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UNIVERSALISM AND ITS CRITICS: A DEFENSE OF DISCOURSE ETHICS

By

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ABSTRACT

UNIVERSALISM AND ITS CRITICS: A DEFENSE OF DISCOURSE ETHICS

By

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A major question in contemporary social theory is whether democratic politics can be given a universalistic normative justification. Historically, enlightenment universalism has been faced by the twin problems of over abstractness and latent dogmatic content. Jurgen Habermas's discourse ethic is a recent attempt to outline a universalistic political ethic which avoids the problems of its enlightenment predecessors. The discourse ethic has been widely criticized as itself overly abstract and dogmatic in various ways. If critics are right then democratic practice cannot be given a normative backing by appeal to the idea of universal participation in dialogue. In this dissertation, I defend the discourse ethical approach against charges of over abstraction and dogmatism. I argue that the ethic is concretely grounded in culture and society, that it is able to function as a practical political ethic, and that it is consistently critical of dogmatism and domination.

I begin by discussing the normative universalisms of Kant, Hegel, and Marx, and show that each both abstracted from important political issues and incorporated uncritical political content. I then describe Habermas's project as an attempt to draw on aspects of these previous enlightenment theories while avoiding their salient difficulties. The rest of the dissertation is framed by responses to several of the most prominent criticisms of the discourse ethic. I discuss objections that (1) discourse ethical universalism incorporates covert uncritical content which furthers domination, (2) the ethic is disembodied, making

it irrelevant to politics or biased in favor of some issues and groups, (3) the ethic fails to do justice to the importance of context and caring relationships in political judgment, (4) the ethic is founded upon an inappropriate distinction between universalistic moral issues and culturally relative ethical ones, (5) the ethic yields no definite political judgments, and (6) the ethic does not contribute to understanding the conditions for actual democratic activity or institutions.

I argue that though such criticisms show important challenges for the application of the discourse ethic, they fail to refute it as a democratic political ethic. First, I argue that the ethic consistently calls for criticisms of any form domination and thus is not dogmatic or exclusive as critics charge. Secondly, I show that the discourse ethic is compatible with context sensitive judgement and the inclusion of various rhetorical styles. Third, I argue that the distinction between morality and ethics, properly understood, is defensible and necessary for a democratic ethic. Fourth, while acknowledging that a democratic philosophical ethic is necessarily limited in yielding precise political judgments, I argue that the ethic is useful in two related ways. First, it serves as a normative basis for social criticism, in which social norms can be seen as results of relatively undemocratic procedures. Second, in providing conditions for democratic legitimacy the discourse ethic can serve to guide political action at the level of institutions and social movements. In each chapter, I indicate ways in which the discourse ethic is both more practical and consistently critical as a political ethic than the alternatives suggested by its critics.

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CHAPTER I. INTRODUCTION

1. Thesis

This dissertation addresses the problem of a democratic political ethic. I argue that Habermas's discourse ethic provides an adequate normative guide for social criticism and democratic political action. In the face of criticisms that the discourse ethic, like other expressions of enlightenment universalism, is uncritically dogmatic or so abstract as to be inapplicable to actual politics, I argue that it provides a conception of democratic politics which is both consistently critical and pragmatically grounded in actual contexts of political action.

2. Background

Political philosophy attempts to explain the conditions for a just social order, offering principles for its organization or for the political process for arriving at such norms. Modern enlightenment political philosophy, including theories as diverse as those Hobbes, Locke, Rousseau, Kant, Hegel, and Marx, has been characterized by attempts to outline the conditions for universal freedom. Enlightenment theory stipulates two forms of normative universalism. On the one hand, a just or legitimate social order is one which takes everyone's interests into account, applying its laws fairly to each person. On the other hand, enlightenment philosophers also held that, as rational beings, all people should be active participants in constructing the norms which regulate the social order, or at least be able to recognize those norms as just. Thus, enlightenment political philosophy tended to justify a democratic politics in which all serve as legislators of norms as well as equal subjects under the law.

However, enlightenment attempts to provide adequate conceptions of political universalism have encountered continual difficulties. It proved difficult to demonstrate that a form of thought was itself universally valid and did not simply represent views of a given person, culture, or historical period. Early modern articulations of a theory of human nature entailing natural forms reasoning and interests could not be maintained. While Hobbes's self-interest, Locke's natural rights, and Rousseau's fellow-feeling all seem to represent important aspects of political insight and action, none can be proven to have a normative priority which results directly and inevitably from human nature. In fact, by the time of Kant, it became apparent that metaphysics -- the use of philosophical reflection to get at the world, including human nature, as it really is and not just how it appears to be -- was bankrupt. Thus the basis for political philosophy, universalist or otherwise, was undermined.

In response to these difficulties with basing political theory on human nature, more recent enlightenment philosophy has used a method of critique, in which the conditions for valid forms of human activity are derived from the presuppositions of actual practices. Kant, on the one hand, explored the conditions for valid normative reasoning, and found it to entail impartial consideration of what could be willed universally. Later, Hegel and Marx used the method of critique to develop theories which would explain how conditions for universal freedom could be realized in social and political institutions. Each successive enlightenment theory offered to provide philosophically defensible normative theory which could be used to rationally criticize current social practices and to provide a conception of how freedom could be pursued in a manner consistent with freedom for everyone.

However, critical philosophy itself appears to fall into difficulties in its attempt to articulate any universal political standards. On the one hand, philosophically rigorous forms of normative universalism, such as Kant's, tend to result in abstract conceptions of morality which cannot address actual political action. This abstraction also can lead to the uncritical application of enlightenment theory in the justification of undemocratic procedures and unjust systems. On the other hand, critical universalisms which, in the tradition of Hegel and Marx, attempt to depict how universal freedom can be concretely realized, are not only difficult to justify philosophically but also result in a dogmatic assertion of a conception of rational politics which is insensitive to actual political conditions, with their contextual specificity and diversity. Such dogmatism results in an uncritical endorsement of some interests and perspectives at the expense of others. The tradition of enlightenment universalism appears to be caught between the difficulties of excessive generality and excessive specificity. In either case normative universalism is involved in abstractions which prevent it from providing a critical political orientation. Enlightenment universalisms thus have been false universalisms which do not consistently and practically conceive of democratically opposing all forms of political domination.

