is not *excluded* from the conversation; but the kinds

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[71] Benhabib, "Practical Philosophy," 38.
[72] Ibid., 39.
[73] Ibid., 39.
[74] Ibid., 40.
[75] Ibid., 42.

of grounds… will not be sufficiently universalizable."[76] Conventional morality can verify itself

by representation in the status quo worldview, not only in communicated consensus as is the case

for normative verification in discourse ethics.

By setting up an opposition between conventional and reflexive morality then

categorizing discourse ethics as the latter, Benhabib argues discourse ethics is not morally

neutral because discourse ethics' reflexivity cannot include esoterically grounded positions. Even

so, in a case example of right versus good on a matter of tolerance, Benhabib argues for the right.

For her, the deontological theory of communicative ethics is procedural, pluralist, tolerant,

respectful and egalitarian while prioritizing the right over the good. Benhabib's critique of

discourse ethics stems from the Hegelian concrete '*sittlichkeit*' as "the centrality of a shared

ethos."[77] She amplifies priority on the matter by noting that if norms are evaluated by a shared

ethos without being formulated from that ethos, then "morality becomes subordinated to the

collective ethos of a community."[78]

For Benhabib, communicative ethics aims to affect communities by providing

anticipatory "non-violent strategies of conflict resolution as well as encouraging cooperative and

associative methods of problem solving."[79] Indirectly referring to discourse ethics, Benhabib

criticizes the neglect of "emotional and affective bases of moral judgement" by "cognitive and

proceduralist ethical theories since Kant."[80] Benhabib then clarifies the definition of these

categories which she finds are often misrepresented. Here, ethical cognitivism means that

"ethical judgements and principles have a cognitively articulable kernel" unaffiliated with taste

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[76] Benhabib, "Practical Philosophy," 42.
[77] Ibid., 46.
[78] Ibid., 46.
[79] Ibid., 49.
[80] Ibid., 49.

or preference.[81] While ethical rationalism means that moral judgements are central and result

from a moral self whose perception of morality is similarly as objective as would be with

geometry. Benhabib criticizes moral rationalism for neglecting embodiment of the moral entity

and its moral bonds which nest the subject in cultured society at birth then onward.

The overall argument of Benhabib suggests that an honestly universalist moral theory is

plausible. However, "the gender blindness of much modern and contemporary universalist

theory… shows the need to judge universalism against its own ideals and to force it to make

clear its own unjustified assumptions."[82] For example, "since the eighteenth century ethical

rationalism has promoted a form of moral blindness" resulting in a systematic absence of

"familial and other personal relations of dependence" in the contemporary moral point of view

which favour political and economic interests.[83] The notions of the generalized and the concrete

other necessarily "expand moral cognitive universalism beyond its rationalistic limitations"

which otherwise sustain "enlightenment illusions of the rational moral self as a moral

geometrician."[84]

For Benhabib, moral universalist discourse with pragmatic presuppositions can be

redeemed as the moral point of view by understanding moral discourse as "*ordinary moral*

conversations in which we seek to come to terms with and appreciate the concrete others' point

of view."[85] This requires ceasing to view moral dialogue in legalistic terms of generalized others,

in favour of "ideals of reciprocity, equality and 'the gentle force of reason.'"[86] Discourse ethics'

success is suggested to depend on our ability to understand how moral discourse procedurally

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[81] Benhabib, "Practical Philosophy," 49.
[82] Ibid., 51.
[83] Ibid., 51.
[84] Ibid., 51-52.
[85] Ibid., 52.
[86] Ibid., 52.

relates to moral judgement. In general, "judgment involves the capacity to represent to oneself the multiplicity of viewpoints, the variety of perspectives, the layers of meaning which constitute a situation."[87] However, "moral judgment alone is not the totality of moral virtue… only judgment guided by the principles of universal moral respect and reciprocity is 'good' moral judgment."[88]

The discussion of moral theory is not exclusive to the academic scene, especially by Benhabib's emphasis on connection to culture at large. "The dispute between discourse theorists and neo-Aristotelians and neo-Hegelians is at its heart a dispute about modernity" and is of relatively little immediate pertinence to the public sphere.[89] However, "the process of disintegration of personality and the fragmentation of value which is said to be our general condition today" is widely publicly accessible.[90] Rawls is likewise interested in public discourse, however, with many differences from Habermas and Benhabib as the next chapter discusses.

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[87] Benhabib, "Practical Philosophy," 53.
[88] Ibid., 54.
[89] Ibid., 55.
[90] Ibid., 55.

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Clarities Subsequent to the Rawls Debate

What additional information on subjectivity in discourse ethics can be surmised from Habermas' debate with Rawls? Most importantly, Habermas is interested in norms of morals in general, while Rawls is interested in the political. Their resulting debate adds and clarifies several key factors to argument such as the imperative of agreement, methods of moderation, and the role for participants. Their agreements suggest avenues which could be continued to develop more optimal communities and institutions that rely on argumentation. Conversely, their disagreements suggest productive areas for further discussion. Such disagreements include as the attributes of argumentative format vary between fields or the appropriate definition of characteristics for key factors in discourse. Both note the importance of forming and maintaining socially healthy discursive spaces. However, both rely on strategies which could benefit from contemporary re-examination. A clear and shared basis for finding agreement is an obvious boon to civilization as we know it. This chapter examines three articles that are central for the Rawls-Habermas debate in order to contend with how Rawls' and Habermas' illuminate the relation between communication and justification. Rawls' following comments are published in the same issue as, and immediately following, Habermas' in this 1995 volume of *The Journal of Philosophy*. Rawls replies in two parts: first clarifying his difference in aim and motivation from Habermas, second by addressing Habermas' criticisms. This chapter proceeds by discussing the distinction between comprehensive and freestanding, the relation between justice and reason, categorization of theory, Habermas' critiques of justice, politically situated personhood, the maintenance of reflective equilibrium, the influence that results from doctrinal categorization,

pro-tanto justification, some risks of a strictly procedural approach, how the theorists

differentiate validity and tolerance as well as justice and morality, constitutions and their

pertinence to both morality and justice, the division between public and non-public and how this

is integral as a boundary of justice, the defensibility of a purely political approach, just reason

and rational good, the base of the dilemma between substantive and procedural approaches,

whether legitimacy or justice results from discourse ethics, the lack of hierarchy in discourse

ethics, and multiple agreements between Habermas and Rawls.

[Comprehensive v. Freestanding Doctrines]

For Rawls, Habermas' position is comprehensive, while his own is political. Both

philosophers construct with the representational means of independent concepts that facilitate

association between subjects within their given theory: for Habermas, the ideal discourse of

communicative action; and for Rawls, the original position. Early and frequent emphasis occurs

on the point that Rawls "leaves philosophy as it is" by remaining "entirely within that domain [of

the political] and does not rely on anything outside it."[1] Rawls finds in most other cases of

political philosophy that various types of norms are connected to, and are the result of,

comprehensive doctrines. In contrast, Rawls describes his own theory as capable of refining the

political enterprise within the confines of reason, and holding the expression of freedom in its

foundation. Within Rawls' theoretical landscape, political philosophy "proceeds apart from all

such doctrines" as "religious, metaphysical, and moral."[2] Unlike many other approaches to

political philosophy, Rawls theory claims to be freestanding relative to these other such doctrines

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[1] John Rawls, "Political Liberalism: Reply to Habermas," *The Journal of Philosophy*, vol. 92, no. 3 (1995), 133-4.
[2] Ibid., 134.

enabling inclusivity of non-liberal viewpoints such as religious terminologies. Rawls' political

philosophy benefits from having its own terms which promote the freestanding attribute.

[Justice from Reason]

For Rawls, a reasonable person requires two elements. First, a willingness to propose and

fulfill terms which are fair or supportable in the eyes of free and equal others, provided that all

participants engage the terms mutually. Second, recognizing and accepting the burdens resulting

from judgements following said terms. Rawls is not concerned with doctrines unless they

unreasonably and essentially reject his notion of a democratic regime which correlates to his

notion of justice which applies to the fundamental institutions of society and their cohesion. An

explicitly political concept of justice can be formulated independently of comprehensive

doctrines but may be amenable with one or another in various cases. Further, justice here is

fundamentally political by drawing from the public political culture around democracies, their

constitutions, their basic laws, as well as "leading historical documents and widely known

political writings."[3] For Rawls, these three aspects of justice render it freestanding. For

comparison, Rawls finds that "Habermas' position, on the other hand, is a comprehensive

doctrine" because it offers "a general account of meaning, reference, and truth or validity both

for theoretical reason and for the several forms of practical reason" while attempting to "resist

both scientific reductions and aesthetic assimilations."[4]

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[3] Rawls, *The Journal of Philosophy*, 135.
[4] Ibid., 135.

[Categorization of Theory]

Both Rawls and Habermas categorize their theories separately of prescriptive doctrinal narratives. Habermas is quoted in order to argue this is a commonality, that communicative action aspires to comprehensiveness via universality, and that Habermas' theory claims there is a lack of logical force in appeals to higher doctrines. Rawls distinguishes his approach by capitalizing on the last point in arguing that while Habermas a priori denies logical force to "higher or deeper doctrines," in his own approach the utilization of claims deriving from comprehensive doctrines "is left entirely open to citizens and associations in civil society."[5] Where Rawls defends a regiment of politics, Habermas seeks to justify a moral point of view. This also reinforces the distinction of Rawls approach to justice as exclusively politically interested and freestanding. Rawls then moves to counter through summary and quotation with the aim to show that discourse ethics neither has a particular concern for politics nor is freestanding. This adds detail to the context in which the subject of either theory is immersed. To make the point, Rawls cites Habermas on perspective reversibility in ideal discourse and the consequence of independence from comprehensive doctrine. This enables the critique that Habermas' "logic is metaphysical in the following sense: it presents an account of what there is."[6]

[Identifying and Countering Habermas' Critiques]

Each of Rawls and Habermas purport their own theory to be the more modest, and the other's more grandiose. Habermas claims modesty on the basis that his theorem is founded in

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[5] Rawls, *The Journal of Philosophy*, 136.
[6] Ibid., 137.

procedure; Rawls claims modesty on the basis of his political exclusivity. Rawls indicates

Habermas finds that the attributes and large goals of the original position require artificiality of

participants, thus instead limits the task of moral philosophy to the determination and

clarification of the moral point of view. Some disagreements stand out from this. For one,

whether a political conception of justice requires substantive conceptions which set it outside the

boundaries of political philosophy. For another, when does a notion of personhood exceed the

boundaries of political philosophy and what implications does this have for claiming a

freestanding attribute. As well, whether political constructs require "questions of rationality and

truth" and how do correlate principles and ideals inculcate "a priori and metaphysical reason".[7]

The subjects of either a political philosophy for justice or a moral theory for discourse will have

to contend with how these questions are best answered in theory for applicative measures.

Rawls rebuts Habermas' claims and critiques regarding the relative modesty of

theoretical aims, the original position, justice's requirement of substantive conceptions, the

consequence of Rawls' definition of personhood, the requirements of political constructs, and of

Rawls' use of metaphysical reason. Rawls again shores up his position in humbling his intentions

relative to Habermas' theory, argued as situated among the comprehensive doctrines, unlike

Rawls who is exclusively the politically interested. That exclusivity is important for

distinguishing the ideal discourse situation from the original position. The original position has

the intention of enabling participants to formulate decisions which are amenable to future

revisions. Rawls describes the task of considering conditions in discourse ethics to be of

immensely greater proportion. This task implies the possibility of considering every feasible

condition or result that could apply to a truth or validity claim in communicative action such that

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[7] Rawls, *The Journal of Philosophy*, 138.

any participant could agree if they were equally informed as all other perfectly informed

participants. For Rawls, discussion or "argument may occasionally reach a fairly high level of

openness and impartiality… [depending] on the virtues and intelligence of the participants" and

is at all times from the point of view of the citizen and for the sake of the citizen in civil society.[8]

He finds this discursive setting comparable to Habermas' notion of the public sphere. The person

as such for Rawls is the citizen, thereby exclusively specifying a politically philosophical topic.

