

DIALOGUE AND ETHICS: Can the Study of Dialogue Teach Us Something about Ethics?

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Abstract: Habermas and Apel tried to give Ethics a philosophical justification by analyzing the way we realize discourses. A discourse is a special kind of a dialogue or, more generally, communication. Habermas' and Apel's contributions profoundly influenced German philosophy and jurisprudence. Yet, Ernst Tugendhat, a friend of Habermas, very soon pronounced the objection, that the procedure of Habermas and Apel was circular: Their definition and description of "discourse" relied implicitly to the main ethical rules, and therefore these rules can easily be recognized by analyzing the settings (or structure) of a discourse. In the following text I'll try to show that Tugendhat's objection is valid, but nevertheless Habermas' and Apel's discourse philosophies remain inspiring for everyone interested in giving Ethics a solid foundation. I will argue, however, that the central pillar of this foundation is not discourse itself, but a particular kind of co-operation ("qualified cooperation"), of which discourse is an example. The main step in my argumentation consists in showing that different kinds of communication – discourse, negotiation, debate – correspond closely to different kinds of human interaction, of which "qualified co-operation" is the basic one.

Keywords: Apel, Co-Operation, Competition, Debate, Dialogue, Discourse, Ethics, Habermas, Human Rights, Moral Rules.

1. Introduction

French philosopher Michel Serres has highlighted with a catchy metaphor the situation humanity is on the watershed to the

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third millennium: We all, citizens and politicians of whatever country, are like mariners in a ship on the ocean. When we succumb to the temptation to rivalling, quarrelling and turning against each other, we risk to get shipwrecked. Therefore we must agree to a contract of mutual non-aggression and seriously co-operate with each other.¹

The actual situation of world society is marked by a widening gap between rich and poor, increasing tensions between different religious groups, armed conflicts spreading in recent years, a growing flux of migrants, and, last but not least, climate change with its manifold undesirable consequences. To prevent further destruction of our planet, the rich countries must break the engine of further economic growth by tempering the status competition and damper the struggle for social ranks. If we want to master these challenges, we must increase our efforts and willingness not only to lead discourses (politicians had held many summits in the past decades, yet all these discourses were by far insufficient!), but also, and primarily, to co-operate in a qualified way on all possible scales – national and international.

The following parts of the text pursue three objectives: First, though discourses follow some elementary ethical rules, it will be argued that the foundation of Ethics doesn't lie in the discourse. Second, it is to be shown that ethical rules implicit in discourses are for their part based in the rules of "qualified co-operation". For this sake the concept of "qualified co-operation" is to be explained. John Rawls already identified social co-operation as the basis of social institutions and considered the Human Rights as prerequisites for such co-operation.² Yet, he didn't distinguish between different

¹Michel Serres: *The Natural Contract: Meditations on Environmental Change and the Necessity of a Pact between Earth and Its Inhabitants*, Michigan: University of Michigan Press, 1995. Reference to the German version: *Der Naturvertrag*, Frankfurt: Suhrkamp 1994, 71.

²Rawls identifies "the basic structure of society" with "the arrangement of major social institutions into one scheme of cooperation" (*A Theory of Justice*, Boston: Harvard University Press,

(“qualified” and “unqualified”) types of co-operation. Third, it will be reminded that the main challenge we are today confronted with consists in realizing “qualified co-operation,” both within and between all societies, and expand it further. Yet, before tackling these three objectives the attempts of Habermas and Apel to give Ethics a foundation by analyzing the functioning of a *discourse* are summarized and critically discussed.

2. The Discourse Theory of J. Habermas

Habermas starts from the conviction that norms are commonly shared mutual expectations. The validity of a norm depends on the condition that all people concerned by the norm agree with the results and consequences of the generalized compliance with the norm. Therefore, in case of doubt, the norm and the consequences of its general acceptance have to be examined in a discourse.

In a certain way this is an extension and improvement of Kantian ethics. According to Kant’s doctrine of the Categorical Imperative, every single person is capable of finding out whether she can agree with or even wish that this rule becomes a general law, followed by everybody. The third formula of the Categorical Imperative alludes to “the idea of the will of every rational being as making universal law.”³ Habermas concludes that we establish norms, and even moral norms, by the means of a so-called rational discourse which leads to a consensus. Such a discourse is based uniquely in arguments. In what follows, I’ll call it simply a “discourse”. In a discourse we discover possible distortions of our view due to individual preferences and interests which can even twist our moral judgments. Yet, a dialogue can only be called a “discourse” if it fulfils certain conditions. Otherwise its result may be distorted itself, even though it may lead to a consensus.

1971, 54). The basic structure of a society, so we can conclude, is the set of arrangements according to which its members co-operate.

³Immanuel Kant, *Foundations of the Metaphysics of Morals*, L. W. Beck, trans., Indianapolis/NY: Bobbs-Merrill Comp., 1969, 56.