As a result of such difficulties, critics now widely question whether the enlightenment project of attempting to grasp the general conditions for universal freedom is viable or desirable. These critics question whether there are any universal normative principles and whether each succeeding articulation of a more comprehensive universalism does not inevitably commit new forms of abstraction and dogmatism, which makes it ineffective as a guide for political criticism and action.

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Other trends in social and political theory support skepticism over enlightenment universalism. First, there is growing sensitivity to cultural differences, which seem to be denied by the attempt to articulate a universal theory of political freedom. Furthermore, Nietzsche's genealogy of morals argued that universalism involves a repressive self-limitation which is in fact a disguised attempt to gain power. This view has been influential in the descendants of Marxist critical theory. The Frankfurt school's Horkheimer and Adorno, who sought to be consistently critical of the way in which modern forms of reason were bound up with domination, wound up arguing that notions of enlightenment are committed to an instrumental reason which results in repression and domination. Poststructuralist descendants of Nietzsche, including theorists such as Foucault, Lyotard, and Derrida, have provided further arguments for thinking that critical philosophy's attempt to establish conditions is mistaken and that attempts to use it in politics lends support to domination. These positions are frequently shared by feminist theorists, who, though wanting to establish normative standpoints from which to criticize social norms and imagine different social systems, find that the universalizing claims of critical theory tended to be insensitive to gender differences and domination.

These criticisms of enlightenment theory parallel an impasse in actual political life. Liberal universalism, which receives theoretical underpinnings from theorists such as Kant and Hegel, argues that freedom is possible within the institutions of a market and a representative state government, appears to be neither universally just nor democratic. However, it is not clear whether there is a socialist universalist alternative along the lines proposed by Marx. Given the lack of a revolutionary working class in most advanced capitalist countries, and given the economic inefficiency and political repression which

plagued actual socialist countries, socialist universalism itself appears neither viable nor desirable.

Thus, it seems that a political ethic which is critical of domination and also practical, needs to be non-universalistic. It needs to embrace the forms of criticism and action generated by a variety of social movements -- feminist, minority and anti-racist, environmentalism, gay rights, elderly rights, rights for the handicapped, etc. While such forms of protest have the potential to lead to reforms, it does not appear viable to try to formulate an overarching universal perspective which systematically incorporates their concerns in a way consistent with the freedom of everyone. Furthermore, while the globalizing nature of the market, corresponding liberal principles, and communication systems, links humanity in a way which is unprecedented, the possibilities for political action are increasingly perceived as minor tinkering with this system in response to particular difficulties. To postmoderns, the theoretical impasse of critical universalism combined with the impasse in democratic politics implies that the enlightenment project ought to be abandoned in favor of social criticism and political action oriented to the particular context of historical struggles for freedom.

At the same time that postmodern and feminist political thought challenge the presumptions of universalism, new pragmatic strains of thought suggest that philosophical reflection on the validity of social orders is misguided. Richard Rorty argues that conceptions of reason do not yield any political direction not already realized in the within the framework of liberalism. Rather, says Rorty, current political challenges are matters of cultivating the sensibilities which motivate the moral commitment to do what liberal concerns for suffering and violations of rights indicate needs to be done. On

this account, there is no need for an articulation of the terms or foundations of rational or democratic politics.

It light of such criticisms it appears that no form of universalism can serve as an adequate political ethic. Any such critical theory is likely to become either too abstract to address actual political issues or to incorporate dogmatic content which is not truly universal. In either case, universalism is not likely to be consistently critical of domination or provide a way to think about democratically pursuing a more just society.

3. Discourse Ethics

Against this background of impasses in critical theory, the flourishing of postmodern and pragmatic theory, and barriers to democratic politics, Jurgen Habermas defends a universalist normative theory known as discourse ethics. Drawing on developments in the philosophy of language and social psychology, Habermas argues that forms of reason and the conditions for their validity can be identified in discourse. From an analysis of presuppositions made in the process of communication, Habermas derives a moral theory in which the validity of social norms depends upon the ability of everyone affected to agree in uncoerced discourse. Thus, he carries on a version of Kant's critical project in linguistic terms.

Habermas has been concerned to show that such a principle of normative validity is relevant to understanding contemporary political issues. The discourse ethic, with its articulation of the conditions of rational agency, helps to make sense of the assessment of the prospect for democratically pursuing justice. According to discourse ethics, social norms are just to the extent that they could be ratified in discussion by those who are

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affected by them. Such a general principle of validity implies that insofar as possible, justice requires a deliberative democracy in which social norms are subjected to the test of public, reflexive, uncoerced debate. Habermas has argued that within the civil society of the modern world, there does arise a public sphere of debate to which the presuppositions of the discourse ethic are applicable. However, as communication in this sphere is in fact distorted in various ways, a prominent goal of social criticism is to uncover ways in which discussion has been distorted, and to recommend means by which politics can be democratized. As a political ethic then, discourse ethics helps to define what modern politics is about, what the conditions for its validity are, the challenges which it faces, and the prospects for improvement.

With a discursive political ethic, Habermas hopes to salvage a form of enlightenment universalism from postmodern and pragmatic criticisms, and thus to avoid what he argues are their directionless and complacent tendencies. Habermas offers a post-metaphysical universalism which draws on previous enlightenment political philosophy but avoids the difficulties which have plagued it. Habermas attempts to preserve the consistent impartiality of Kantianism, the institutional groundedness of Hegellianism, and practical orientation of Marx, while doing away with the abstract, dogmatic, and metaphysical tendencies of each. Thus, discourse ethics holds out the possibility of a theory practically grounded in actual political forms of action and institutions, which can help address current possibilities for democracy, and does so in a way which is consistently critical, avoiding dogmatic assertions of political content.