Rawls supplants Habermas' accusation of constructivism with connection, arguing this latter

descriptor is the accurate characterization created by his theory via reason on the relation

between justice and citizens. Lastly in this set, Rawls defends that his dependence on

metaphysical reason does not exceed that of "the simplest bit of logic and mathematics," for "no

sensible view can possibly get by without the reasonable and rational as I use them."[9]

[Politically Situating Personhood]

Apolitical roles and perspectives are included in Rawls' notion of the citizen in society.

This suggests that what he considers as confinement to the political may be more comprehensive

than it first appears because society is a more inclusive domain than the political. Rawls' self-

assigned boundaries logically bolster his position until he elaborates their definition whereupon

we find their domain of interest to be similarly as inclusive as what he describes elsewhere as a

comprehensive doctrine. Rawls position could be further secured by reviewing the notion of

person more towards the understanding that that politics and people are inseparable. Any issue

that concerns anyone has a political dimension insofar as that issue is animated in civil society.

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[8] Rawls, *The Journal of Philosophy*, 141.
[9] Ibid., 138.

By this, the actions themselves of the social person are mutually inclusive with those of the

political citizen. Rawls may still retain his freestanding attribute by this via exclusive

consideration the specifically political dimension for a case. Otherwise, Habermas calls for

deeper restructuring to correct legitimate doubts of the original position based on extenuating

conditions placed upon the corporeal person to fulfill the terms of the citizen in the original

position. Without modification, this implicates philosophical questions that compromise the

freestanding intentions of Rawls. This suggests cause to doubt the efficacy of Rawls' political

exclusivity when contrasted with of approaches that presume wide base inclusivity as is the case

with the universalism traced in discourse ethics.

[Maintaining Reflective Equilibrium]

Rawls sees his goals as "a point at infinity we can never reach."[10] Discourse ethics is

similar in this regard, though Rawls tends to portray consensus as more tangibly possible by his

own notion of reflective equilibrium than Habermas describes consensus in discourse ethics.

This leads Rawls to deal with two questions from Habermas: first, "whether an overlapping

consensus adds to the justification of a political conception of justice already taken to be justified

as reasonable;" and second, whether the term 'reasonable' can "express the validity of political

and moral judgments or does the term merely express a reflective attitude of enlightened

tolerance."[11] Rawls responds that he finds three kinds of justification and two kinds of

consensus:

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[10] Rawls, *The Journal of Philosophy*, 142.
[11] Ibid., 142.

Justice $_1$: *pro tanto* justification, or the systematized understanding of a conception of political ordering by the values thereof and the directives those values would tend to iterate.

Justice $_2$: full or individual justification, the would-be narrative of one amidst self-description of their own concept of what ought to be in the political and how that is consequential to them.

Justice $_3$: public justification by political society, peer-to-peer discussion between citizens about what ought to be of a political matter, within the bounds of reflective equilibrium, overlapping consensus, respect for reason.

Consensus $_1$: everyday political consensus, the situation where a political will bargains and coerces similar others to agree on or endorse some matter.

Consensus $_2$: reasonable overlapping consensus, when agreement occurs by way of appeal to justice (itself, entirely, only) *pro tanto* alone, without entreating interests that would be more specific or exclusive.

[Influence resulting from categorization by doctrine]

Citizens may be categorized by the doctrines with which they ally themselves because these doctrines "play a basic social role in making public justification possible" and endure across generations such to have "their own life and history."[12] Rawls argues that consenting to his procedure justifies exercising coercive political power over others, such as this categorization. Yet, he argues that the expected results of reason and stability are also the justification of that exercise. This iterates a sequence where reason and stability justify a procedure which in turn justifies coercive power which then produces the same reason and stability on which the justificatory sequence was first premised. A *petitio principii* thus appears here as the argument's premises require the conclusion be accepted first as true in order to iterate a logical system. Further, this requires either pre-existing reason and stability or an expectation that these attributes will be precipitates of the given procedure. If these attributes are already

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[12] Rawls, *The Journal of Philosophy*, 145.

present, additional procedure would require further justification for why it is not redundant; and, if these necessary attributes are presumed true on the grounds of expectation, then a certain extent of faith is required by those working within Rawls theory. Also problematic is sustained derogatory regard for the categorical occupants of the comprehensive doctrine designation. This creates a dilemma between maximizing inclusion of citizens while simultaneously disadvantaging many relative to those who are not allied with comprehensive doctrine. By contrast, discourse ethics entails translational obligations at an institutional level such that the specific interests of subgroups can be rationalized in generalizable terms rather than obfuscating potentially critical perspectives.

[P*ro-tanto* Justification]

For Habermas, *pro-tanto* justification occurs in the participant-perspective, the first available for normative reasoning, with the intention of producing a freestanding conception of justice abstracted from comprehensive doctrines. Habermas notes that in the process, background presuppositions are inevitably included. Presumably, the link between background presupposition and the public stance would be effaced insofar as the resultant position appeared freestanding. This may result in accumulations of statutes whose precedents orbit the most popular doctrines or normative structures to the detriment of minority freedoms. Further, propositions which are reasonable in their singular form will not necessarily form a rational whole when they accrue in the societal normative structure over time. This should not be a matter of controversy as that which is true for a part of a whole is not necessarily true of the corresponding whole, nor vice versa. Habermas lists three types of disagreements anticipated to

occur in political *pro tanto* justification: defining the political domain, hierarchizing political

values, and prioritizing political values above public ones.

For Rawls, political social stability achieved through consensus is "the deepest and most

reasonable basis of social unity available" for three reasons: society's structure is therein

regulated by a collectivized notion of justice; different doctrinal views are harmonized in

overlapping consensus rather than potentially conflicting outside the bounds of reason; and

decisions on matters of constitution or justice are based on "the reasons specified by the most

reasonable."[13] Note that the always-*pro tanto* political justification is accessible to the more

particular perspectives of public discourse via the described overlapping consensus structure

which embeds what is specifically just in *pro tanto* political justice. Rawls defends the

reasonability of the citizen for his theory depends on their faculties of reason. This provides an

answer to a question from Habermas' on whether overlapping consensus adds to the political

concept or if it is a prerequisite of social stability. Rawls' answer is within the preceding, and

adds the likelihood of the prior *petitio principii*, in that overlapping consensus from his

procedure connects to both the political concept's continuity and pre-existing social stability

through public justification.

Habermas adds that overlapping consensus is analogical to moral compromise and is concerned

with the role of reason relative to overlapping consensus. Rawls' freestanding political

conception of justice is found to cause public validity to depend on non-public reasons insofar as

to be parasitic and counterintuitive. However, for Habermas, "valid statements deserve the

acceptance of everyone for the same reasons" otherwise what is meant by "'agreement' is

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[13] Rawls, *The Journal of Philosophy*, 146-7.

ambiguous in this respect."[14] This resembles Habermas' pursuit of consensus in discourse ethics

and its relation there to validity claims. Specifically, those "that demand intersubjective

recognition and offer the prospect of public justification when they are questioned" manifest "the

binding force of speech acts."[15] The problem for Habermas here is that these hypothetical

citizens are instead crafted "to assume that moral judgments depend essentially on personal

background beliefs" thus morality cannot be shared on bases of reason as found between distinct

groups of believers.[16]

[Risk from Strict Procedure]

Rawls prefers case specific applications of reason through discourse that are exemplified

by justice as fairness as a founding idea for his theory. This strategically situates Rawls' theory

to have political power over political action. This risks voiding competing deliberative processes

by requiring deference to a specific set of terms which do not allow opportunity to executively

proceed otherwise. If Rawls seeks sustained just outcomes over time, he is forced to assume his

theory is sufficiently immunized against tyranny in order for its default superior position to be

justifiable. Otherwise, there is a certain incompatibility between Rawls' positioning for

uncontested superiority on the one hand, and its cornerstones of justice and reason on the other,

because the former invites tyranny while honest forms of the latters are mutually exclusive from

tyranny. While this extent of constancy or uniformity in deliberative processes for a political

regime's democratic and judicial bodies compliments the aforementioned value of stability, it

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[14] Jürgen Habermas, "'Reasonable' versus 'True,' or the Morality of Worldviews," *The Inclusion of the Other*, translated by Ciaran Cronin (Cambridge: MIT Press, 1998), 86.
[15] Ibid., 86.
[16] Ibid., 86

also entails risks to the openness of reason. The terms of discourse ethics do not suffer this same

risk in part because its universality requires that diverse approaches to deliberation be permitted

by minimizing restrictions on participants and maximizing the agreeability of those equally

borne restrictions. Thus although Rawls' theory is more mature to a political purpose,

comparison with discourse ethics suggests more openness to diversity in deliberative method

could insulate against undesirable outcomes while promoting its own values.

[Validity v. Tolerance]

Rawls takes up the question on how his approach to reason may refer to either moral

validity or reflective tolerance. Habermas claims that Rawls takes morality for granted in the

sense that his theory "does not use the concept of moral truth applied to its own political (always

moral) judgments."[17] Habermas resists using Rawls' terms whereby morality in the political

sense is understood as fair justice. Reasonability for Rawls has its own metrics based in "political

ideals, principles, and standards" which are iterated in persons via one's willingness: to offer or

accept terms which any other could find fair; and, to recognize and accept the consequences of

those terms.[18] Rawls disagrees with Habermas' accusation that he depends on notions of person

and truth in such a way that defies the freestanding characteristic which he aims to possess.

Instead of truth as such, Rawls argues that his reliance is upon an internally defined concept of

reason; similarly, he supplants the more generalized notion of the person as such with the citizen.

For Rawls, "the idea of the reasonable needs a more thorough examination."[19] Rawls' alibi

precisely distinguishes the above differentials by appealing to a precedent of political

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[17] Rawls, *The Journal of Philosophy*, 149.
[18] Ibid., 149.
[19] Ibid., 150.

conceptions operating on principles and concepts which are already internalized in that given

political conception. Given that discourse ethics does not exclude the political, Rawls' concept of

person as citizen offers us an additional example of discursive subjectivity that is less uniformly

generic than the generalized other but also less personalized than the concrete other.

[Two-Stage Character v. Four-Stage Sequence]

        Habermas considers the original position as derived from political autonomy while

describing a state of being reduced to mere existence and thus inadequate to ascertain what is

just. Rawls understands Habermas as viewing his theory to have a two-stage character that

"starts with the hypothetical situation of the original position where principles of justice are

selected once and for all by the parties as equals subject to the veil of ignorance, and next it

moves to citizens' regular application of those same principles under the actual conditions of

political life."[20] The original position is a starting point which is transitioned into reality.