A discourse is performed with the collectively shared goal of finding the truth by a consensus and is realized in an atmosphere “free of domination” and represents an “ideal situation to speak.”⁴ Explaining these conditions Habermas mentions three basic discourse rules:

- (1) Every subject with the competence to speak and act is allowed to take part in a discourse.
- (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) No speaker may be prevented, by internal or external coercion, from exercising his rights as laid down in (1) and (2).⁵

But there are further conditions:

(4) *Consensus-orientation*: The participants co-operate actively in reaching a consensus as a common goal. The experience of participation *helps the participants to agree with the decision and to accept its binding force*. Habermas explains the binding force of social (and even moral) norms with the consensus by which they are supported.

(5) *Argumentation as exclusive basis*: Participants use arguments and evaluate the others’ arguments. They *convince* each other, and to convince means that the ones addressed consent freely. Speaking on feelings is allowed, but what counts is uniquely the “non coercive coercion of the better argument.”⁶

(6) *Exclusion of power plays and strategic behaviour*: Persuasion implies a pressure or manipulation and is therefore forbidden. Authoritative attitudes should be avoided as they involve, like

⁴Jürgen Habermas, “Wahrheitstheorien” in J. Habermas, *Vorstudien und Ergänzungen zur Theorie des kommunikativen Handelns*, Frankfurt: Suhrkamp 1984, 127-183 (first published in 1972, 174).

⁵Jürgen Habermas, “Discourse Ethics: Notes on a Program of Philosophical Justification,” in J. Habermas, *Moral Consciousness and Communicative Action*, Cambridge, MIT Press 1996, 43-115, 89.

⁶Peter Dews, ed., *Anonymity and Solidarity: Interviews with Jürgen Habermas*, London: Verso 1992, 260.

persuasion, a power asymmetry. To convince others, however, is free from any power play.

(7) *Mutual respect*: Participants respect each other's rights (principle of *mutuality* or *reciprocity*). Even if they differ in their social status, discourse participants have equal rights – to speak, to be heard, to be taken seriously, and not to be interrupted.

(8) *Prohibition of unfair methods*, such as lying, cheating, deceiving, threatening, provoking, discriminating, confusing or distracting the others. Such behaviour would be counterproductive.

Another type of rules is connected to the use of linguistic rules:

(a) *Truth claim*: When asserting something, the participants make implicitly a truth claim: “It is true that...”

(b) *Sincerity*: Participants claim to behave with sincerity and honesty,

(c) *Logical coherence*: They try to avoid contradictions.

(d) *Clarity*: They try to be clear (lucid) in their assertions.

Habermas distinguishes two possible purposes of discourse: “theoretical discourse in science or practical discourse [e.g.] in parliamentary activity.”⁷ In theoretical discourses we seek “propositional truth” and in the practical discourse “normative correctness” (or “justness”: “The truth of propositions means the existence of facts in a similar way like the correctness of actions means the fulfillment of norms.”⁸ To this difference corresponds this difference corresponds the distinction between “need of explanation” and “need of justification” according to Habermas' earlier work *Wahrheitstheorien*.⁹

⁷Habermas, “Discourse Ethics,” 92.

⁸Habermas, *Diskursethik, Notizen zu einem Begründungsprogramm, in Habermas, Moralbewusstsein und kommunikatives Handeln*, Frankfurt: Suhrkamp 1983, 53-126, 69. Translation by the author.

⁹“Wahrheitstheorien” in J.Habermas, *Philosophische Texte 2, Rationalitäts- und Sprachtheorien*, Frankfurt: Suhrkamp 2009, 208-269, 248s.

First, search for truth in science. The best example is the discourse between scientists who share the same paradigm (in the sense of Thomas Kuhn). They lead a discourse for clarifying facts or situations and their interpretations, or to reconstruct past events from witness statements, to find the truth or, more exactly, to find out what the informed participants believe to be true: Which is the easiest route to Mount Everest? What are the smallest particles? When Mohenjo-Daro was founded? A theoretic discourse also serves to improve a hypothesis. A scientist may realize in a discourse that he had overseen a detail which is important for his research.¹⁰ When we enter into a discourse, we are confronted with someone else's views, and this helps us to overcome our own egocentric views. The discourse permits us to coordinate different perspectives and increase our knowledge and information.

Second, discourses also serve practical purposes, such as reaching collective decisions about how to proceed for reaching a common goal, an agreement concerning collective rules and "basic norms"¹¹ or the solution of a conflict.

In his 1983 article Habermas formulates a "universalization principle": "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."¹² This principle refers to a practical discourse. Norms to be established can even be "controversial,"¹³ according to the different, and possibly incompatible, interests involved. In his explanation of the "original position," John Rawls introduced a "veil of ignorance" to avoid the bias in participants' judgments under

¹⁰Ernst Tugendhat, *Vorlesungen über Ethik*, Frankfurt: Suhrkamp 1993, 171.

¹¹"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*." "Substantive principles or basic norms (...) can only be the *subject matter* of moral argumentation"; Habermas, "Discourse Ethics," 66, 93.

¹²Habermas, "Discourse Ethics", 65.

¹³Habermas, "Discourse Ethics", 93,

the influence of accidental circumstances, such as social position, age, sex and preferential interests.¹⁴ Discourse according to Habermas doesn't occur in an “original position,” and it is not clear, how the participants avoid a distorted consensus if the “veil of ignorance” is lacking.