Habermas's attempt to preserve enlightenment universalism with a theory of communication has met with numerous objections. Postmoderns find the universalism of

the discourse approach to be false in light of the impossibility of achieving domination free discourses and the tendency for claims to universality to be used to support dominant interests and hegemonic worldviews. To many critics, discourse ethics appears to be a form of agency biased towards the interests of white, middle and upper class western males. Thus, the discourse ethic is charged with being insufficiently critical of domination, retaining a dogmatic content which renders its claim to universality false.

At the same time, critics charge that in attempting to present a generally valid theory of political action, Habermas's discourse ethic is so abstract as to be inapplicable to actual issues or forms of political action. Habermas's universalism is less practically oriented than Marxism and other recent critical theory, as it remains agnostic on subjects of particular political agents, institutional structures, and principles of justice. Because it leaves political judgments to be resolved by participation in discourse, it is not clear what the discourse ethic implies with regard to the legitimacy of capitalism, the welfare state, gender identities, affirmative action, etc. Adoption of the discourse ethic appears to give up hope of using a normative ethic to reveal systematic injustices and to envision a truly just and democratic system. While Habermas has argued that discourse ethics helps to clarify the role of social movements in democracy, his discussion of the practical implications of discourse ethics has been minimal and his statements about movements such as feminism have been ambivalent. Critics charge that discourse ethics has little to say to those political movements wherein lies the actual potential for the democratic pursuit of justice.

In short, critics could be said to charge that discourse ethics has not adequately learned from the uncritical and impractical abstractness of previous universalism.

These criticisms of discourse ethics raise serious concerns and point to limitations of Habermas's project. However, the discourse ethic can be defended against them. This defense takes a threefold form. It can first be demonstrated that discourse ethic does not retain the biased, dogmatic content that it critics suggest, but rather consistently endorses a critical democratic approach which is directed at the subversion of any forms of domination or exclusion. Secondly, though the discourse ethic is presented at such a level of abstraction that it is limited in yielding specific political judgments, it does suggest lines of systematic social criticism and an orientation to specific forms of political action. Finally, compared to alternatives suggested by its critics, discourse ethics can be shown to recommend an ethic which is both practical and consistently critical.

4. Synopsis

In the following chapters I attempt to show how discourse ethics can and should be defended against the charges that it articulates a false universalism like those of traditional enlightenment theory. I begin by reviewing the history of the attempt to use critical philosophy to formulate the conditions for political freedom that are in some sense universal. I discuss the subsequent enlightenment theories of Kant, Hegel, and Marx, noting in each case the evolving conception of an adequate political ethic. I demonstrate ways in which each theory lead to problems of abstraction and insufficiently sensitive criticism. I review the resulting impasse in critical theory and its parallel in contemporary politics.

In chapter three, I introduce Habermas's discourse ethic as a universalistic political ethic which is formulated, in part, to avoid its predecessors' difficulties abstractness and insensitivity to domination. I explain the nature of the discourse ethics as a political ethic, including its implications for social criticism and democratic politics.

Chapters four through nine address various challenges that discourse ethics is problematically abstract. Based on a complete survey of the commentary on discourse ethics in English, I take up a range of the most common, influential, and clearly articulated criticisms of Habermas's political ethic.

In chapter four, I address postmodern challenges that an ethic based on universal agreement in discourse is committed to a covert content which furthers domination. Taking up various forms of such a criticism, I respond by pointing out that each is committed to a contradiction, secondly, that discourse ethics is more sensitive to subtle forms of power than critics imply, and, third, by showing that the discourse ethic is preferable to postmodern political ethics proposed as alternatives.

Chapter five responds to criticisms that discourse ethics asserts a disembodied ethic, which either fails to take into account the inevitable role of things such as emotion, rhetoric, and aesthetics in politics, or inappropriately attempts to keep such valuable contributions out of politics. Once again this criticism is linked to charges that discourse ethic further disadvantages the already marginalized. I argue that discourse ethics does leave room for embodied forms of political action of these forms. However, I also argue that discourse ethics provides a standpoint from which their use can be criticized and appropriately refuses to attach emancipation to particular aesthetic forms.

Chapter six addresses concerns of care ethicists that discursive universalism is insensitive to contextual matters, including the importance of particular affective bonds. I argue that discourse ethics has room for responsiveness to the particular circumstances in its combined moments of justification and application. Furthermore, discourse ethics accounts for the need for bonds of social solidarity, affective familial bonds, and responsiveness to the concerns of others, while not admitting an irreducible moment of care into the political process.

Chapter seven addresses objections that discourse ethics, as a procedural universalism, reduces rational politics to an abstract moral reasoning, cut off from the ethical sources that could give it meaning and motivational force. I argue that the distinction between morality and ethics is viable and relevant for politics, while pointing out that Habermas's position does not involve an abstraction from ethical life to the extent that critics fear. This entails addressing the relationships of identity, community solidarity, and motivation to a political ethic.

In chapter eight, I address the question of whether discourse ethics has any determinate content that can aid political judgment about the rightness of social norms. I argue that the ethic can be coherently used to make political judgments through identifying ways in which current discussion is distorted and by projecting the contents of relatively undistorted communication. I discuss the relative advantages of a discursive proceduralism over political ethics that provide more substantive guidance.

Finally, in chapter nine, I inquire into the extent the philosophical discourse ethic provides the terms and guidance for thinking about the democratic pursuit of justice. That is, I consider to what extent a philosophical discourse ethic is also politically

efficacious. Arguing that discourse ethics is conditioned by the real limits of a philosophical theory of politics, I outline some ways in which the discourse ethic helps to conceive of the terrain, form and content of movements struggling for emancipation.

CHAPTER II. HISTORY OF ENLIGHTENMENT UNIVERSALISM: CRITIQUE, ABSTRACTION, AND DOGMATISM IN KANT, HEGEL, AND MARX

Throughout modern philosophy efforts have been made to characterize the forms of reasoning of which human beings are capable and to stipulate the conditions of their validity. In political philosophy, the challenge has been to uncover general principles that can be used to evaluate the rightness of social practices and political processes. With the enlightenment, the belief arose that human reason had the capacity to recognize norms which are valid for everyone and which could guide the political pursuit of universal freedom. On this view, the rightness of action can be referred to human reason rather than community traditions, positive law or a divine will. Of course, this presents a challenge of actually describing principles of moral reasoning which are valid across differences in values, social positions, and interests, which usefully serve to criticize domination in all its forms and which facilitate political emancipation.