However Rawls disagrees with Habermas that this subordinates the democratic process; for

Rawls, it does not. Rawls clarifies his four-stage sequence in contrast with Habermas' view on

the veil of ignorance having a two-stage character. For Habermas, this sequence is exclusive to

neither practice nor theory. Rather, it frames how the theoretical citizen makes judgements in

reference to norms, information, subject, and context. The four stages are properly sequenced for

Rawls as follows: first, principles of justice are selected from the original position; second, a

constitution is rendered from the preceding principles; third, laws based on the constitution and

its principles are made; fourth, interpretation of the laws, their constitutional heritage, and the

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[20] Rawls, *The Journal of Philosophy*, 151.

fundamental principles of the society guide enforcement and actions. This difference reiterates the tendency for universality through more broad and less strictly formed conditions of discourse ethics when read alongside the benefits of stability from clarity garnered from the more purposed requirements of Rawls' theory.

[Personhood Requisites]

Rawls' elaboration of the variances between stages implicates mechanisms that are fascinating to assume as true. However, these assumptions incite dubious requirements for the human mind. Rawls writes of settings or parameters which pertain to the stages of the veil of ignorance that define which information pertains and how that information is to be thought upon by the reasoning citizen. Benhabib's notion of the concrete other is useful here for it is the factor which it is required to assume plausible to remove from Rawls' system of equations for the veil of ignorance stages in order for Rawls' intended outcomes to be realized as described. Otherwise, there is an unaccounted variable in the veil of ignorance. The depth of complexity in an individual consciousness roots to its unique set of experiences. Rawls almost begins to approach that which is within Benhabib's concrete other by his consideration of attributes of self, such as tastes, preferences, or values. This has implications for what reasons the citizen by Rawls' standards could access, how the citizen encounters given reasons, and how the context of the reasoning action is interpreted in the case. Rawls' citizen appears to be theoretically situated somewhere between the concrete and generalized others from Benhabib's terms, however significantly nearer to the generalized other. Excluding dimensions of the concrete other is by no means accidental insofar as the concrete other includes the depth of difference between persons

and that such difference creates difficulties for the political unison eventually sought in reflective equilibrium. A study of subjectivity in this context reminds us of the costs incurred by pursuing the theoretical efficiencies garnered from Rawls' arrangement of political philosophical devices.

[Justice v. Morality]

In contrast to Habermas' comment that what one finds agreeable at an early stage of the veil of ignorance may not be acceptable at a later stage, Rawls notes that such political designs are the result of earlier generations reasoned agreement which are open to assessment and revision; thus, quite under the control of its subjects. This is contrasted by Rawls in order to indirectly critique discourse ethics. The critique posits a hypothetical situation wherein some theory is institutionalized as the sole means of political proceedings that does not systematically reconsider its contemporary subjects as time proceeds. Although discourse ethics does not explicitly possess a theoretical device for subjective reconsideration, the subject of discourse ethics is perpetually immersed in the stipulations of communicative action which constantly require the situating of the subject in order for the social pursuit of agreement through understanding to occur as described in the theory. Habermas contrasts that the citizen in Rawls contention cannot "reignite the radical democratic embers of the original position in the civic life of society."[21] However, Rawls does not see why not. There is a sustained discrepancy between the perspectives that Habermas and Rawls each argue from because, as a political theory of justice, Rawls is only concerned with justice in the political while Habermas is consistently quoted in such a way that neglects Habermas' perspective from a moral theory of discourse in

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[21] Rawls, *The Journal of Philosophy*, 153.

preference of the illustration by Rawls than Habermas does not consider justice as an exclusively

political matter. The importance of this differentiation is difficult to overstate because of both the

frequency of its occurrence and the central role each concept holds in their relative theory

suggests it is the primary source of debate.

 [Constitutions from Theory]

Further disagreement occurs with regards to constitutions. For Habermas, constitutions

ought to be broad enough as to serve as a bedrock for the review of societal values and laws

which are otherwise held constant over time. In contrast, a constitution for Rawls defines a more

detailed structure for its society while also being further yet open to review over time. This

presents a notable difference regarding how a just constitution is worked towards. Rawls notes

that for Habermas "the constitution cannot be conceived as a project – as something yet to be

achieved."[22] Rawls' casts doubt on Habermas' position with several purported yet uncertain

readings of Habermas. Rawls doubles down on his uncertainty, choosing the interpretation which

"is easy to address."[23] In doing so, he clarifies his stance on matters such as the character of a

political autonomy which defines a case wherein citizens live under a reasonably just

constitution. A reasonably just constitution in this sense refers to one which citizens endorse that

secures their liberty and equality while being open to necessary revisions as dynamic conditions

change over time. On the occasion of the detection of injustice in such a case, reasonable citizens

may and indeed do pursue autonomy so as to be corrective of the societal structure in

constitutional terms which is experienced as insufficiently addressing the given injustice. By

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[22] Rawls, *The Journal of Philosophy*, 155.
[23] Ibid., 155.

contrast, a constitution compatible with the terms of Habermas' theory would possess discursive devices that enable the correction of injustice without constitutional amendment. In sum, the disagreement between Rawls and Habermas here is that for Habermas a just constitution is not a project while a just regime is; and for Rawls, that both a just constitution and just regime are projects. The universal character of constitutional norms within their regime – and beyond in the case of human rights, which the constitutions of many nations engrain – implicates moral content that intersects with an inherently political document. This intersection makes constitutions a crucial common interest for the theories of Rawls and Habermas, thus are as well consequential for the interests and definition of subjectivity within either theory.

[Constitutional Amending]

Rawls contends with the position that citizens within his theory are not able to question the fundamentals of society, a reigniting of democratic embers as discussed by Habermas. Rawls does not promote citizens' capability for this. For Habermas, Rawls' theory has "a prepolitical domain of liberties [that] is delimited which is withdrawn from the reach of democratic self-legislation" stemming from "the rigid boundary ['set by basic liberal rights'] between the political and the nonpublic identities of the citizens."[24] This makes the pre-political inclinations present at the creation of the regime inviolable within Rawls' theoretical permissions. Constitutionally embedded positions from the early stages of the veil of ignorance are immutable so long as they stand as a whole. In Rawls' view, this ought to hold true until the entire constitution can be deemed unjust, however his positions suggest he has a binary view of the

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[24] Rawls, *The Journal of Philosophy*, 156-157.

matter such that either a constitution is just and thereby irreproachable, or it is unjust and due for

recreation. The theoretical citizens are also blockaded by a lack of description as to how that

immense determination could justly be made. Habermas' critique here moves the capacity of the

philosophical system so as to enable people to question constitutional fundamentals without

destabilizing an entire constitution. However, a central purpose of a constitution is to render

certain principles and positions nearly, but not quite entirely, immutable. To enable a questioning

of such fundamentals stands to warrant a new title and definition for deeply engrained principles

that are more accessible to review. The work of sustaining and refining constitutions is a

theoretical occupation for the subjects of either Rawls' or Habermas' theory. Contrast and

conflation of the theories enlightens ways by which that work can justly be done by

constitutional subjects.

[Public v. Non-Public]

Rawls points out a misunderstanding of Habermas which incorrectly claims that basic liberal

rights set the boundary between political and non-public values "prior to all political will

formation".[25] Rawls' correction holds that his theory allows, but does not require, the

incorporation of basic liberal rights which occurs at the declaration of the constitution.

Therefore, the boundary between public and non-public is accounted for within the original

position at the outset of the veil of ignorance as not prior to all political will formation insofar as

constitutional parameters define that boundary. This boundary is important in restricting majority

rule over non-public minority interests. Further, this boundary is consequential across all society,

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[25] Rawls, *The Journal of Philosophy*, 156-157.

it is not a strictly political matter. Thus, it does not necessarily require an explicitly exclusive political theory to define it. An approach to defining the private division from the public such as discourse ethics may result in a more efficacious and acceptable boundary across cases over time by accepting a more broad range of concerns and interests as valid that exceed while also including political terms. This pertains to how otherwise sacred though exclusive understandings of religions could broaden the normative foundations of society in public justice as well. Further, a political theory may be less apt to discern that which is non-political relative to a theory of discourse for any norm which has purview over the non-political inasmuch as the political. However, discourse ethics lacks an explicit device for making this distinction and its reliance on the notion of an unlimited communication community further effaces the boundary between publicity and privacy. Thus a conjunction of approaches whereby one is strategically positioned to recognize political concerns and another with capacity for universal negotiation may be a step toward a more sensible approach to defining this boundary. For Rawls, it is important for the reader to "see the four-stage sequence as a framework in a device of representation to order our political judgements."[26] Examples from American history show how major constitutional changes may occur after implementation: "these cases show that the constitutional protection of basic rights is not prior to what Habermas calls will formation."[27] However, these examples are not demonstrably representative of Rawls' theory because Habermas' observation is based on the technicalities of theory, not on the history which inspires Rawls. In defense, Rawls argues his theory "is not an instance of a natural law doctrine" of the moderns, despite Rawls' belief that Habermas would claim such.[28] Rawls clarifies that his theoretical stance is informed by ideas from the American constitution but does not aim to fully endorse or justify that constitution. For

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[26] Rawls, *The Journal of Philosophy*, 158.
[27] Ibid., 158.
[28] Ibid., 159.

Rawls, constitutional design "is not a question to be settled by considerations of political

philosophy alone" for it must consider actual and potential institutions within their historical

context.[29] The division between political and private is set by subjects within their constitution.

Rawls theory reinvigorates the idea that some concerns and ideas are public-political, while

others have no pertinence to the political public whatsoever. This boundary provides the means

for fair conversation from the first, without which the theory of neither Rawls nor Habermas

would be feasible. This distinction mirrors the freestanding character sought by Rawls' theory as

well as the separation of church from state which has made the nations of the western world

possible today as we have them. The universality of discourse ethics does not a priori secure this

boundary as Rawls does, yet the subjects of discourse ethics are built on presuppositions

regarding these foundations for the possibility of honest speech. However, discourse ethics

provides the terms and conditions by which its subjects have every freedom to arrive at or

constitutionalize strikingly similar conclusions about free speech.

[The Boundary of Justice in History]

        Rawls presents the reader with an area of Habermas' thoughts on the pertinent historical

context of political philosophy. Here, Habermas is said to think that civil and republican writers

of political philosophy have never understood "the internal relation between public and private

autonomy" and find that liberal writers base private autonomy on human rights as per the

liberties of the moderns and base public autonomy on the principle of popular sovereignty.[30]

Rawls also notes an unresolved competition is observed by Habermas between these two

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[29] Rawls, *The Journal of Philosophy*, 160.
[30] Ibid., 161.

autonomies since the 19th century CE where liberalism has been heralding the importance of

human rights as a means of mitigating the risk of tyranny by popular sovereignty.

> Civic republicanism in the tradition of Aristotle has all along granted the priority to the ancient over the modern liberties. Contrary to Locke and Kant, Habermas denies that the rights of the moderns are moral rights based either on natural law or a moral conception such as the categorical imperative. He claims that by basing those rights on morality, liberalism subjects the legal order to an external ground, thereby placing constraints on legitimate democratic law; whereas the view of Rousseau and civic republicanism bases ancient liberties on the ethical values of a specific community with its ethos of the common good, rooting those liberties on particular and parochial values.[31]

Civic republicanism is found by Habermas to prioritize ancient (public) liberties over

modern (private) liberties. Further, the rights of the moderns are not moral rights. Basing these

rights on morality is undue legitimation. Civic republicanism instead grounds ancient rights

within the specific community's values and sense of the good. Prioritizing either over the other is

erroneous because they have an internal connection by which "they mutually presuppose one

another."[32] Human rights can be moral rights but not positive law because they "cannot be

imposed by an external agency on the legislature of a democratic regime" within the confines of

justice.[33] Rather, liberal rights "emerge from a transformation of the liberties reciprocally

ceded."[34] This refers to rights which protect individuals from institutional power, not individuals

from other individuals which Habermas considers 'originary': "there that we begin, just as we

might say that the basic rights covered by the first principle of justice are originary."[35] There is a

dilemma for Habermas in liberalism regarding human rights between the unjustifiability of

externally imposing human rights and the unjustifiability of a regime's breaking of human rights.