Against Habermas' approach a series of objections have been forwarded. I'll mention only some of the most persistent criticisms: Though discourse serves to a better mutual understanding, it must be doubted that truth can be defined as the result of a discourse process. Not only individuals, groups also can be mistaken. When President Bush junior started the war against Iraq in 2003, millions of Americans were convinced that Saddam Hussein had stored biological and chemical weapons, which was wrong. It is doubtful also whether truth can change with history. The change from the geocentric to the heliocentric worldview was a change of a consensus between astronomers (the “change of a paradigm” in the sense of Thomas Kuhn). But it would be odd to say that before this change the geocentric view was true in the sense that it corresponded to the astronomic facts. And the consensus between fascists doesn't prove anything either. A more general criticism reminds the fact that on a personal level truth finding is rather based on individual experience than on discourses.

Another bundle of criticisms concerns the discourse as a means to resolve practical problems. For resolving a conflict we must consider the different priorities (views, demands, wishes, priorities) of the involved persons or parties. Mostly they don't coincide, and in many cases they are incompatible. Who stays behind, if a taxi hasn't enough room for all? How the astronauts preparing the first landing on moon decided who should stay in the space shuttle? If there is a power asymmetry between the participants, the interests of the weaker party often count less than those of the more powerful party. The power asymmetry between participants may not influence the result of a discourse as long as neither the power asymmetry itself nor

¹⁴John Rawls, *A Theory of Justice*, § 24.

the interpersonal relations depending on it are at stake. Yet, disputes often concern controversial interpersonal relations and their underlying power structure. To settle such disputes a purely argumentative discourse is not the adequate means. It is hard to imagine how such a discourse between a master and his slaves could lead to abolition.

Of special weight is still another objection: According to Ernst Tugendhat, Habermas has smuggled into his discourse definition precisely the ethical norms he pretended to derive from the outcome of such a discourse.¹⁵ If so, his suggestion of how to give Ethics a foundation is circular. For Habermas' claim to give moral norms a foundation this critique is the most serious. Its convincing power gets more visible in section 5 below.

3. The Discourse Theory of K. O. Apel

Karl-Otto Apel has devoted many decades to discourse analysis. He pursued two goals, first, to elaborate a rational theory of collective decision-making and second (more important), a theory which allows to convey the moral norms a solid foundation.

Like Habermas, Apel criticizes Kant for overestimating the individual's capacity to legislate moral rules (or laws). If an individual had this capacity, he would act "as a quasi-guardian of all others."¹⁶ Apel wants to put morals on a broader ground and therefore pleads for substituting the individual decision process by a collective one. The members of the concerned group should make the decision collectively.

"Communication leading to a discursive consensus" implies a form of reciprocity which can be universalized.¹⁷ Up to this point, Apel and Habermas argue in similar ways. Yet, Habermas (at least in his early writings) explained the moral

¹⁵See Tugendhat, *Vorlesungen über Ethik*, 8th lecture.

¹⁶Karl-Otto Apel, "Diskurs als Verantwortungsethik und das Problem der ökonomischen Rationalität," in K. O. Apel, *Diskurs und Verantwortung*, Frankfurt: Suhrkamp 1988, 270-305, 272.

¹⁷Apel, "Diskurs als Verantwortungsethik," 272.

norms as being the outcome of a consensus, whereas Apel assumed that for detecting the moral norms we must analyze the conditions such a discourse must fulfil.

Apel developed his theory in two parts: In the first one he analyzes the (ideal) normative conditions under which a rational discourse occurs. In the second he applies the characteristics of an "ideal" discourse to real situations. In the first part he focuses on an "Ethics of democracy" and then reflects on this Ethics in a wider historical context.¹⁸

In the first part Apel elaborates the "principle of argumentative consensus formation" or, more simply, a "discourse principle", to which he attempts to give "in a philosophical way (...) an ultimate foundation."¹⁹ This principle sounds as follows: "I argue, so I recognize the rules, including the ethical norms, of an unlimited ideal communication community."²⁰ A principle is "ultimately" founded, if it cannot be denied (questioned) "without a performative self-contradiction,"²¹ which consists in the denier's implicit adoption of the denied principle due to his participation at a rational discourse. To understand Apel's argument, it is useful to remind the relation between a contradiction and a necessary truth: Propositions whose negation implies a contradiction are true, and there is no option to dispute their truth in a coherent way. Their truth therefore is undeniable.

The discourse principle is relevant for both a discursive search for truth and a discursive way of solving practical challenges: In view of the fallibility of human reason, "it is an ethical duty to carry out theoretical and practical problem-solving discourses."²² Yet, as indicated in the "discourse principle," certain rules (and moral norms) can be made explicit by analyzing the conditions of a rational discourse.

¹⁸Apel, "Diskurs als Verantwortungsethik," 272.

¹⁹Karl-Otto-Apel, *Philosophie und Begründung*, ed. By Forum für Philosophie, Bad Homburg, Frankfurt: Suhrkamp 1987, 192.