In this chapter, I discuss three of the most famous, influential, and systematic theories of normative universalism in succession -- those of Kant, Hegel and Marx. Each theorist in turn attempted to tie a critical philosophy to a conception of universal freedom. Each recognized in certain presuppositions of human activity the direction through which humanity could emancipate itself. However, each form of universalism was itself criticized as inadequate as a political ethic. Many of the criticisms of each form of universalism derive from the abstractness of the concepts of universal freedom required. This is most evident in the moral universalism of Kant. Hegel and Marx attempted to construct conceptions of political action which addressed the way in which universality might be embodied in possible forms of political institutions and movements. However,

these concrete universalisms are subject to criticisms of their own. In projecting the content of universal freedom, they appear to overstep what can be known through philosophical reflection. The forms of life and political action which are presented as universal actually represent particular interests, and thus reveal a kind of dogmatism. Hegel's teleological universalism and Marx's materialist universalism achieve their concreteness at the expense of uncritically abstracting from certain forms of experience.

In this chapter I outline the respective universalisms of Kant, Hegel, and Marx and the objections to each as abstract and uncritical. I conclude by describing how the crises in the traditions of Kantianism, Hegellianism and Marxism has resulted in skepticism regarding any form of enlightenment universalism.

1. Kant's Moral Universalism: Freedom through Autonomous Reflection

Perhaps the quintessential enlightenment theory is that of Immanuel Kant. Kant rejects the traditional philosophical notion of pure reason -- a faculty which can provide certain knowledge of the world as it is in itself. Kant argues that it is impossible to know the world as it is in itself, for knowledge only occurs within the categories of a knowing subject, categories which subjects cannot independently verify by comparing them to objective reality. However, from this epistemological human limitation, Kant does not derive the skepticism to which empiricist philosophy[1] had been lead. Kant develops a conception of philosophy as critique: though reason cannot describe the reality beneath all appearance, it can analyze the conditions under which forms of knowledge and

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[1] For example, in his *Enquiry Concerning Human Understanding* (Indianapolis: Hackett Publishing Company, 1977), David Hume rejects the rationality of scientific induction and explanations in terms of causation.

experience are possible.   In his major treatise on metaphysical and epistemological

issues, Kant sought to elucidate those transcendental conditions for experience and secure

knowledge of empirical reality. He deduced the existence of a transcendental subject

which organizes experience in certain categories (e.g. spatially, temporally, causally).

Such organization makes it possible for people to gain "theoretical" knowledge of the

way world is -- ability to comprehend the world in meaningful categories and to observe

consistent empirical laws. Kant's critical philosophy offers a way to explain knowledge

of the world, while dropping its grounding on dubious theories of direct intuition or

beneficent deities.[2]

Kant realized that his systematic defense of the capacity for knowledge of lawful

empirical properties raised the question of whether "practical" reason is possible, that is

rationally based judgments of what ought to be done. Moral principles had traditionally

been defended by claims to knowledge of human nature, as in Aristotle, or in terms of a

natural law willed by God, as in Locke's defense of human rights. In light of the limits of

human reason, enlightenment morality could not rest on metaphysical grounds. Of

course, materialists had presented their own moral theories. Hobbes had argued for a

basis of the political order on self-preservation,[3] Hume for a morality based on

sentiment,[4] and Holbach for a morality of pursuit of general welfare.[5] For Kant, this was

also an inadequate view of morality, for rather than presenting human beings as free to

choose to act according to principles, it presents freedom as tied to the conditional,

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[2] Immanuel Kant, *Critique of Pure Reason* (New York: St. Martin's Press, 1965).
[3] Thomas Hobbes, *Leviathan* (London: Penguin Books, 1987).
[4] Hume, *An Enquiry Concerning the Principles of Morals* (La Salle, Illinois: Open Court Publishing, 1966).
[5] Paul Henri Thiry Holbach, *Systeme Social. Ou Principes Naturels de la Morale et de la Politique* (Hildesheim, 1969).

sensory driven pursuit of particular, finite ends. In fact, materialistic views of morality seem contradictory insofar as they present the world as a mechanistically determined system and also say that individuals should act according to certain principles of reason, presumably as opposed to some other principle of action. Without metaphysical foundations, it was difficult to conceive of the freedom and moral responsibility of a human agent or to argue for principles which could be recognized by all and which accorded rights to all, as demanded my modern moral intuitions and social stability.

Thus Kant offers a critique of practical reason. As the critique of pure theoretical reason started from the phenomenon of experience of the world in general, the critique of practical reason started from the phenomenon of moral experience. This is the phenomenon of a person having a duty to act in a certain way regardless of their particular inclinations. It is the phenomenon of feeling free to not act according to lawlike generalities but rather to act according to duty.[6] As moral action is fundamentally distinct from any action caused by irrational, contingent forces which happen to influence a person, Kant argues that morality is founded upon the principle of autonomy, governing oneself according to practical principles which one recognizes as a duty by using one's own reason. Because any such principles derived from reason are not contingent on heteronomous (i.e. external) factors, Kant further argues that morality involves acting according to principles which hold for any rational being.[7] From this, Kant derives a principle which can be used to test rationales for human action for their general validity. This principle, the famous categorical imperative, states that one should

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[6] Kant, *Groundwork of the Metaphysic of Morals*, trans. H.J. Patton (New York: Harper & Row, 1964), 65-68.
[7] *Groundwork,* 80-88.