Such cases are where justice is most imperative and yet most absent from politics. This suggests

that something beyond political theory is necessary to sustain justice when it is needed most.

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[31] Rawls, *The Journal of Philosophy*, 162.
[32] Ibid., 162.
[33] Ibid., 162.
[34] Ibid., 165.
[35] Ibid., 165.

[In defense of Pure Politics]

Rawls does not agree with Habermas' dilemma regarding human rights in liberalism. Rawls argues no dilemma could occur if both sides of the alleged dilemma are mutually included, as would be the case by the terms of his theory. Contrary to the content of Habermas' critique but concurrent with its aim, Rawls finds that the balance of liberalism between public and private is fair equilibrium. For Rawls, the act of selecting rights which all persons will possess and respect in others that will lead to legitimate regulation by positive and coercive law is parallel but not equivalent to discussing, accepting and embedding principles through the channels of Rawls' theory, with principles in particular being ascertained at the point of the original position. In this context, both forms of rights are co-original and equipotent. Rawls raises the question as to whether "these liberties are better secured and protected by their being incorporated into a constitution" in considering that constitutional protection can simultaneously be debilitating for democracy.[36] In sum, Rawls denies Habermas' accusation "that liberalism leaves political and private autonomy in unresolved competition."[37] For Rawls, the dilemma of injustices between externally imposing moral law and violating moral law expresses "the risk for political justice of all government" that is the inquiry of "the age-old question of how best to unite power with law to achieve justice."[38] This demonstrates entirely political content regarding which discourse ethics offers no clear advantage over Rawls' approach. This results from the regimental continuity described in the stipulations of the example which maintain the systems logic of Rawls theory thus requiring nothing beyond political content and considerations to resolve. If, however, the integrity of the regime or political system were brought into doubt with

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[36] Rawls, *The Journal of Philosophy*, 165.
[37] Ibid., 166.
[38] Ibid., 166.

additional qualifiers, then the advantage returns to discourse ethics whose more versatile and

inclusive terms enable a further yet enlightened and open discussion about appropriate prudence

while Rawls political restriction and cannot proceed out from compromised political integrity.

Rawls' theory thus presents limitations in cases where the boundary of the political is or has

become uncertain.

[Just Reason v. Rational Good]

For Rawls, both he and Habermas believe "that public and private autonomy are both co-

original and of equal weight."[39] Further, discourse ethics to Rawls "reconstructs the legitimacy

of democratic law" while in his own system they are "put together as an ideal."[40] This occurs

through the way it designs its citizens to think reasonably about their sense of justice and

rationally about their conception of the good. Rawls describes this design in six steps:

(a)   Specify the requisite citizen developmental environment for exercising moral powers.
(b)   Identify the rights and liberties necessary for (a)
(c)   Define the range of liberties on the presumption no liberty is unlimited.
(d)   Consider the historical role of potentially selected liberties and their potential futures.
(e)   "Introduce primary goods" to shape how justice is to be iterated in practice.
(f)   Demonstrate the acceptability of this design to the original position.

For Rawls, this iterates the internal connection between public and private.[41]

Rawls finds Habermas' position to be "sketched too broadly to foresee to what family of

liberties the ideal discourse procedure would lead," if "it could lead to any very specific

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[39] Rawls, *The Journal of Philosophy*, 166-7.
[40] Ibid., 167.
[41] Ibid., 167-168.

conclusion at all."[42] It is noted that Habermas writes that the internal relation between public and

private "depends on 'the normative content of the *mode of exercising political autonomy.*'"[43]

Rawls follows to ask why the focus on the political and why the political is not balanced with the

private for Habermas. However, the quote of Habermas specifies the pivotal factor is the mode

of exercising political autonomy; that is the mode specifically, not political autonomy in sum

total, as Rawls leads readers to understand. A direct connection is re-emphasized to exist

between a private right and political right which contributes to the justification of a right, but is

not sufficient on its own.

[Substantive v. Procedural]

For Rawls, a substantive approach determines justice based on the outcome, while

procedural justice is based on the accurate fulfillment of process in this regard. Further, the two

are connected through the procedural's dependence on the substantive because "the justice of a

procedure always depends on the justice of its likely outcome."[44] He notes procedures as having

internalized values. Using the division and distribution of objective resources for an example of

procedural justice, Rawls makes a demonstration showing the status of justice depends on the

outcome being one of fair division because if the procedure resulted in anything otherwise "it

would not be a procedure for justice, but for something else."[45] Given that the example outcome

is the critical factor in determining the status of justice, this example better demonstrates

substantive justice than procedural, the latter of which would find justice to be achieved when its

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[42] Rawls, *The Journal of Philosophy*, 169.
[43] Ibid., 169.
[44] Ibid., 170.
[45] Ibid., 171.

procedure is practiced correctly regardless of outcome. The substantive-procedural distinction is

further explored via discussion of the defining points of democracy and weighing majoritarian

and constitutionalist positions. The majoritarian v. constitutionalist disagreement demonstrates a

priority on substantive justice in the context of real governing institutions. Given this, Rawls

doubts that Habermas would at this point argue discourse ethics to be strictly procedural. Rawls

proceeds to detect five values within discourse ethics: impartiality, equality, openness, lack of

coercion, and unanimity. Rawls notes Habermas' thought "that once idealizations are attributed

to the discourse procedure, elements of content are thereby embedded in it."[46] These values are

argued by Rawls to be crucial at the conclusion of the discourse ethics procedure to make a

determination of justice. Habermas is argued to utilize a presupposed notion of reason by which

to evaluate outcomes thus implicating reliance on substantive based on Rawls' finding of

Habermas holding "that the outcomes of public reason working through democratic procedures

are reasonable and legitimate."[47] However, it is not clear that the outcomes are just because the

values they demonstrate or because of the procedure utilized. Neither Habermas nor Rawls deny

value to justice in the substantive or procedural sense entirely, but each prefers a different

priority.

Rawls offers quotes which he argues demonstrate that Habermas, in actuality, prioritizes

substantive justice. However, Rawls selects quotes wherein Habermas notes that integrating

substantive elements into our individual selves and shared identities results in contributing to the

sustainment of those values; not that any certain values are or should be of chief importance.

Rawls suggests a detailed comparison of discourse ethics and his own theory is warranted which

exhibits "exactly what questions each view leaves open for discussion and under what

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[46] Rawls, *The Journal of Philosophy*, 173.
[47] Ibid., 173.

conditions" seeing as "it is a matter of more or less."[48] Agreement can be found where Rawls

notes that in his theory "there are no philosophical experts" because Habermas intends the same

of discourse ethics such that "students of philosophy take part in formulating these ideas ['of

right and justice'] but always as citizens among others."[49]

[Legitimacy or Justice from Discourse Ethics]

        Although both agree that participation is crucial, difference returns regarding the

trajectory on which that participation is engaged, especially for discourse ethics. Rawls suggests

Habermas' focus is on legitimacy rather than justice which carry important differences. For

Rawls, legitimacy refers to how something came to be, whether a person in a role to office or a

legislation into law, while justice refers to fairness. While "legitimacy allows for an

indeterminate range of injustice that justice does not," Rawls also has "serious doubts... about

this idea of procedural legitimacy" because it depends on the orderliness of society which is

taken to be unreliable.[50] Rawls sustains an interest in mutual correlations, here, between

legitimacy and justice: they require one another but not insofar as to be mutually inclusive.

Given these doubts on procedure for justice, Rawls opts to "always depend on our substantive

judgements of justice."[51] Rawls finds constitutional democracy to be, in practice, incompatible

with discourse ethics; Habermas might agree but for different reasons and with different

expectations. At the same time, Habermas would observe inherent compromise within Rawls'

model which, as a theory of the just for the political, implicates a compromise upon justice that

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[48] Rawls, *The Journal of Philosophy*, 174.
[49] Ibid., 174-175.
[50] Ibid., 176.
[51] Ibid., 177.

leads to difficulties in perceiving the results of such a model as just at all – certainly not in a

theoretical ideal sense – but rather as a theory of practical politics. Causes for this difference

include limitations of legitimacy, time constraints, total consideration of evidence, or realities of

party politics.

[Discourse Ethics Lacks Hierarchy]

Rawls finds Habermas' description of argumentative procedure in discourse ethics

unsatisfactory in part because Rawls calls for a more detailed explanation from Habermas on of

how interests of parties are to be hierarchized that goes beyond the force of the better argument.

For Rawls, substantive values are required in order to curtail propositions patently absurd to any

common sense of value relative to the context that can yet find reinforcement by logically

evidenced rationalized arguments. Purely procedural justice "may easily lead to injustice even

though the outcome of the procedure is legitimate."[52] Several background substantive values are

noted as commonly overlooked within a procedure for justice but are impactful insofar as they

exist within the citizenry seeing as it is they who animate discourse, specifically political in this

case. Rawls accepts the substantive categorization rather than procedural because this is

considered necessary for the above reasons but importantly further for Rawls' argument, this also

applies to discourse ethics. A more detailed description of discourse ethics demonstrates how

therein substantive values abstracted from participants into presupposed factors of discussion

whereas Rawls trusts in the tradition of liberal thought. However, this is more a concession of an

agreement to disagree rather than the more whole agreements which are considered next.

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[52] Rawls, *The Journal of Philosophy*, 178.

[Agreements]

Habermas and Rawls agree that among the most fundamental aspects of a constitution is

the possibility to revise because it is reasonable to expect unforeseeable circumstances to occur.

They additionally agree that: all societies are culpable of some extent of injustice (perhaps that is

somehow constitutive of a society, the allotment for some extent of injustice so as to

simultaneously allow the possibility of freedom), debates about justice and injustice are

necessary, it is not possible to anticipate all factors pertaining to justice in advance given the

reasonable expectation that societal conditions are not constants, and that "a just constitution is

always something to be worked toward."[53] We can further add to Habermas and Rawls many

agreements the notion that political structure depends on background culture. Rawls adds that

culture will not sustain a political system if reason in culture does not find its concept of the good

supported. Rawls speculates on Habermas' "emphasis on the political" by hypothesizing that the

tenability of said position depends on "the idea of classical humanism" which suggests "the

activity in which human beings achieve their fullest realization, their greatest good, is in the

activities of political life."[54] However, Rawls does not affirm classical humanism in this way.

Although Habermas does not address this equation explicitly, it is likely he would concur with

Rawls' non-affirmation of the given idea of classical humanism. "A two-stage construction" is

found by Rawls in his own theory and discourse ethics: one stage where principles of justice are

determined with impartiality relative to each participating individual's interests, another where

the rationale subsequent from the determined principles is applied to "presupposed state

power."[55] For both Rawls and Habermas, the derivability alone of a right from a basic liberty of

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[53] Rawls, *The Journal of Philosophy*, 154.
[54] Ibid., 169-70.
[55] Ibid., 164.

classical liberalism is an insufficient basis for law, although Rawls believes this may possibly

approach a limit of Habermas' concurrence. Regarding the procedural-substantive matter of

justice, Rawls and Habermas agree that Rawls demonstrates a substantive approach.

Disagreement returns for discourse ethics about which Rawls believes it substantive albeit with

different substantive elements than his own, while Habermas' position would hold discourse

ethics as strictly procedural.