²⁰Karl-Otto-Apel, *Philosophie und Begründung*, 192.

²¹Apel, "Diskurs als Verantwortungsethik," 271.

²²Apel, "Diskurs als Verantwortungsethik," 274.

Some of the underlying rules concern the logic of argumentation, others touch the implicit ontology (i.e., the participants' shared worldview), and again others rely to the semantic and pragmatic use of language. The ontological rules make explicit, e.g., that in a discourse we consider the participants as existing living beings, that there is a (common) language we all can use, and a "community of communication" to which we all belong as rational beings.²³ A logical rule concerns the necessity to avoid contradictions. The semantic and pragmatic rules remind us that in a discourse we raise four types of validity claims, namely "intelligibility, truth, correctness, and truthfulness"²⁴ (I assume that what I am saying is true and intelligible, the facts are correctly exposed, and I don't hide anything.) Another pragmatic rule reminds us to distinguish between the "consensus among those involved in the discourse" and the "consensus of all concerned". The interests of those concerned but absent should be balanced with the same seriousness as the interests of the participants and therefore need to be represented by discourse participants who defend them like an advocate represents and defends the interests of his client.²⁵

3.1. Double Application of the "Discourse Principle"

Apel illustrates the discursive search for truth by referring to the method of scientific research, as Popper had described it. Scientists consider the basic statements of a theory to be mere hypotheses that are to be tested by empirical observations or experimentation. If they are "falsified," they must be replaced by better ones. In short, the discourse principle emphasizes the idea that under ideal conditions the (virtually unlimited) community of rational communicators is capable of approaching, albeit never definitively, a "consensus about validity claims."

²³Apel, *Philosophie und Begründung*, 194.

²⁴Herein Apel follows Habermas' "Wahrheitstheorien," 137.

²⁵All citations: Apel, "Diskurs als Verantwortungsethik," 272.

But the principle of discourse also applies to practical decisions and even to "the foundation of norms in a substantive and situation-related way". These norms, however, are partially rooted in ethos forms and institutions transmitted by tradition, and therefore cannot be given an absolute, eternally valid foundation: They may change according to varying situations. Like hypotheses in science, binding norms are "fallible and revisionable."²⁶ When social agreements, customs, collective habits are called into question, an argumentative discourse is needed.

Apel claims that the "principle of discourse" allows us to derive universal moral norms, since it implies the *idea of equality* – an idea which is accepted by most ethical positions, even though they don't relate it to discourse practices. Apel mentions some of these positions: Utilitarians postulate that every person's interests and everybody's well-being count the same. Rawls postulates a fairness principle and a "sense of justice," which are equally valid and accessible for everyone.²⁷ Hobbes already derived a principle of equality from the experience that everybody is capable of killing the other, no matter whether by physical strength or by cleverness.²⁸

Apel considers the discourse principle to be ultimately founded, since someone who questions it would entangle himself into a contradiction: To defend his doubts concerning equality he is obliged to participate in a discourse and accept its prerequisites, one of which is the idea of equality itself. The "ultimate philosophical foundation", due to a "transcendental-pragmatic reflection on the general and (...) necessary presuppositions of argumentation"²⁹ became the brand of Apel's philosophy.

As Apel points out, the discourse is an *ideal*, and it would be naive to assume that an *ideal* easily becomes reality or should be imposed to reality. The meeting point of ideal and reality,

²⁶Apel, "Diskurs als Verantwortungsethik," 273.

²⁷Apel, "Diskurs als Verantwortungsethik," 282.

²⁸Hobbes, *Leviathan*, London: Penguin Books, 1969, chap. 13, 183.

²⁹Apel, "Diskurs als Verantwortungsethik," 282s.

Apel writes, is the so-called Ethics of responsibility (*Verantwortungs-ethik*) in the sense of Max Weber.³⁰ A supporter of such an Ethics doesn't believe that principles have an absolute value and therefore renounces to utopian presuppositions and expectations. He takes into account that in a discourse the ideal meets reality or, the other way round, *strategic rationality* and instrumentalizing practices contaminate the *ideal discursive rationality*. Strategic rationality is predominant in politics and more generally in "situations where (...) negotiation (containing offers and threats)" is at stake.³¹ Participants behave strategically, when they try to persuade instead of convincing other people. That's what Apel called a "concealed strategic use of language".³²

3.2. Critical Remarks on Apel's Explanations

According to Apel, participation in discourses is inescapable: Someone who claims that he never enters into discourses gets involved in a contradiction. Yet, it is not clear why such a person should explain herself in a discourse. It is easy to imagine a power striving man who participates in negotiation and debates, but successfully avoids discourses and survives splendidly.

We can derive from the discourse conditions, according to Apel, a principle of mutual respect, which implies the idea of equality. Yet, insofar as this equality is intrinsic to the discourse we may suspect that it remains limited to the relation between partners in an ongoing discourse. Apel's claim, however, goes further: When in the discourse principle the phrase "I argue..." is understood as "I am a rational being capable to argue," then

³⁰Max Weber, "Politik als Beruf," in M. Weber, *Gesammelte Politische Schriften*, Munich 1921, 396-450.