"act only on that maxim [i.e. subjective rationale] which [one] can at the same time will ... should become a universal law."[8] Kant provides examples demonstrating how the categorical imperative implies the validity of commonly accepted moral principles. For example, Kant inquires whether the practice of deceiving others is consistent with morality. Such a practice can not be consistently willed as a universal law. For if all were to will to deceive then nobody would believe any deception and deceit could not be accomplished; deceit rests on the general practice of truth telling. Similarly, killing oneself for one's own good is wrong, for good cannot come to an individual if it ceases to exist. Killing others to gain advantage is wrong, for none would benefit from a general principle that people kill when it is to their advantage. Finally, Kant suggests that miserly hoarding is wrong, for the miser would not will to have others not give to him were he poor.[9]

Kant derived other versions of the moral law which demonstrated more clearly the obligations which people have towards one another. Kant argues that the same idea of autonomy as an end in itself used in the first formulation of the categorical imperative, implies a second formulation, that people should always treat each other as ends in themselves rather than merely as means. Thus Kant's theory suggests a range of human rights and a general opposition to all forms of domination or lack of full recognition of humanity.

There remained a tension for Kant between the status of the empirical world as a deterministic system admitting of rigorous prediction by theoretical reason and people's ability to rationally determine what they ought to do and act on this latter knowledge.

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[8] *Groundwork*, 88.
[9] *Groundwork*, 90-91.

Kant questions whether the dictates of moral reason can ever be made efficacious. In order to explain how we nonetheless are able to apply the category of the moral to ourselves, Kant argues that three "postulates of practical reason" must be made: freedom of the will, the existence of God, and immortality of the soul.[10] Though there is no scientific evidence for these things, people are committed to believe in them as conditions for holding themselves and others morally accountable.

Kant is much less known as a political philosopher than as a moral philosopher. However, in his few political essays, Kant suggests that the capacity for critical reflection can lead to universal freedom. Kant's third formulation of the categorical imperative suggests that correct norms are those in which are consistent with people acting as legislators in a kingdom of ends, a situation in which social conditions are consistent with universal autonomy.[11] For the time being Kant endorses a republican system of government, arguing that people should carry out their public tasks in law-abiding manner while "privately" using their capacity for reflection to criticize the existing social order. "Enlightenment," writes Kant, "is man's emergence from his self-incurred immaturity."[12] Kant was aware that actual aspects of society, including repressive governments, religions, and greedy capitalists, work against human freedom. However, he held that if individuals are given the opportunity to reason on their own and express these views in public, an increase in freedom is inevitable. He averred that "men will of their own accord gradually work their way out of barbarism so long as artificial measures

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[10] Kant, *Critique of Practical Reason*, trans. T.K. Abbott (New York: Prometheus Books, 1996), 147-161.
[11] Kant, *Groundwork,* 101.
[12] Kant, "An Answer to the Question: 'What is Enlightenment?'" In *Kant's Political Writings*, ed. Hans Reise (Cambridge: Cambridge University Press, 1987), 54.

are not deliberately adopted to keep them in it."[13] Thus Kant held a theory of universal

freedom based on his conception of the autonomy of the rational individual.

2. Critique of Kantian Moral Universalism

Kant's moral universalism and its political implications have been subjected to

numerous criticism. A central theme in this criticism is that a theory of freedom based on

a conception of individual, rational autonomy is problematically abstract. Beginning

with Kant's close successor, Hegel, critics charge that Kant's theory is empty in its

formalism, abstract from actual human interests and perspectives, and impotent in

upholding a moral ought separate from the motivations of personal realization and

institutional forces. Thus critics charge that Kant's framework is inadequate for thinking

about the conditions for and meaning of political agency. More recent critics, especially

feminist theorists, argue that Kant's moral universalism problematically abstracts from

contextual application and from normative insights based on emotion. Combined with

Kant's own explicitly sexist and racist views, this suggest that his enlightenment

universalism is actually biased in favor of the interests and perspectives of white, western

males.

Kant bases morality on a formal test which is empty of direct implications. The

categorical imperative tests maxims such as "I will deceive others to my advantage," to

see if they are self-contradictory in presupposing an institution, such as truth telling, from

which they simultaneously grant exemptions. However, Hegel argues that the categorical

imperative can never actually tell us that truth telling is good, nor suggest any positive

norms that one ought to follow. The enjoinder not to contradict oneself or make

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[13] "An Answer to the Question: 'What is Enlightenment?'" 59.

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exceptions for oneself is empty of content. Hegel even suggests that in telling us not to

act according to non-generalizable norms, Kant merely gives us the tautology that the

moral is not the non-moral.[14] However, as Kant's defenders have noted, the categorical

imperative's formalism does not mean that it is empty of consequence: those norms which

are self-contradictory are wrong. While the categorical imperative cannot be used to

generate good norms *ex nihilo*, as long as people do reflect on principles of action, it

could be argued that the categorical imperative is the right standard by which to judge

them. If attempting to deceive leads to contradiction, then the categorical imperative has

the positive implication that one ought to tell the truth.[15]

Though it is not altogether empty of content, Kant's universalism is susceptible to

the charge that it abstracts from important human interests and perspectives in

determining the moral point of view. However, Kant's formalistic moral theory can be

said to be empty in another, more specific way. As both Hegel and utilitarian critics have

also pointed out, the formula of the categorical imperative does not take into account a

norm's range of consequences in determining its morality. Kant famously argues that it is

even wrong to lie if nobody would be hurt and good ends could be achieved.[16]

Consistently applied, the categorical imperative suggests that it would even be wrong to

lie to prevent a murder, for if such an act were generalized it would be self-defeating. It

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[14] G.F.W. Hegel, *Elements of the Philosophy of Right*, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1995), paragraphs 134-135, 161-163. Of course, this seems to contradict Hegel's suggestion that Kant has provided important insights about the nature of morality.

[15] In "Morality and Ethical Life: Does Hegel's Critique of Kant Apply to Discourse Ethics?" Habermas defends Kant (as well as discourse ethics) against the charge of formalism, arguing that the categorical imperative does contain a substantive moral viewpoint and that moral principles are supplied by real life rather than the moral philosopher. *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (Cambridge, Mass.: The MIT Press, 1990), 204.