[In Sum]

Rawls stands his ground in the political by portraying his theory as a process of negation

in regards to which interests and attentions can be vetted for their reasonableness and literal

political pertinence. Rawls confirms "modern liberties are not pre-political and prior to all will

formation" and "that there is an internal connection in justice as fairness between the public and

private autonomy and both are co-original."[56] In sum for Habermas, "the public use of reason,

legally institutionalized in the democratic process, provides the key for guaranteeing equal

freedoms."[57] Democratic processes and the legal medium define the boundary between public

co-legislators and private addressees of the law. The two sides are complementary and

"reciprocally presuppose one another" to provide "equal freedoms for all citizens in the form of

both private and public autonomy."[58] Rawls closes with thoughts upon constitutional design of

the autonomies and their spheres in considering "how exactly the political institutions associated

with constitutional democracy can be understood to be consistent with the idea of popular

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[56] Rawls, *The Journal of Philosophy*, 179.
[57] Habermas, "'Reasonable' versus 'True,'" 101.
[58] Ibid., 101.

sovereignty;" a possible endeavour to which an ethics of discourse could be applied.[59] Habermas

concurs in that political and moral discussions only somewhat resemble one another with

respects to "constitutional essentials and underlying conceptions of justice."[60] The type of

discussion is distinguishable by legal practicality and coercive bargaining which are factors in

political contexts and not in moral contexts. Habermas would limit philosophy to clarifying the

moral point of view, democratic legitimation, and discourse rather than judging contemporary

law and politics. Rawls develops a precise approach to political philosophy, albeit with an

avoidance strategy via purportedly self-contained theory. Although Habermas is particularly

critical of Rawls' claim to freestanding characteristics, the relation between reason and truth, and

the borders drawn around political philosophy; he concedes appreciation for the resultant

debates. Rawls acknowledges that discourse ethics "shares the intentions of justice as fairness

and sees its essential conclusions as correct" while likewise confirms Habermas' critiques as

constructive and challenging.[61] Constructive exchange of this kind is an exhibition of the task

proper to the subject of discourse par excellence and details numerous additionally relevant

attributes within discourse philosophies.

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[59] Rawls, *The Journal of Philosophy*, 180.
[60] Habermas, "'Reasonable' versus 'True,'" 87.
[61] Rawls, *The Journal of Philosophy*, 180.

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Contextualizing Justificatory Discourse

This section asks: how do the preceding results combine to iterate the context in which the subject, for discourse ethics, is immersed? Doing so represents the situation consequent to the immense array of intersecting interests of the reviewed authors, however this re-examination of unresolved disjunctions is limited to those pertaining to discourse ethics. This section proceeds by discussing the significant standards of discourse ethics and the extent of its beneficence, the role of the concept of equality, some limits pertaining to a cognitive approach, the necessity of harmonizing justification with application, possible substantive elements, the possible necessity of a concept of the numinous for morality, the implications from distinguishing principles from their statutes, what material is most appropriate through which to study morality, whether and what modifications would be necessary for discourse ethics to improve its concept of its subjects, the role of the concept of inclusion, the relation between integrity and consensus, the importance of context to evaluative consideration, the lack of iteration of the positivity of moral experience, further details and improvements for the moral point of view, how a concept of progress can increase the plausibility of consensus, the hierarchal implications about norms, purpose, method, reason, authority, the intersection between political and moral on the matter of constitutions, further implications for the uncertainty in outcome in discourse ethics, the continuity of procedural-substantive dilemma, and the character of the course for reason towards of truth.

[Relative Standards of Discourse Ethics]

Benhabib's central critique of discourse ethics rests on its evolutionary character which places requirements on human subjects that disregard their present limits in attributes such as conscientiousness, sympathy, generosity, language and reason.[1] Consensus in discourse ethics requires unreasonably exceptional standards in the aforementioned attributes in order for consensus to be realized in terms true to discourse ethics. This leads to another major difference with Rawls whose theory does not create demands that are as extensive as those of Habermas. Of course, Rawls does require participants to set aside differences in a shared perspective that clarifies needs by articulating those which are the most shared among the population of the regime in the case and then proceed on grounds which honour fairness and liberal virtues in general. Not a small task even so. Though, Rawls draws significant inspiration for his theory from history, whereas Benhabib's critique informs the reader about the Frankfurt school legacy of social theory and its similar relation to discourse ethics as with history to Rawls' theory. Benhabib conveys theoretical difficulties encountered by the Frankfurt school and interpolates an advancing relation between those with discourse ethics to characterize a progression in moral theory that departs from past double binds encountered by social theory. This suggests discourse ethics was developed in a context of extensively theoretical demands whereas Rawls interest is focus on politics itself out of conscientiousness of its history. The comparatively lofty goals inferred and pre-required by discourse ethics are instead necessary in order to begin to contend with the challenges created by theoretical aporias.

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[1] Seyla Benhabib, "Modernity and the Aporias of Critical Theory," *Telos* 49, vol 14, no. 3(1981): 54.

[Extent of Beneficence]

Benhabib faults Habermas for not providing philosophy with a remedy for a contemporary crisis which lacks an adequate basis of ethical insight for those that would seek increased moral perspective.[2] This basis would, if adequate, provide a sense of the good that may need be no stronger than to indicate morality as worthwhile. The current status of contemporary ethics is suggested to be insufficient for even this. Due to the subjective nature of qualifying an instance as morally enlightening or otherwise, this critique is difficult to either sustain or deny. Given that both Benhabib's and Habermas' ethics regarding moral norms are formatted to favour interactive, participatory and collaborative methods, Habermas alone cannot be solely at fault. Benhabib does not succinctly define the requirements of this type of education. Habermas' publications pertaining to discourse ethics are thoroughly informative about a diversity of philosophers and authors relevant to moral theory today. This may be a necessary beginning to overcoming the limits consequent to the aporias identified by Benhabib. However, Benhabib's requirements for an adequate basis of ethical insight are unclear, if not absent. Without at least this, it cannot be said as to whether Habermas is merely highly informative, or if his work fulfills the requirements of morally enlightening reason.

[Pursuing Clarity and Balance for Equality]

For Benhabib, "reciprocity entails that we are treated by others equally insofar as we are a member of a particular human group."[3] However, this calls for more specification for what is

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[2] Seyla Benhabib, "In the Shadow of Aristotle and Hegel: Communicative Ethics and Current Controversies in Practical Philosophy," in *Situating the Self* (New York: Routledge, 1992), 24.
[3]Ibid., 31.

entailed by equal treatment. Theoretically ideal equal treatment does not adequately account for

several plausible permutations. Any given matter will vary in pertinence between participants.

Pragmatic presuppositions help balance this variation by informing and motivating rules such as

the equal opportunity to contribute to moral discourse and the non-preference of expert

viewpoints. However, balancing with reciprocity the anticipated outcomes of participants'

actions produces complications. An example of such a dilemma occurs when two voluntary and

legitimate speech acts occur such that one participant articulates concrete disinterest in the topic

while the actions of another iterate immense and well-informed concerns. In this case, upholding

reciprocity suggests the disinterest of the former becomes inflated while the concerns of the latter

are mitigated in order to establish equality to the thorough extent Benhabib describes. For

Benhabib, respect is an attitude found within collectives with mutual concern for members. The

possibility of this respect is compromised if strict reciprocity is enforced for the establishment of

equality. This reciprocity enables equality in the foundation of all interactions, regardless of

merits or consequences stemming from the deliberation of member's concerns. These members

cannot reasonably expect that a concern could be heard for its actual conditions when inundated

with such enforced conflicting principles without further clarification. Instead, a concern is

determined by a principled appropriation of its worth relative to the standard of equality in the

collective. It is ambiguous as to whether Benhabib refers to equal opportunity, equal outcome, or

both. Any combination of these could be justified, though not without additional and currently

absent addenda. Her addition that "all communicative action entails symmetry and reciprocity of

normative expectations among group members" suggests the answer may be both.[4] This means

she is caught in one of two aporias, either: especially concerned participants will be largely

disregarded in order equate their contribution with less active participants; or, she has smuggled

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[4] Benhabib, "Practical Philosophy," 31.

in Habermas' assumption of communicative evolution where disproportionate concern between

participants does not arise which reintroduces her third aporia of critical theory in *Telos*.

[Reason Beyond Cognitivism]

    Benhabib is critical of the inadequate consideration given to emotional and affective

reasons within cognitivist moral theory.[5] However, Benhabib simultaneously uncovers an

unjustified dissonance between cognition and emotion. Perhaps the justifiability of their unity is

inferred by the amenability of discourse ethics to additional concepts attuned to human emotive

infrastructure, such as the concrete other. The inclusion of the internalized moral affect by

Habermas and its relation to societal moral sanctions are factors of discourse ethics that further

suggest Benhabib's concrete other as a beneficial inclusion.[6] Though Habermas' theory can

sufficiently resemble Benhabib's concrete other with the result of a priori suitability on this basis

alone, without factoring the inherent versatility of discourse ethic's construction.[7] Even so,

discourse ethics' terms and conditions do not fully account for this area as Benhabib observes.[8]

[The Necessity of Harmonizing Justification with Application]

    The relation between discourse and judgment in their moral senses is crucial. Benhabib

and Habermas similarly identify the extenuating difficulty of bridging the distance between

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[5] Benhabib, "Practical Philosophy," 49.
[6] Habermas, "Remarks," 47.
[7] Jürgen Habermas, "Morality and Ethical Life: Does Hegel's Critique of Kant Apply to Discourse Ethics?" *Moral Consciousness and Communicative Action*, translated by Christian Lenhardt and Shierry Weber Nicholson (Cambridge: MIT Press, 1990), 199-200.
[8] Benhabib, "Practical Philosophy," 51.

autonomous justificatory discourse and applications of practical reason. Clearly, this as yet

remains to be completed given the continuity of moral abominations in human history.

[Possible Substantive Elements]

Habermas is quoted by Benhabib on the universalization principle of discourse ethics

which is then compared with Kant's example of deposits and property resulting in the finding

that "numerous forms of property arrangements are morally permissible."[9] Thereby, Hegel's

critique is validated by Habermas' universalization principle of discourse ethics for Benhabib

because the triviality and inconsistency of Kantian meaning for property cannot morally

legitimize general property relations. Using this, Benhabib reiterates positive moral action is not

the product of the universalization principle of discourse ethics. Although her argument on this

point appears critical, the criticisms neither change nor influence discourse ethics because they

accuse discourse ethics of failing to achieve an objective which is not a goal of its own. This is

confirmed by her position that the universalization principle in discourse ethics "must deliver

criteria for distinguishing among the morally permissible and the morally impermissible,

without, however, being able to yield adequate criteria of the morally good, virtuous or

appropriate action in any given circumstance."[10] From the exchanges between Habermas and

Rawls, these criteria can be understood as pertaining to a substantive theory of justice, as

opposed to the more procedural discourse ethics. Even so, it could be argued that discourse

ethics possesses more substantive morality than it would prefer.[11] Habermas may admit that there

are substantive elements in discourse ethics within "the factual inescapability of substantive

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[9] Benhabib, "Practical Philosophy," 35.
[10] Ibid., 36.
[11] Ibid., 34-36.

normative presuppositions of a practice *internally* interwoven with our sociocultural form of life," thus stem only from characteristics and tendencies that are innate and general to humanity.[12]