³¹Apel, "Diskurs als Verantwortungsethik," 298.

³²Karl-Otto Apel: "Openly Strategic Uses of Language: a Transcendental-Pragmatic Perspective (a Second Attempt to Think with Habermas against Habermas)," *Jürgen Habermas: A Critical Reader*, Oxford: Blackwell, 1999, 272-290, 273; see also Apel, "Diskurs als Verantwortungsethik," 298.

the discourse principle is valid for all rational beings that are able to argue. According to this interpretation, "equal rights and responsibility shared with solidarity" refer to all virtual discourse partners, and even to "all rational beings."³³ But this generalization is hardly conclusive: A teacher's relation to his students is of asymmetric power. If the teacher and students are engaged in a real discourse, they relate to each other as equal discourse participants; their social roles and the distribution of rights and obligations between them remain unequal.

In Ethics equality means different things: equality with respect of the law, equal opportunity for persons with equal capacities and willingness to use them, equal access to social infrastructure, equal weight of votes, etc. The idea of "equal rights and responsibility shared with solidarity" between "all rational beings" (e.g., between the CEO of a pharmaceutical enterprise and a poor Indian patient who needs a drug) is highly important. But it is not clear at all how this idea could be derived from the discourse principle. It must be given another, more solid foundation.

It is also not clear whether Apel's proof can be extended to all moral norms. Some moral norms, such as "Keep your promises" or "help to protect our planet in favour of future generations" don't follow from an equity principle. Therefore, many norms and the corresponding rights, especially many human rights (e.g. the rights to property, education, employment, welfare, etc.), seem to remain unfounded. If so, then Apel's transcendental pragmatics is insufficient for a full-fledged foundation of morality.

There is an even more serious difficulty: The "rules" (namely the rules of logic, semantics and linguistic pragmatics) and the "ethical norms" implied in the setting of a discourse are different in nature. We follow semantic rules, since by violating them we risk not to be understood, and communication becomes difficult. Someone who denies their validity gets involved into a contradiction, because he must presuppose the

³³Apel, "Diskurs als Verantwortungsethik," 283.

validity he denies. If we negate an assertion that implies a contradiction ("It is raining here and now and it isn't raining here and now"), we get an undeniable truth. A rule the validity of which cannot be denied without incurring into a contradiction is undeniably true. Yet, moral norms are different. We can violate them and deny their validity without complicating communication and without making a contradiction. Therefore the negation of such a denial doesn't lead us to an undeniable truth. In other words, there are purely logical reasons why moral norms escape an ultimate foundation.

4. Apel and Habermas on Strategic Speech Acts

Before trying to show how Apel's attempt to give Ethics a foundation could be improved, it is worthwhile to take a step back and ask what role the discourse exactly plays within a wider range of human communication. I'll start with some hints concerning the way how Habermas and Apel think about strategic speech acts and then will contrast the discourse with three other types of dialoguing.

Both authors, Habermas and Apel, feel challenged by the frequent occurrence of strategic speech acts, and both distinguish between a *concealed strategic use* (CSUL) and an *open strategic use of language* (OSUL).³⁴ An example of the first is persuasion ("a manipulative way when speaking to another, so that the conversation partner has no opportunity first to understand the speech act (...), and then either to accept it or not accept it").³⁵ An example of the second is the conspicuous use of a threat: "Hands up (or I'll shoot!)" At least in some of his writings,³⁶ Habermas holds both types of strategic speech acts as parasitic to the rational discourse.³⁷

³⁴Apel, "Openly Strategic Uses," 273.

³⁵Apel, "Openly Strategic Uses," 274.

³⁶Habermas, *The Theory of Communicative Action*, vol. one, Boston: Beacon Press 1984, 286-295

³⁷"...the use of language with an orientation to reaching understanding is the *original mode* of language use, upon which indirect understanding, giving something to understand or letting something be

Apel doesn't agree. According to him OSUL cannot be assimilated to a discourse. Yet, he admits the view that some forms of CSUL frequently occur in discourses. He refers to Austin's³⁸ distinction between illocutionary speech acts, concerning simply "the *understanding of meaning*," and perlocutionary acts concerning "additional normative claims to *consensus or agreement regarding validity claims*."³⁹ Whether a person consents or doesn't consent to what his fellow speaker says obviously depends in some degree from the way how the speaker forwards his argument. Speaking clearly and speaking in a rhetoric manner facilitate understanding, but an excessive use of rhetoric tricks seems rather a strategic move. Yet, from this kind of CSUL the open threat (OSUL) differs neatly: The threatening person strives for a material gain and uses a speech act as a means. The threat is parasitic to a speech act, but Habermas and Apel seem to overlook that this speech act neither belongs to a discourse nor serves to reach a consensus.

The motives for OSUL are not to facilitate comprehension or getting to a consensus, but transcend the objectives of a discourse. The leading motives often are selfish, but sometimes they may even serve a common goal. The proclamation of criminal laws promotes peace, but nevertheless is strategic. Instead of distinguishing between CSUL and OSUL, it seems to be more appropriate to distinguish between strategic speech acts, which serve mutual understanding, from strategic speech acts which advance discourse-external goals ("teleological action that goes beyond speech act"⁴⁰).