[16] Kant, *The Metaphysics of Morals*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 183.

seems problematic to argue that because it would be impossible to deceive every murderer, it is wrong to deceive some of them. Kant's equation of morality with generalizability leaves many of norm's consequences irrelevant to their rightness. This contrasts greatly with moral intuitions.[17]

Kant himself frequently makes assumptions about the value of certain consequences in the application of the categorical imperative. For example it is not clear that there is a contradiction in universalizing a maxim such as "I will kill person X for my benefit." The derivation of a contradiction assumes that if everyone killed someone when it was beneficial for himself or herself, this would be bad for all, and thus it would contradict the intention of any of them to get ahead. But it is possible that a given individual could benefit from such a universal law; the argument that one would not depends upon assumptions not only of the probable consequences of the maxim being generalized but also whether these consequences can be desired by the agent. If Kant is not to assume that certain things simply should not be considered valued, then the only content by which to judge consequences is the intended maxim of the thinking subject.

Kant might argue that the rational individual always wills to have a certain range of goods for herself, such that universalization of her will requires a range of goods for everyone. It seems counterfactual to assert that everyone wills a certain range of basic goods (e.g. security, comfort, respect). To make this argument, Kant would have to claim that regardless of their stated reasons for acting, which may involve insincerity or self-deception, people actually always pursue these basic goods. Such a presupposition seems

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[17] Of course, the fact that it goes against our moral intuitions does not prove Kant's theory wrong. However, if there is any doubt about the soundness of its metaethical derivation, moral theory generally needs to demonstrate that it accords with many of our moral intuitions.

factually dubious and is the kind of substantive notion of the good life that Kant's project of basing morality formally on rational autonomy is supposed to avoid. The categorical imperative cannot take the moral relevance of the consequences an action has unless they happen to contradict the will of a particular subject. This voluntarism constitutes a failure on Kant's part to provide a universal framework for moral reason.

The categorical imperative fails to take into account not only a norm's full range of consequences of a norm but also the various perspectives with which norms might be evaluated. A miser could consistently will that anyone who is wealthy hoard their money and let the poor remain poor, so long as he is willing to accept that if he ever became poor, he would also not receive any aid. The categorical imperative fails to demand that the perspective of those who actually are poor be taken into account in evaluating the rightness of the norm of miserliness. A similar problem holds for Katianism with respect to evaluating any exploitative or discriminating practices in which social positions are asymmetrical. Ironically the fewer perspectives which an individual takes into account, the easier it will be to universalize his or her maxims. On Kant's account, norms which are followed on the basis of failure to consider a range of consequences, alternatives, and perspectives, whether through small mindedness or self-deception, can be moral. Kant's categorical imperative has a basic element of voluntarism, in which norms rest on the arbitrary content of an individual will. The lack of substantive moral content and principle according to which to treat people, results in a theory at odds with universal freedom.

Kant could of course appeal here to the second formulation of the categorical imperative and argue that murder, exploitation, and, perhaps, poverty are wrong because

they treat people merely as means, regardless of whether each rational person is able to recognize them as wrong. However, there are difficulties with bringing in Kant's second formulation in this way. First, the qualification that individuals not be treated *merely* as means leaves open the possibility that they be treated *principally* as means; thus perhaps it would be valid to give workers a right to life and freedom of contract, while not criticizing the economic system within which they are treated principally as means to the end of profit. Second, it is not clear what it means for a person to treat others as ends; again, this seems to require a substantive concept of the good that each can use to deduce what is owed to all the rest.

This leads to a final problem with the second formulation: it does not follow from the first as Kant suggests. The first formulation, that one must universalize one's maxims, cannot be used derive a general value attaching to all rational beings. Though a person uses reason to test her maxims, it does not follow that she would contradict herself by not willing to preserve this reasoning faculty wherever it occurs. A person could consistently condemn rationality and will that it be destroyed. Furthermore, even if one is compelled to value one's own thinking nature, there is no apparent contradiction in willing not to value that of others, so long as one is willing not to have one's own nature valued in turn. To ground the moral outlook, Kant requires a further premise whereby people's recognition and value of their own rational capacity compels them to respect that of others as well. Kant provides no reason that a single thinking person needs to be concerned about other people. Though Kant's political writings support the right to public expression of opinion, exchange with others is not formulated as a condition for moral reasoning.

A third criticism which Hegel levels against Kant is that the latter's concept of

moral duty, because it is opposed to motivation and empirical reality, is impotent to affect

the actual world.[18] Hegel suggests that this results from Kant's abstracting morality from

all actual motivations, guided as they are by institutions, traditions and social

commitments. Kant's conditions for moral agency -- the postulates of immortal life in a

perfect state, a divine being who rewards the good, and freedom to act separately from all

contingent circumstances -- provide no concrete way to think about how this universalism

could be efficacious. The absolute contradiction between real forms of agency and the

moral point of view means that there can be no practical tension between the way the

world is and how morality dictates that it ought to be. Moral universalism remains, as

Hegel says, an "abstract ought" that individuals, institutions and governments should

conform to but cannot in fact be conceived as conforming to.

This abstractness from actual forms of motivation as well as from normatively

relevant interests and perspectives reveal limitations in Kantianism as a moral theory.

These limitations are still more glaring if one tries to use Kantianism as a political ethic.

The suggestion that normative matters could be settled by applying the formula of the

categorical imperative suggest a political model which is not democratic and which could

not serve to result in the effective use of power to pursue the common good. Hegel saw

in Kant's individualistic conception of autonomy the kernel of a dangerous notion of

freedom detached from all working institutions. In opposing freedom to all heteronomy,

Kantianism lends support to the anarchical view that individual wills ought not be by

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[18] For example in *The Phenomenology of Spirit*, trans. A.V. Miller (Oxford: Oxford University Press, 1977), 366, Hegel suggests that the (Kantian) moral consciousness, as opposed to non-moral, cannot realize its object.

positive law, familial or national ties, or contractual obligations. In fact, Hegel links this

form of enlightenment universalism to the failure of the French Revolution and its result

in terror.[19]

The failure of moral universalism to find institutional embodiment can also lead

to the uncritical support of the status quo. For the contrast of the moral to motivation and

contingency implies that morality is either irrelevant to actual politics or has a limited

role of individual conscientious objection. While Kant does suggest that individual acts

of rational criticism would continually further the maturation of society as a whole, this

view appears hopelessly naïve. It seems to deny that social power, including the ability to

manipulate the terms of political debate, is concentrated in the hands of the few and will

not be relinquished easily. An adequate political ethic, it seems, needs to demonstrate in

what way reason can be embodied in institutions that can actually lead to political

change. Beyond supporting freedom of thought and speech, Kant's moral universalism

does not contribute to imagining the conditions for the forms of political action involved

in the pursuit of universal freedom.