Benhabib notes criticisms of discourse ethic's excess complexity, counterfactuality, and indeterminacy; though, she argues against these. Her own criticisms of discourse ethics are directed at discourse ethic's moral non-neutrality. Similarly as mentioned previously, Rawls offers a list values that can be found in discourse ethics. These include impartiality, equality, openness, lack of coercion, and unanimity.[13] Benhabib likewise can identify substantive elements in discourse ethics. For her, these include descriptors of tolerance, pluralism, equality in reciprocity, universally respectful, and as holding moral rightness as prior to ethical goodness.[14] With regards to the moral universalism pursued by Habermas, Benhabib argues in favour of interactive universalism over substitutionalist universalism with her iteration of the moral through the concrete other articulating interactive universalism. Benhabib considers Rawls to be both substitutionalist and universalist regardless of the political exclusivity he claims for his theory. Habermas adds to this by finding the values of Rawls from these to center on a certain brand of tolerance derived from generosity, pacifism, patience, hospitality and sympathy.[15] Given Benhabib's noted similitude between the projects' of Habermas and Rawls, it should be no surprise that the respective values each identifies in the other are largely mirrored. Even so, certain differences are apparent. Habermas makes a more explicit negation of coercion whereas Rawls develops means to actively utilize a coercive but fair executive mechanism. In addition,

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[12] Jürgen Habermas, "Remarks on Discourse Ethics," *Justification and Application*, translated by Ciaran Cronin (Cambridge: MIT Press, 1993), 83-84.
[13] John Rawls, "Political Liberalism: Reply to Habermas," *The Journal of Philosophy*, vol. 92, no. 3 (1995), 173.
[14] Benhabib, "Practical Philosophy," 42.
[15] Jürgen Habermas, ""Reasonable" versus "True," or the Morality of Worldviews," in *The Inclusion of the Other*, translated by Ciaran Cronin (Cambridge: MIT Press, 1998), 87-88.

collaborative universality consistently animates discourse by Habermas' terms which proactively establish legitimacy at the point of consensus. By contrast, the values of generosity and hospitality suggest Rawls' fairness is maintained more retroactively through the executive actions deemed just by overlaps in consensus.

[The Moral and the Numinous]

Habermas' pursuit of universal morality based on the reason of purposive rationality may well be futile.[16] Without the unity stemming from the deference to a god or salvific ideal, the variety of moral norms sought by communicators increases. This creates a significant hypothetical plausibility that any such communicator would begin to understand morality as moralities, rather than morality. This remains distinct as a moral matter from the plurality of worldviews and ethics when navigating matters of harmonious fair civilization rather than what any given perspective might regard as an optimal arrangement of objective considerations. The success of Habermas' project relies on the enlargement of the moral domain rather than disintegration into multiple equally compelling moralities.

[Principles v. Statutes]

Principles are a type of generalization, while the specific conditions of their exceptions and inclusions form a normative web for action. As such, the relatively more broad terms of principles themselves leave room for interpretation and thereby agreement. Logic here would

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[16] Jürgen Habermas, "To Seek to Salvage an Unconditional Meaning Without God Is a Futile Undertaking: Reflections on a Remark of Max Horkheimer," *Justification and Application*, translated by Ciaran Cronin (Cambridge: MIT Press, 1993), 134

suggest that principles themselves are then likely to experience agreement more easily than more specific derivatives. These derivatives include conditions which define where exception to a principle is legitimate or occasions when a given principle is inevitably necessary. Similarly, the ideal terms of theory allow one in thought to concur with their sound rationale and detailed elaborations with less reference to specific consequence than if the propositions were examined in a more corporeal context than text. The system by which people ascent to their norms is likely to affect the norms they accept which in turn is likely to affect the group of subjects that results. It would be fascinating to examine the results of abiding different systems of norm selection in a laboratory or case study. Further, this could add crucial detail to any potentially problematic aspects of discursive approaches to norms as well as suggest where other appropriate pragmatic presuppositions exist.

[Moral Material in Sake of Study]

As a theoretical approach to morality, cognitivism as per Habermas may be questioned for its primary focus on how moral norms are managed by human cognition. This cognitivism has imperfections as a way of studying morality because it chooses to examine most specifically precipitate phenomenon of norms which are subsidiary to the more primary moral context of people themselves. This theoretical approach also enables Habermas to sustain Kantian propositions in this context. Given that the qualities of norms are shaped around actual human activities and their inclinations or aversions, people themselves are more fundamental and meaningful aspects to the moral enterprise than norms. The primacy of the concrete other to Benhabib is more attuned to this perspective. However, just as people moderate their accepted

norms around themselves, so too are they moderated by their norms. Although norms are made

by people, norms would have no bearing if they were not deferred to in preference of other

mitigating factors. Merely making and having norms does not necessarily correlate, if at all, with

the moral enterprise. Rather, it is in the abiding of norms that morality can be secured, and only

if those are the right norms as determined by just and equitable procedure. Thus norms are near

to the core of the human aspiration to morality even if they are not quite the epicenter thereof.

Further, norms are much more amenable to professional study than are other plausible foci such

as the more ephemeral and subjectively fluctuating moral experience.

[Modification as Necessarily Prior to Conflation]

Habermas considers it inaccurate to understand a moral norm as a description, evaluation,

experience, or an intention.[17] However, an occasion which has moral consequences or

considerations could be understood through attributes such as any of these. A moral cognitivist

immersed in a special form of argumentation will consider the chief matter of moral import to be

those moral contents which are most amenable to thought, reflection, or discussion. Attributes

such as those of the former set are of at most secondary importance due to the extent to which

they are of a personal nature making their strict articulation into logical argument prone to

ineffability thus complicating potential consensus. However, the perspective of the concrete

other is able to include these factors without hesitation. Therefore, an approach to morality which

was honestly inclusive of the concrete other could not dismiss of these attributes as quickly and

confidently as discourse ethics does. This suggests that some adaptation may be needed between

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[17] Jürgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification," *Moral Consciousness and Communicative Action*, translated by Christian Lenhardt and Shierry Weber Nicholson (Cambridge: MIT Press, 1990), 44.

discourse ethics and the concrete other in order for the concepts to work in concert. Although

Habermas' paradigm is structured appropriately to mitigate these factors, this depends on

narrowing the moral focus resulting in the exclusion of factors which is justifiable because of the

theoretical definition of the paradigm that allow an exclusion which not all would.

Habermas' acknowledgement of these factors suggests he is at least conscientious of the

likelihood for moral arguments to have contents which are not strictly in the terms of moral

cognitivism. However, other theorists such as Benhabib find a need to articulate a stance vying

for a more meaningful consideration of the depth of personal selves in moral cognitivist

paradigms. This suggests that it may be going too far to say that discourse ethics has already

included and adapted its theory to such an extent of inclusion. Though, this may be a necessary

lack in that discourse ethics' interest is in public discourse, whereas many of the noted non-

cognitive bases of moral norms would be more amenable to the terms of private discourse. The

interpretability for a plural public is more assured within the terms and conditions of discourse

ethics as is, thus so too is the plausibility of consensus on which Habermas has already defined a

heavy burden. The more thoroughly and completely participants of moral discourse can agree

with the debated outcomes about norms should produce a better outcome in terms of justice.

Inclusion of the concrete other is a means by which such thorough agreement could be attained.

Here, the trade-off is a significant increase in the difficulty of attaining the level of agreement

conferred by Habermas' consensus, which is already restricted by evolutionary constraints as its

subjects can only exist in theory. In sum, where the high threshold of these theoretical conditions

is met, the inclusion of the concrete other in discourse ethics positively affects justice.

[Pursuing Clarity and Balance for Inclusion]

Another necessary assumption of discourse ethics concerns the requirement of a discursive element in the rendering of just moral determinations.[18] Given that monological approaches are valid for many others in moral philosophy, a necessary support within the structure of discourse ethics is a negation of this contrary in favour of its own approach. This raises questions on the extent of necessary inclusion in discussion if and when we can soundly agree to an application of the communicative ethics method. Habermas does not define the boundaries of inclusion with satisfactory specificity. Although this limit has practical relations and implications, it can be approached and discussed in theoretical terms; thus it would be invalid to dismiss it within a theoretical discussion as a practical factor. The terms in which the 'all' is described by the principles of universalization and discourse ethics begs the question as to whom discourse ethics includes in this category that is in turn defined by how discourse ethics qualifies affectedness. The difficulty here arises from the hypothetical plausibility that for one case to affect another in a chain of causality can reach extenuating ranges of inclusion. However, perhaps there is a subtle yet necessary communicative element inferred by the relation of the 'all's of Habermas' principles to communicative participation. By this one would then be required to be included in the 'all' of those affected if they could or can make an action of communicative participation. Given that discourse ethic's determinations of normative rightness requires consensus, the magnitude of agreement or disagreement with a contention does not matter since it is only ideal agreement that allows a success condition within discourse ethics. This suggests that redundant positions need not apply as it were to the communicative praxis of discourse ethics if any and all contributions that subjects holding such positions could make are

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[18] Habermas, "Discourse Ethics," 67.

already addressed in the contribution of another with a communicatively identical perspective.

By the strictures of discourse ethics, there is no logical consequence of having multiple

perspectives which act in communicative uniformity as a result of having striking similar

concerns and interests for any given reason or set thereof. Another communicatively null point

occurs if a speech act is not understood by its audience. In cases of non-understanding or

redundancy, the possibility of qualifying a speaker as a participant becomes ambiguous with the

currently available details of discourse ethics. Further ambiguity and uncertainty result from the

connotation of Habermas' principles which suggest exceptionally broad terms of inclusion at the

same time as their denoted details shape a paradigm paralleling our status quo. The subject of

discourse ethics is preconditioned as a participant that is qualified by inclusion in communicative

ethics. Both the logic of communicative ethics for a meaningful speech act as it relates to

understanding and the broad terms defined for inclusion in the principles of discourse ethics

together lead to a concept of subject as participant qualified by inclusion for which more detail

could be beneficial in the original theory.

[Integrity as Necessarily Prior to Consensus]

        Given that consensus requires integrity, it is then not sufficient for the grounds of a

consensus to be free of coercion and compromise for consensus in order to be realized to the

ideal extent Habermas describes.[19] The grounds of all participants for agreement must be for the

sake of the literal accordance with the terms as they are mutually understood. The agreement of a

party is illegitimate and rightly understood as disingenuous if the terms of a consensus are agreed

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[19] Habermas, "Discourse Ethics," 90.

to for the sake of some manipulation, subterfuge, or opportunity that defies the integrity of the

mutual understanding of the agreement stemming from the act of consenting to some given set of

conditions.

[The Importance of Context to Evaluative Consideration]

By following with critique of Rawls' own approach, Habermas distinguishes his own and

supports it by negation of a competing paradigm.[20] As convincing as Habermas is on this point,

an affirmative response must be withheld. Although manufactured consensus would not sound

preferable to a philosopher, the noted ambiguity of the outcomes of discourse ethics may be even

yet less preferable to a much larger audience. Discourse ethics fits the evaluative standards

Habermas has opted for very well. However Rawls' position shows that when those metrics

change, the most justifiable theoretical argumentative paradigm shifts, and perhaps again when

reviewing Benhabib.