What does Habermas exactly mean by saying that strategic speech acts are *parasitic* to the rational discourse? A parasite can live only as long as its host lives. Many parasites, but not all, exploit or even kill their hosts. In Mexico there are gangs which

understood, and the instrumental use of language, in general, are parasitic" (Habermas, *The Theory of Communicative Action*, 288).

³⁸John Austin, *How to Do Things with Words*, Oxford: Clarendon, 1962.

³⁹Apel, "Diskurs als Verantwortungsethik," 282.

⁴⁰Habermas, *The Theory of Communicative Action*, 291.

parasitize of abduction commands: they don't plan real kidnapping, but call people to announce their being kidnapped unless they pay a ransom. These gangs do not exploit the abduction commands, but once the latter disappear, the fantasy kidnappers lose credibility and disappear also. In a similar way speech acts (or actions) which are *parasitic* to the discourse, as for instance strategic speech acts which facilitate mutual understanding, would be doomed to end as soon as the rational discourse disappeared. From this, however, strategic speech acts which serve discourse-external goals wouldn't be affected, since their home is not rational discourse, but some other kind of communication we now should consider more closely.

5. Discourse, Negotiation, and Debate: A New Approach to Communication Theory

Besides discourse there are at least three more types of communication, each of which has its counterpart in a correspondent form of human interaction. In real life the different communication types are often intermingled, but each of them has his own rules and criteria. The word "dialogue" is broad enough to embrace them all. Human interaction may occur silently or backed by communication. To make the differences more clear, I shortly describe the four types, together with the corresponding interaction types:

<i>Form of communication</i>	<i>Form of interaction</i>
Discourse	Co-operation
Negotiation	Exchange
Debate	Competition
Verbal strife	Fight /Struggle (war)

5.1. Co-operation and Discourse

A discourse is lined up to a common goal – a consensus. Co-operation is also directed towards a common goal, which can be a collective work on a material ground (a building, a railway line, a dam, etc.) or a performance (worship, music, dance, theatre, soccer game, etc). Following a set of rules shared in a community, enterprise or society is also co-operation. We can distinguish between two types of co-operation: (a) co-operation

according to the pattern "tit for tat" or "Do ut des" ("I give you, if you give me, too") – an exchange between selfish actors each of whom pursues one's own objective. They participate as long as they benefit from it. (b) the co-operation for a common goal, based on the Golden Rule⁴¹ ("Don't do to others what you don't want them to do to you") or the Rule of Generalization⁴² ("Don't act according to rules whose general compliance you cannot wish"). Keeping peace in a society or lowering greenhouse effect are such common goals that presuppose co-operation, namely the readiness to follow the basic moral and social rules necessary to keep peace and to reduce climate-damaging behaviour. A *discourse* is consensus-oriented, and the consensus arises from argumentation. The statements forwarded in a discourse may be controversial and logically opposed to each other. But a logical opposition is not to be confounded with an opposition between interests (or a political opposition). The logical opposition between true and false even belongs to the basics of a discourse. Habermas' concept of "communicative action" stands for discourse oriented co-operation.

⁴¹The Golden Rule is well known in human societies since thousands of years: In Greece it was mentioned from the 6th century BC on, in China Confucius referred to it (5th century BC), in India Mahabharata alludes to it (4th Century BC), and in Judaism it was discussed since the 1st century BC. No wonder we meet it also in the New Testament (Matthew 7: 12). Albert Dihle, *Die Goldene Regel: Eine Einführung in die Geschichte der antiken und frühchristlichen Vulgäretik*, Göttingen: Vandenhoeck, 1962.

⁴²In Europe the Generalization Rule was first discussed in the 18th Century. It is implicit in the 1st formula of Kant's Categorical Imperative. H. Hruschka, "Die Konkurrenz von Goldener Regel und Prinzip der Verallgemeinerung in der juristischen Diskussion des 17./18. Jahrhunderts als geschichtliche Wurzel von Kants kategorischem Imperativ," in *Juristen Zeitung* 42, 941-946. Nowadays the Generalization Rule became important as an argument against behavior promoting climate change and ecological disasters.

5.2. Exchange and Negotiation

Exchange is an interaction between two persons or parties which both give and take something. The actors *bargain* (*negotiate*) the exchange conditions. Before the emergence of market societies exchanges were held to be just, when the goods concerned were of equal value. Today it is more common to call an exchange just when it corresponds to the laws of the market; "the buyer determines the price," as Thomas Hobbes formulated.⁴³ Yet, if someone urgently needs a particular good, he may accept the dictate of its seller. We are used to exchange of material goods, money, favours, compliments, services, information, etc. A *negotiation* is the communication process in which the exchange conditions are established. Negotiation is needed to resolve conflicts or to prepare collective achievements which require that participants bargain the distribution of burdens and rewards. If their priorities are too divergent or incompatible, negotiation may fail and the transaction or collective achievement become impossible. Normally the participants have to waive a part of their initial expectations. The result of a negotiation process is a *compromise*. Power asymmetries between the parties can lead to an asymmetric distribution of burdens and rewards. In negotiation, equality is not granted.