To the above criticisms that Kant's conception of enlightenment is not only

abstract but also insufficiently critical have recently been added charges that such moral

universalism contains an inherent gender and race bias. The way in which Kant's

morality opposes normative reflection to emotion and to individual attachments and

context sensitivity suggests a male centered perspective. Furthermore Kant's own

statements about different inherent abilities according to race and sex raise further doubts

about the critical credentials of enlightenment universalism.

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[19] *Philosophy of Right*, par. 5 and 258.

There are two commonly noted aspects of moral universalism which appear dubious as principles of practical reason and which seem to be related to gender bias. First, Kant's theory demands action on the basis of reason as opposed to emotion. For Kant, one fails to act morally if one acts according to emotion rather than out of respect for rationally conceived duty. This seems to ignore the extent to which human beings not only inevitably act from emotional responses but also the extent to which a healthy ethical life involves acting on emotion. Secondly, Kant's universalism, in linking moral reasoning to an exploration of what is valid for all, fails to conceptualize the moral importance of responding to particular individuals and situations with all their differences and complexities. Recent trends in feminist philosophy have argued that caring responsiveness to particular others and sensitivity to unique matters of the context of action is an important dimension of moral reasoning. Care ethicists argue that formalistic rational universalism mistakenly ignores such considerations.

Because both emotion and caring are commonly associated with women -- for reasons which probably stem from some combination of sexist stereotyping and actual gender differences -- Kant's separation of moral reason from such forms of reflection appears to contain a gender bias. In fact, Kant himself argues that only men can be citizens and that men have "a naturally grounded right to command" their wives,[20] and suggested that women were by nature driven by sense instead of reason and, unlike men, were most concerned with their comfort and appearance.[21] In this context, then, the identification of the moral point of view with the rational, non-emotionally conditioned

[20] Kant, "The Character of the Sexes" in his *Anthropology from a Pragmatic Point of View*, trans. Mary Gregor (The Hague: Martinus Nijhoff, 1974).
[21] See Sally Sedgwick, "Can Kant's Ethics Survive Feminist Critique?" *Feminist Interpretations of Immanuel Kant*, ed. Robin May Schott (University Park: Pennsylvania State University Press, 1997), 89.

thought of an autonomous individual, serves to further deny rational ability to women. One might think that all that is needed is a recognition that women, like men, can become autonomous in the way in which Kant suggests, but critics argue that the gender bias of the conception of reason requires its replacement or supplementation with a conception which places more emphasis on emotional attachment and perception of the needs of the particular, as proposed by care ethicists.[22]

Others have connected Kant's moral universalism to his views on the distinct natures of races of humanity. At the same time that Kant presents an original systematic defense of the universal human capacity for and right to freedom, he is one of the first to theorize that humanity was separated into several distinct races. In his anthropological work he argues that there are four distinct races of human beings and proposes a descending hierarchy in intelligence and industriousness from White, to Asian, to Negro, to Native American.[23] One could argue that this mistaken pseudo-science takes nothing from Kant's moral universalism which, if anything ought to make him cautious of any pronouncements on fundamental differences in people's capacity for moral reason. However, to others, it is not an accident that the spokesman of the enlightenment is also a theorist of racism. The principle that rights ought to be extended to all rational beings capable of autonomy was articulated at the same time as the attempt to justify slavery and colonial expansion. Just as the newly written U.S. constitution, in recognizing general human rights also systematically justifies the exclusion of black slaves from those rights, Kant's articulation of universalism recognizes a general capacity for autonomy and right

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[22] See, for example, Carol Gilligan, *In a Different Voice* (Cambridge, Massachusetts: Harvard University Press, 1982).

[23] Kant, "On the Different Races of Man," in *This Is Race: An Anthology Selected from the International Literature on the Races of Man*, ed. Earl W. Count (New York: Shuman, 1950), 16-23.

to moral consideration which is understood to only apply to particular types of people. The historical legacy of enlightenment thinkers such as Kant, in not only failing to denounce but also directly promulgating racism, raises the question of whether universalism is not always in practice understood to apply to a limited group and consequently codifies the political exclusion and lack of moral consideration for those who are othered in its conceptualization.[24] I take it that Kant's enlightenment conception has been understood and employed ideologically to further racial and gender oppression. To what extent a universalism of the Kantian form inevitably does this, I will leave undecided until my discussion of criticisms of discourse ethics.

In summary, Kant's moral universalism is subject to several criticisms that it is problematically abstract and insufficiently critical, and thus not an adequate normative basis for political action. Kantian universalism abstracts from range of interests and perspectives which people have, thus ignoring important content and failing to be properly universal. Second, it is abstracted from the individual motivations and social institutions through which agency generally occurs, making it inadequate to conceptualize actual movements in the direction of freedom. Third, it is abstracted from emotion and care, other important sources of moral action and insight, exhibiting at the same time a gender and cultural bias. This raises the question of whether a universalism can adequately enriched so as to address particular contexts and modes of moral action, or whether universalism needs to be rejected. Finally, for Kant and for subsequent

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[24] This linkage of Kant's anthropological writings on race to his moral and political philosophy is made by Charles Mills in "Dark Ontologies," in Jane Kneller and Sidney Axinn, eds., *Autonomy and Community: Readings in Contemporary Kantian Social Philosophy* (Albany: State Univerity of New York Press, 1998), 132-138, and in Emmanuel Eze, "The Color of Reason: The Idea of 'Race' in Kant's Anthropology," in *Anthropology and the German Enlightenment*, ed. Katherine M. Faull (Lewisburg, PA: Bucknell University Press, 1995), 196-237.

interpreters of his theory, moral universalism was compatible with sexist and racist views about the comparative capacities, roles and rights of different individuals. This raises the question of whether universalism does not itself contain covert content which subtly serves to justify domination.