[Missing Positivity of the Moral Experience]

All of Habermas' examples of the moral occasion are negative examples (demonstrating

what one ought not do) which may be consequential for his priority on the moral experience

seeing as the moral experience may be more significant on a negative occasion whereas the

reinforcement of obligatory moral senses similarly tends to follow from positive occasions of

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[20] Habermas, "Remarks," 28.

moral situations. Thus a focus on positive morals might find a different basis of moral commands more sensible.[21] This may be inevitable from Habermas' Kantian approach.[22]

[To Further Inform the Moral Point of View]

Although Rawls' original position is purpose-built to his own theory, the discussion and exposition about it yield a concept which is arguably more elucidated and attuned to the requirements sought by Habermas' modification of ideal role taking as moral point of view. The original position is limited here by at least being a species within the moral point of view's genus, but at most by being entirely unrelated as its role is within a political theory of justice thus quite distinct from the interests of general moral norms. However, if it can be presumed that in any given case prudential sensibilities will not mutate when transitioning from the general public sphere to political concerns despite certain fluctuation of other variables, then abridgment is fairly feasible. The original position may also require additional specificity as to what its participants are to retain and forgo in their perspective so as to maintain a definition of an authentic human character in that role. If so, the original position can be a beneficial concept to iterate aspects of discourse ethics' notion of the moral point of view despite noted inefficiencies.

[Increasing Consensus Plausibility through a Concept of Progress]

For Habermas, argument organizes without creating information, definitions, and interpretations.[23] However, any recalled experience of argument ought to remind the reader of

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[21] Habermas, "Remarks," 41.
[22] Ibid., 63.

the minor agreements which occur amid argument out of the combination of perspectives such to progress the process towards consensus. These can quite often result in something new. Perhaps this is an illusion of organization that something pre-existing appears novel when reorganized and reconsidered.

[Norms and Hierarchy]

Habermas' aspiration for universality is supported by a non-hierarchical character to the relation between positive and negative rights.[24] This creates a disadvantageous ambiguity. There is a positive correlation between the extent of inclusion of real personal features of people and the diversity of consequences that a norm could have on those people. Rawls' approach is attuned to this problem and thus lessens one factor in order to also reduce the other with the intent of seeking a manageable equilibrium. Habermas' universality for norms however seeks moral rightness through good communication for and by everyone possible. Although the virtue of Habermas is undeniable, his argument runs aground in technicality without additional clarities. Under the assumption that positive correlation between diversity of persons and diversity of normative consequences for persons is accurate, a critic ought to inquire as to how norms could be universally non-hierarchical, especially when even human rights experience hierarchy between them. Habermas has already enabled his readers to doubt as remedies to this both extenuating societal homogeneity and a concept of the public person that is effaced to a similar extent as the entities of Rawls' original position. Other remedies could stem from clarifying whether equal goodness is meant macroscopically or microscopically. The attenuation

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[23] Habermas, "Remarks," 58.
[24] Ibid., 63.

to detail and case by case emphasis distributed throughout Habermas' discussion of discourse

ethics suggests the more difficult microscopic approach is intended whereby any given norm is

moderated by a prudence of equal sympathy. However under that condition, the correlation

between pluralism and consequences finds an early limit that creates a higher risk for normative

gridlock. If instead a macroscopic equality is intended whereby the totality of the widely

influential and inclusive system of norms produces an environment of moral universality over

long a period of time, then a more attainable ideal is suggested. The ambiguity here is

particularly problematic because Habermas specifies a norm array which is non-hierarchal, but in

the more plausible macro-equality of norms viewpoint any sense of sub-culture or categorization

of persons is inevitably going to find some norms more pertinent to their interest than other

norms, thus leading to a hierarchy and the old troubles of party politics.

Rawls' criticism of the lack of priority hierarchy in the argumentative process of

discourse ethics is difficult to sustain.[25] Rawls finds Habermas' description of argumentative

procedure in discourse ethics unsatisfactory in part because it does not explain how interests of

parties are to be hierarchized. Although this is more an applicative concern than theoretical, for

Rawls, substantive values are required in order to curtail absurd propositions backed by

rationalized arguments. Purely procedural justice "may easily lead to injustice even though the

outcome of the procedure is legitimate."[26] Several background substantive values are noted as

commonly overlooked within a procedure for justice but are impactful insofar as they exist

within the citizenry seeing as it is they who animate discourse, specifically political in this case.

Rawls accepts the substantive categorization rather than procedural because this is considered

necessary for the above reasons but importantly further for Rawls' argument, this also applies to

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[25] Rawls, *The Journal of Philosophy*, 177.
[26] Ibid., 178.

discourse ethics. A more detailed description of discourse ethics demonstrates how therein substantive values abstracted from participants into presupposed factors of discussion whereas Rawls trusts in the tradition of liberal thought. Precisely defining definite priorities could inhibit the freethinking critique that discourse ethics creates space for insofar as defining such would add presupposed limits to the context of ideal discourse. This suggests that the addition of the kinds of limits Rawls argues for stands to compromise the extent to which theoretical discourse is ideal which in turn contradicts core aspects of discourse ethics. Thus if this critique could be sustained, it would be problematic for Habermas. However, doing so would require less just restrictions which poses significant difficulties to a theory or theoretician unless those restrictions are not redundant and incline to more agreeable outcomes. Seeing as the consensus requirement as defined by discourse ethics already creates an immense threshold for legitimacy that defines hierarchy between arguments, Rawls' identified lack might not actually apply. Though unlikely, it could be possible for a given matter to find consensus in more than one conclusion. In such a case, Rawls is then correct in identifying a lack which calls for more clarifying distinction between argumentative positions forwarded through discourse ethics.

In sum, if discourse ethics intends as it appears on a micro-equality approach to normative universality and does so without uniformity for civil personalities, then something more is needed. Perhaps all that would need to be uniform amongst persons is the sense of justice for those norms which benefit others. That suggests a remedy exists where if actors could regard a norm which benefits the other to a great extent with equal non-hierarchical weight as they might regard a norm beneficial to the self. Simultaneously, the macro-equality of norms would have to be maintained as well in order for that level of sympathy to be plausibly sustainable alongside any sense of individuality.

[Innovations to the Moral Point of View]

"The categorical imperative requires that all those possibly affected be able to will a just maxim as a general rule."[27] This is inadequate because it iterates action from an isolated perspective, though is yet preferable to "the egocentric character of the Golden Rule: "Do not do unto others what you would not have them do unto you.""[28] Only if every individual were somehow intimated with a universally shared transcendental consciousness, or a worldview, could such independent perspectives result in just determinations. Similarly, the original position "neutralizes the multiplicity of particular interpretive perspectives from the outset" using "informational constraints."[29] The contrasting approach within discourse ethics utilizes the moral point of view to intersubjectively improve how well we understand others through ideal role taking in argument. Pragmatic presuppositions assist to guide "free and equal participants" to interlock perspectives in order to determine if "they wish to make a controversial norm the basis of their shared practice."[30] For Habermas, persons of the original position would be disengaged from the matters over which they deliberate by the extent of identity alteration defined by the original position's parameters. Consensus among ephemeral altered identities is trivial when the perspective of actual people with real disagreements resumes. Discourse ethics does not interrupt identity to the same extent, or perhaps at all, if the idealizations of the pragmatic presuppositions hold. Discourse ethics also benefits from better maintaining continuity between the relation of justifications to applications because its definition of application warrants consideration in justifications so that justified norms are sustained as amenable to their applications in accordance with justice.

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[27] Jürgen Habermas, "Reconciliation Through the Public use of Reason: Remarks on John Rawls's Political Liberalism," *The Journal of Philosophy*, vol. 92, no. 3 (1995), 117.
[28] Ibid., 117.
[29] Ibid., 117.
[30] Ibid., 117.

The veil of ignorance confers limitations which do not promote justice thus iterating a double bind within this concept between its aims and limits. By Habermas' reading of Rawls' definition, the purpose of the veil of ignorance is to exclude impartial perspectives while simultaneously excluding any normative matter inapplicable to the common good of free and equal citizens. This is considered a cumbersome burden because of the extent of normative concepts which must be accurately assumed as shared among all free and equal citizens. The subjective contents of citizens thereby must experience extensive predefinition in order for them to suit their theoretical structure to produce results, compromising citizen autonomy. This leads to the reasonable expectation that extensive constraints in this sense will be prerequisites to avoiding political gridlock as the probability of disagreement is likely to increase with every sequential lifting of the veil. In pursuit of increased sympathy for a pluralism that neither compromises the justness of its outcomes nor relies on major substantive limits, Habermas suggests a customized installation of the moral point of view to Rawls' process could lighten the evidentiary burden.[31] This further demonstrates the subtleties of differentiating and distinguishing the theories of Habermas and Rawls at the same time as highlighting Habermas' lack of sympathy for Rawls' interest in political exclusivity. Priorities and interests such as freedom, plurality and equality for and within society and its people are largely herein shared. However, the concept of subject shaped and required by Rawls theory is comparatively and justly by the terms of its theory more narrowed and focused than the more autonomous subjects within a universal communicative ethics of cognitive morality.

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[31] Habermas, *The Journal of Philosophy*, 118.

[Purpose]

Both Habermas and Rawls accuse the other's theory of grandiosity while claiming modesty for their own.[32] However, unless discourse ethics is misinterpreted as a theory of argument in general, its grandiosity is quite unclear because its explicit and exclusive interest is in moral norms. Although broader contexts are mentioned in its supporting texts, this primarily occurs for explanation or distinction by deduction. For example, that moral validity is analogous but not identical to a truth claim. Discourse ethics claims authority for its understanding of only the more specific former, not the comprehensive latter.

[Method]

For Rawls, communicative action's interest in universality qualifies it as a comprehensive doctrine; although further argument is levied by Rawls against Habermas on this point, this one attribute is sufficient by his evaluation.[33] Habermas disagrees and rebuts Rawls, finding comprehensiveness in his peer as well. However, Rawls may be misattributing universality to discourse ethics because its context of pertinence is limited to the theoretical academic morality inasmuch as Rawls' theory remains within theoretical political academia. Rawls suggests Habermas' ethics can be read as a phenomenology of the moral through its metaphysical descriptions of the moral enterprise within the human condition.[34] While such descriptive exposition can be found in Habermas' work, this critique carries little merit against discourse ethics proper. This criticizes corollary supporting evidence of discourse ethics rather than its

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[32] Habermas, *The Journal of Philosophy*, 131; Rawls, *The Journal of Philosophy*, 137.
[33] Rawls, *The Journal of Philosophy*, 135-136.
[34] Ibid., 137.

principles, chief stipulations or otherwise core content. At many times, Habermas applies

hermeneutics (similar to the phronesis of the colloquially known Socratic method) to texts of his

peers with adjacent interests in order to make a more elaborate illustration of his fundamental

point. The metaphysical descriptions referred to by Rawls are limited to this descriptive

technique of Habermas and are most often the summarized positions of positions negated in the

text. This line of critique is therefore more accurately understood as addressing Habermas'

methods of description rather than affecting the logical force of his argument.

[Reason]

Rawls is likewise critical of Habermas' claim that there is a lack of logical force in

appeals to higher doctrines.[35] Rawls inadvertently concurs with Habermas despite attempting to

found a critique of the same basis by noting that his theory makes specific allotments for the

inclusion of appeals to higher doctrines. If there were innate logical force in this type of

appellant grounding, a specific condition for their pertinence would be redundant. Instead for

Rawls terms, reasoning and relevance have to be included as factors to sustain principled fairness

in discourse with comprehensive worldviews. In Habermas' strictly logical terms, while no

legitimacy is secured from the choice of source for an appeals' basis alone, there are also no a

priori exclusions, all well-reasoned claims within the parameters of pragmatic presuppositions

count.

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[35] Rawls, *The Journal of Philosophy*, 136.