5.3. Competition and Debate

People or parties who compete with each other *follow their own objectives*. There are winners and losers: Some participants win more than they lose, others lose more than they win. Competition is an essential element in many games. Losing a game does little harm. Losing in a competitive market is worse. Losing a war is disastrous, since war is a competition leading to survival or death. A football match is a domesticated form of a violent struggle: Participants follow fairness rules which serve to prevent violence. The word "*debate*" is sometimes used as a synonym for "discourse." Its etymology, however, is from Latin "dis-" (expressing reversal) + "battere" 'to fight', via French "se

⁴³Thomas Hobbes, *Leviathan*, 152.

battre” and the English word “battle.” Therefore I apply this concept to situations in which communication is competitive. The participants struggle for approval: They aspire to get more votes than their competitors. The rules of a debate differ from those of a discourse. In both cases aggressive acts are forbidden. But in a debate strategic moves, such as bluff, rhetoric, propaganda, seduction, persuasion, are not forbidden, and sometimes participants resort to lying, brainwashing and bullshitting. In a debate, as I have defined it, non-violence is prescribed, but neither equality nor truth orientation is an obliging element. When people are willing to co-operate they coordinate their objectives; but competition always creates losers.

5.4. Verbal Strife and Fight

They are similar to competition and debate, but go further and are more destructive. Fights often end with the capitulation, or even extinction, of one party. I call a *verbal strife* an exchange of blows occurring in a linguistic form. For the following argumentation verbal strife is less important, since it does not contribute to collective decisions or truth finding.

5.5. Symmetric (Egalitarian) and Asymmetric (Hierarchic) Modes of Social Interaction

Besides the four types of communication and interaction, two opposite poles can be distinguished in both, communication as well as human interaction. One pole represents symmetric, the other asymmetric relations – equality and difference in power relations or social strata.

	Respect	Coercion
<i>Equality</i>	Mutual respect or sympathy; Golden Rule	Mutual instrumentalization; possibly power struggle among equals
<i>Hierarchy</i>	Caring relationship: parent-child, teacher-student, doctor-patient	Command hierarchy; social subordination

Mutual respect can occur in asymmetric relations as well as in symmetric ones. Between parents and children the relation is asymmetric, but normally mutual respect prevails. On the other hand, a relation between equals does not necessarily exclude coercion, threat and even violence. In a power struggle both is possible, equal strength between the opponents and unequal strength, producing winner and loser. Both, communication and human interaction in general are shaped by this double bipolarity. Asymmetric relations can make a discourse more difficult and distort its result. Human interaction normally moves somewhere between the extremes.

Power symmetry, equality, lack of coercion: All participants have equal rights and chances in communication to be heard, considered, and taken seriously. That's the "ideal" discourse in Habermas and Apel.

Power asymmetry, hierarchy, elements of coercion: The relation between the participants is marked by differences in power and/or social rank, accompanied by attitudes of order/obedience, threats/intimidation, compulsion/ submission, and pride/shame.

5.6. Some Remarks on the "Ideal" and Its Relation to Reality

Ethics or Morals is a system of basic rights and norms. The more human beings respect these rights and norms, the more society approaches the normative "ideal". Yet, Habermas and Apel call the discourse an ideal and distinguish it from other kinds of communication. These distinctions, however, seem to me inappropriate. In the "real" world both occur, consensus orientation and competing individual interests, which often counteract consensual solutions. When a consensus is out of reach, we may search a compromise or decide according to majority vote. Therefore discourse, negotiation and debate belong to the same reality level. Yet they follow different rules. In negotiations and debates the criterion of equality is not binding: When a power asymmetry is in play, the weaker or rhetorically inferior partner risks to lose. Nevertheless the result of a negotiation or a debate, and the corresponding

obligations, are equally binding for all parties involved. In this respect they all have to *cooperate*.

It is true that the rules directing discourse are in a closer relationship to Ethics than those of other types of communication. Yet, each communication type is narrowly linked to a corresponding type of human interaction (see table 1), and it would be odd to classify cooperation as "ideal" and exchange, competition and fight as belonging to "reality".

Apel relates "ideal" and "reality" to different historical or developmental stages. The first stage is marked by stratified societies with strong power asymmetry, external compulsion and strategic behaviour, and the second by more horizontal societies, based on the principle of equality, a tendency towards consensus, discourse and moral insight.⁴⁴ Modern societies are more individualistic and pluralistic than earlier societies and social control is weaker. Therefore the citizens' commitment to sustain the social order is based on a strong internal motivation: the consciousness of binding moral norms. Though strong tendencies towards strategic and self-interested (or group-oriented) communicative behaviour represent, according to Apel, a past stage, they still remain alive. Nevertheless, Apel hopes that in the long run they are doomed to disappear due to the spread of rational discourse. In his eyes the ideal represents the future. The assumed developmental sequence between competitive debates, strategic forms of communication and consensual-oriented discourses, however, is quite speculative. Apel does not consider the fact that in modern egalitarian societies the whole scale of the forms of communication discussed above is practiced. Even though we appreciate discourse more than our ancestors in last centuries may have done (what is not proven!), and even though we possibly know its rules better, there is few reason to assume that different types of communication reflect different historical periods.