[Authority]

Rawls is critical of the singularity of authority he finds in discourse ethics because of the extent to which it claims pertinence and unlike Rawls' own theory it cannot claim to possess explicit safeguards against this by its conditioned diverse inclusion of comprehensive doctrines.[36] The ubiquitous neutrality of the ideal discourse scenario is a context of uniformity with no described exceptions for outliers. Although the original position also iterates uniformity, it has different specifications as an ephemeral state meant as a point of departure; it is not meant to remain over time unlike the attributes upon which a consensus in ideal discourse is based. Further, the criticisms of Habermas and Benhabib suggest this impermanence is a reflection of the fallibility in the notion of person contained assumed within the original position. However similar, it would be an error to equate a precise definition for a form of authority that is shared uniformly by all with singular authority. An equivalency between these could be deduced after accepting as true the assumption that within any given system some entities will excel while others will not. Such hypothetical lends to a situation of singularity of authority in discourse ethics over time held by those most capable in arguing about norms with the total disregard of those who merely concur. Even so, Rawls' critique falters upon considering that authority in discourse ethics requires that one merely communicate a reason in some reasonably accessible form, with even possible translational burdens defined to rest with the societal infrastructure rather than the individual.

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[36] Rawls, *The Journal of Philosophy*, 146; Ibid., 153; Ibid., 176.

[Constitution as Intersection for Political and Moral]

The reasoned justifiability of constitutions presents a clash for Habermas and Rawls.[37] Rawls finds constitutions properly understood as developing or evolving. In contrast, Habermas holds that constitutions are properly understood as iterating norms which are not in flux as a means of assisting the moderation of those which are. Given the inherent connection between a citizenry and their constitution, the respective differences between Habermas and Rawls on constitutions leads to correlating differences on citizen autonomy. Rawls presents several hypothetical questions regarding the possibility for citizens to recognize and utilize their autonomy in society. The mere agreement to cooperate as a societal member includes a degree of sacrifice of total autonomy insofar as ones actions then come to benefit the many, and not only the self or select few. The notion of the 'fully autonomous citizen' thereby has a paradoxical element in that citizenship confers some extent subjugation, any amount of which is mutually exclusive with full autonomy. Rawls chooses to expound that paradox into several questions in casting further doubt on Habermas' regard for constitutions and the difficulty for citizen autonomy he finds in Rawls' theory. One such question of Rawls' for Habermas could be more productive if it were not "why can citizens not be fully autonomous?" but was instead 'under what conditions does the citizenry desire full autonomy?'[38] The former is less preferable because it is simply the binary contrary to the opposed view. The latter is interrogative of the same tangent, the possibility of full citizen autonomy, but instead advances interest towards developing key concepts rather than regressing into existing disagreement as contrarianism tends to do. Perhaps the most obvious answer to the latter would be: under conditions of radical injustice developing from an initial legislated design prone to injustice in fundamental ways

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[37] Rawls, *The Journal of Philosophy*, 153.
[38] Ibid., 155-6.

which cannot be corrected via the avenues afforded to its inheritors. The faculties of

understanding and reflection, which Rawls dwells on with metaphorical comparisons, do not

necessarily nullify this risk. These stances of Rawls demonstrate his slight tendency to put

legitimated political institutions ahead of citizens as can be seen again regarding his comments

that "those already living in a just constitutional regime cannot found a just constitution": if the

impetus exists amongst the people for a just constitution, how could their current constitution be

sufficiently just?[39] Rather, it is exactly at such points that discourses pursuing agreement are

most appropriate.

[Uncertainty in Outcome]

   Rawls is critical of the uncertainty of the outcomes or conclusions of ideal discourse.[40]

However, the relation between private and public in either theory can be deduced to clarify this

point as this division is an imperative for discerning what content is subject to the given format

of discourse. Further, the extent to which the outcome of dilemmas of justice can be known in

advance resembles a compromise to the integrity of justice insofar as any given

predeterminations disincline participants to judge a case itself in preference of ascertaining

particular outcomes or predefined ideals. Conformity to precedent must be stringently judicious

despite its obvious efficiency in producing a grounded judgement. Although Rawls' critique

regarding uncertainty of outcome appears to iterate a position which is more inclined to

precedential deferral, this could conflict with his stance towards constitutions which holds their

most just status to be one of relatively greater flux in contrast with the suggestions of discourse

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[39] Rawls, *The Journal of Philosophy*, 156.
[40] Ibid., 169.

ethics. That is, if it is a safe assumption that relatively more precedential deferral correlates with

constitutional reinforcement over time. Even if so this does not put Rawls into a paradox, but the

trajectories of the stances do appear conflicting. At least more so than is the case for discourse

ethics wherein deferral is limited, collaborative analysis is preferred, discourse is abundant, and

constitutions have already found consensus.

[Continuing Procedural-Substantive Dilemma]

       Rawls is critical of Habermas' notion of procedural justice, arguing it to actually be

primarily grounded by substantive priorities and the extent that those values can be recognized at

the outcome of discussion.[41] The procedure for Rawls is of relatively lesser value than the

substance of a conclusion, which is not to understate the extent of either given the extensively

detailed procedure he describes for his theory. Thereby, to categorize any justice-focused theory

as procedural is uninformative or misdirecting because substantial values are inevitably affecting

the procedure and its outcomes. However, suppose an example wherein a given set substantive

values of one theory are more particular to an example group than another set which is

comparatively more commonly distributed across a larger sample. Unless variances are

accounted for in this regard, consideration of concerns will prefer a given set of substantive

interests over others, thus incurring a high risk of injustice. In this case, given subcategories

could be appropriately identified with diverse substantive interests with procedural forms of

justices being open to review when asymmetries are experienced. The possibility of incurring

misdirection is a warranted concern that compounds with heterogeneous sample size when

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[41] Rawls, *The Journal of Philosophy*, 173.

substantive values are obscured by procedure declared as fair. For when heterogeneity increases

over a population, the quantity of ubiquitous commonalities inevitably decreases. Thus in the

sense of shared substantive values, an instance whose parameters are defined to experience a

relatively lesser amount of commonality must provide a grounds on which to base justice if its

subjects desire both wide inclusivity and a stable basis of societal moderation. It would not be

reasonable or acceptable to encourage individuals to forgo their substantive knowledge base.

However, the procedure by which diverse substantive groundings collaborate can be subject to

review separate from integral identity factors such as substantive values. Discourse ethics

achieves this through its focus on procedure and is forthcoming about its criterion, thus there is

cause to doubt Rawls' critique on this point. Even so, Rawls' makes the worthwhile observation

that discourse ethics is less focused on justice as such than his own theory is.

[Reason to Truth]

For Habermas, Rawls' use of the "idea that the sought-for public agreement must be

supported by private, nonpublic reasons"[42] can be seen within the claim that comprehensive

doctrines are liable for articulating how they connect reason with truth. This point is more

effective at convicting discourse ethics as comprehensive doctrine than Rawls' argument

suggests here. Elsewhere, Habermas has found that philosophical truth depends on justificatory

discourse.[43] This calls into pertinence several factors. Discourse ethics is Habermas' contention

of ideal justificatory discourse. As well, justificatory discourse in Habermas' terms iterates the

cognitive import of normative validity claims that is analogous but unequivocal to truth. Last,

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[42] Habermas, "'Reasonable' versus 'True,'" 85.
[43] Habermas, "Reflections on a Remark," 146.

discourse ethics presupposes the reason of communicative ethics. Thus there is a complete circuit within Habermas' paradigm from reason through discourse to a shared sense of truth. This more precise definition for comprehensive doctrines by Rawls is more effective at categorically containing his critic than the universality condition. Although this adjective can also be sufficient for categorization as comprehensive by Rawls' terms, it invokes the shapeless idea of the infinite which is endlessly flexible and not entirely applicable to either of their doctrines. However, it is also unlikely that the concept of truth is identical between Habermas and Rawls. It is appropriate to contextualize Rawls reference to truth within his freestanding political contention. The notion of truth to which Habermas refers and for which justificatory discourse such as discourse ethics is liable is, conversely, specified as truth in the philosophical sense; a field from which Rawls claims to ask and require nothing. In addition, Rawls would likely insulate himself from this counter by noting the more objective status truth holds in Habermas' theory; given the imperative role of validity claims to communicative ethics, for example. Further, Habermas would argue that Rawls' arguments and positions qualify as truth claims from the objectivizing iteration of the generalized other as citizen whose point of view depends on the original position. At the same time, those claims are founded in reason; thus there is a likewise connection from reason to truth in Rawls' paradigm. This would thereby result in the comprehensive designation falling back upon Rawls. However, Rawls' discussions refrain from materializing conceptual truth in preference of consensuses precedent on reason, considered as prior to truth. Thus, Rawls could argue he sidesteps comprehensive status to retain political exclusivity by staying one step behind truth. That a more materialized objective concept of truth should apply to Habermas than for Rawls is reiterated in their discussion of constitutions. There, for Habermas, constitutions ought to crystalize, while constitutions for Rawls are justly in flux.

[Conclusion]

This thesis began with a particular interest in the concept of justice as iterated in

Habermas' reflections on a comment of Max Horkheimer regarding the balance of meaning

between the unconditionality of religious terminologies on the one hand, and the imperative of

philosophy for brokering justified consensus on the other.[44] However, Horkheimer's position

stems from the notion of *extra ecclesiam nulla salus* and is motivated by the concept of

adaequatio intellectus ad rem.[45] In order to reconceptualise moral subjectivity in terms of

collaborative communication, this thesis instead asks who does discourse ethics address; or, who

is the subject of discourse ethics? This research argues that subjectivity in discourse ethics can be

described in the fairly simple terms of communicative ethics and moral cognitivism. The breadth

of this thesis develops from the meaning and implications that this relatively direct answer holds

for Benhabib and Rawls. This thesis has sought to convey how the cultural notion of justice and

the bond as social phenomenon (*Bildung*) develops the concept of justificatory discourse and

why it is that discussing these findings is best understood as subject, for discourse ethics. The

content of this thesis derives from an inextricable link that discourse ethics shapes into subject

among three ideas: for one, the centrality of the norm to discourse ethics; as well, the cognitive

and communicative foundations of that theory's understanding of norms; and last, the location of

moral cognition and communicative action being within people from the first. Factors pertaining

to these ideas are imperative to how subjectivity is understood for discourse ethics because of the

fundamentality of communication for Habermas whose presuppositions efface the distance

between being and communication.

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[44] Habermas, "Reflections on a Remark," 133 - 134.
[45] Ibid., 141.

The evolutionary clause of Benhabib's noted aporia is an inspiration to this thesis for a pursuit of further depth and clarity. This aporia is conscientious of the thoroughly theoretical character of discourse ethics that correlates with the theory's practical-philosophical and subjective limitations. Here, for Benhabib, the subject of discourse ethics is not a concrete social one, but one that exists as an evolutionary potential. Benhabib further clarifies the subjective limitation by elucidating the characteristics and empathetic shortcomings of the generalized other, and by contrast with the concept of the concrete other which clarifies as well as offers an answer to the given lack. Although discourse ethics conveys deontological fundamentals rather well in its conceptualization of norms and construction of principles, it suffers from excessively, though inconveniently necessary, abstract procedural terms for the sake of universality. This is where Rawls clarity for essentials such as justice and consensus provide a prime example of the type of improvement discourse ethics could benefit from. These critics help fully and accurately portray elements of discourse ethics in hopes of sustaining the position of *primum non nocere*. Although they appear to offer the means for a progressive conflation, this would contradict certain premises of discourse ethics such as moral cognitivism which may not necessarily be amenable with the depth of subject sought by the concrete other. Further, the precision and detail which does not complicate, but rather compliments, a political theory of justice would require a more thorough reconstruction if they are desirable for a moral theory of discourse.

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