⁴⁴Apel, "Diskurs als Verantwortungsethik," 287.

6. Conclusion

To conclude, it is my contention that Ethics is to be founded not in the Discourse, but in “Qualified Co-operation” (QC), in which the participants apply the Golden Rule and/or the Generalization Rule. These two rules prohibit non-compliance. Qualified co-operation implies the idea of reciprocity: The participants are interested in the well-being of their partner(s) and the success of the co-operating group as a whole. *Discourse is a form of QC*. Co-operation according to the pattern “tit for tat” or “do ut des” is another type of interaction, similar to an exchange guided by self-interest. When two or more parties co-operate in this way, their co-operation is not “qualified”.

In a second step the basic idea of Apel’s proof is transferred from discourse to QC. This transfer is legitimate for two reasons: Discourse is a form of QC, and QC is indispensable in human civilization: Most people wish to live together peacefully, they wish to fight their conflicts without violence and settle them through communication. QC is the unique way to reach these goals. If we transfer the focus from discourse to QC, we can apply Apel’s argument that the denier gets involved into a contradiction in a slightly modified way: Anyone who expressly denies the essential value of QC and defends this denial with arguments gets involved into a contradiction, since he enters into a discourse, which is an item of QC. In other words, the essential value of QC is incontestable.

The third step serves to clarify what the incontestability of QC exactly means: It does not just mean that every kind of co-operation (the tit-for-tat co-operation included) is ultimately based on QC, or that all human beings – unscrupulous powermen as well as ethically well educated people – *sometimes participate* in QC. If this were meant, it would not be clear why somebody who neither wishes to practice QC nor to defend his view in a discourse should be bound to participate in QC. It rather means that QC is the last resort of granting a society peace and welfare. This statement is twofold. One aspect is simply empirical: Qualified co-operation is the unique way to

enable a pacific and productive form of conviviality – productive in the sense that it grants a decent lifestyle virtually to everybody.⁴⁵ In this sense QC is the most fundamental type of human interaction.

The second aspect of the statement is more formal. We can postulate a principle of QC (principle "p"): *"When you interact with other people, never avoid cooperating according to the Golden Rule or the Generalization Rule."* That is to say, be careful not to forget that your interaction with others should follow procedures whose adoption by your partners you would welcome (or at least tolerate). It is not possible to deny this principle in an argumentative way without being involved in a contradiction.

In the fourth and last step, the basic moral norms and Human Rights are given a foundation by showing that they represent necessary conditions which must be fulfilled (a) for making QC possible and (b) for enabling human beings to cooperate in a qualified way. Most of the classical moral norms express obligations to grant such conditions: The prohibition to kill others corresponds to the Human Right for life, the prohibition to steal to the Human Right for having some private or common propriety, etc. Therefore: *We must not violate the other, use force against the other, cause damage to the other or deprive the other, enslave the other, torture the other, deceive him (therefore one must hold the given promises and contracts), etc.*

Some further norms, which don't belong to the "repertoire" of traditional moral norms, can also be considered as prerequisites of qualified co-operation: *Do not humiliate or offend the other* (as he is or some day may become your co-operation

⁴⁵"Social co-operation is possible in regard to the good things that are capable of being universal – adequate material well-being, health, intelligence, and every form of happiness which does not consist in superiority to others. But the forms of happiness which consist of victory in a competition cannot be universal." Bertrand Russell, *Power: A New social Analyses*, London: Unwin Books, 1960, 184.

partner⁴⁶), *do not damage or destroy his social identity, don't instrumentalize or exploit him* (from this follows that parasitic behaviour is forbidden: don't behave as a free-rider); *do not break your promise*; comply with the contracts and agreements you have signed; *do not deny or ignore the other person's freedom of decision, action and contract* (respect these freedoms!); *do not order others a behaviour that violates Human Rights*; *do not deny the other's right to claim their legitimate rights* (since withholding other people's legitimate rights causes suffering, but also, and more important, since it makes qualified co-operation difficult or even impossible).

The proposed argumentation for giving morality a foundation depends on an empirical presupposition, namely that human beings wish to live in a pacific society which allows them to lead a fairly prosperous life and that therefore they are interested in avoiding mutual violence and war.

From Apel's discourse principle we can derive the rules that underlie speech acts – mainly logical and semantic rules the validity of which cannot coherently be denied. But we cannot derive the moral norms from the discourse principle. To give them a foundation, we have to rely them to the co-operation principle, as shown in the preceding paragraphs. It may not be easy, but probably possible to survive without ever entering into a rational discourse, but it is not possible at all to survive in peace and prosperity without participating in qualified co-operation. And Human Rights and the corresponding moral norms are the necessary prerequisites which make qualified co-operation possible.

⁴⁶These norms are valid not only within a given co-operation group, but also between all human beings, since we all are capable of participating at qualified co-operation.