3. Hegel's Teleological Universalism

Hegel sought to develop a theory of rationality which would avoid transcendental theories of subjectivity as well as metaphysical theories about objective reality. Not only is it senseless to speak of subjects gaining knowledge of the way the world really is, independently of knowers, but it is also impossible to know of transcendental conditions for human subjectivity per se. The nature of subjectivity and the methods of uncovering them are historical artifacts, themselves susceptible to critique. Hegel endorses a method of "dialectic" in which knowledge is grounded in continual critical reflection on problems with forms of knowledge and ways in which they might be transcended.[25] Knowledge is always a process of mediation in which the world is construed in a certain way. Knowledge involves a certain conception of what the goal or object is and formulates methods of attaining this goal. Through further action and reflection it becomes apparent that the methods are inadequate to the goal and either goal or method or both may be reconceived. For example, it becomes apparent that the objects of knowledge cannot be viewed as distinct from the knowing subject and the method of knowing cannot be viewed as a mere aggregation of sense data.[26] To have knowledge of one's own sensory

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[25] For a systematic methodological statement, see Hegel's "Introduction" in *Phenomenology of Spirit*, 46-57.
[26] Hegel, "Sense Certainty," in *Phenomenology of Spirit*, 58-66.

experience of an object or of oneself presupposes participation in a community which verifies that one meaningfully and correctly describes the world. Thus Hegel takes up Kant's critique of knowledge as a product of human agency, but extends the critique by viewing these processes as social and historical.

Hegel does not draw the pragmatic conclusion that forms of knowledge are simply tools which help people deal with historical situations and cannot, therefore, be evaluated as more or less absolutely valid. Rather, he suggests that in recognizing its previous misconstruals of subjectivity and objectivity, reason has a unifying potential which makes its own self-knowledge a possibility. Knowledge is continually advanced through self-criticism. Furthermore, Hegel consistently speaks of an "absolute" which is identified not with a transcendent God so much as with the possibilities inherent in reason.[27] Thus, Hegel avoids relativism and concludes that a teleological advance can be recognized in the process of the dialectic of forms of knowledge. Hegel interprets history as governed by the "cunning of reason" -- a force by which progress is made towards rational unification without the agents of progress being conscious of the rational grounds of this advance.[28]

In normative theory, Hegel's dialectical method implies that forms of moral and political reasoning evolve with forms of social organization. Such forms of reasoning and institutional matrixes are tied together by patterns of mutual recognition between individuals. Hegel sought to retain the enlightenment view that universal rational norms were conceptually linked to universal individual freedom. However, he understood

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[27] See, for example, *Phenomenology of Spirit*, 57.
[28] In the *Phenomenology*, Hegel cites a "cunning which while seeming to abstain from activity ... just where it fancies it is pursuing its own self-preservation and particular interest, is in fact doing the very opposite, is activity that results in its own dissolution, and makes itself a moment of the whole." (33)

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individual freedom as incoherent without an account of the social relationships and processes through which individuality and agency could be attained. In order to apply the concept of universal freedom to particular individuals, Hegel required a theory of the mediating forces through which particular individuals could gain freedom within a generally rational framework.[29]

In his famous dialectic of the master and servant, Hegel describes a process through which each can only recognize themselves by gaining recognition from the other. The asymmetrical relationship of master and servant results in a limitation in the ability of each to attain their goals of autonomy, and the relationship becomes thus unstable.[30] Though Hegel does not work out a systematic social theory in terms of recognition in *the Phenomenology of Spirit*, it is clear that the identity and freedom of each person requires recognition by others and these relationships can be more and less successful in granting promoting the freedom of recognizing oneself. And, while Hegel also does not consistently employ the framework of recognition relationships in working through his major political work, the *Philosophy of Right*, he does continue to refer to universal autonomy as based in institutionalized relationships with others,[31] using arguments which might be recast in the terms of recognition.[32]

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[29] For a statement of methodology regarding political philosophy, see Hegel's "Introduction," in the *Philosophy of Right*, 25-64.

[30] Hegel, "Independence and Dependence of Self-Consciousness: Lordship and Bondage," *Phenomenology of Spirit*, 111-119.

[31] See. for example, the discussion of duty as relational, *Philosophy of Right*, par. 148.

[32] Habermas has argued that Hegel thought most systematically of human identity and the normative basis for social relationships in his early writings at Jena, and that the *Phenomenology of Spirit* as well as the *Philosophy of Right* retain only the fragments of such an intersubjective basis of moral norms, as he came to replace dialogical relationships with the idea of a rational totality. See Habermas, "Labor and Interaction: Remarks on Hegel's Jena Philosophy of Mind," *Theory and Practice* (Boston: Beacon Press, 1973), 142-169). This reading of Hegel has also recently been put forth by Axel Honneth in *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, Mass.: MIT Press, 1996), chaps. 2 and 3.

In the *Philosophy of Right*, after beginning with a discussion of individual

freedom in terms of unrestricted, self-interested agency, or "abstract right," and a

discussion of respect for moral duty, Hegel argues that in the modern world a set of

institutions is being established which make possible universal freedom. He calls this

rational set of institutions "ethical life." Ethical life involves a heterosexual, patriarchal

family, the market economy, "corporate" associations based on roles in production, and

the republican monarchical state.

The patriarchal family, in the form of a heterosexual, monogamous couple with

children, provides people with unconditional recognition from others and thus the basis

for individual self-respect. Familial relationships give each person recognition,

attachments, connections and recognition as particular individuals. It provides a way of

organizing society through self-sufficient, reproducing economic atoms, and also

provides a domain for people's realization as natural, embodied beings.[33]

Civil society, i.e. the market and associations such as work-related corporations,

provides a sphere in which individuals undertake meaningful work for their community,

develop a self-consciousness of their abilities, and earn the material basis for continued

existence. The management of private property permits people to develop capacities by

objectifying their labor, and gain recognition from their community as their capacities

and products are given an exchange value. Furthermore, adopting Adam Smith's theory

of the invisible hand, Hegel suggested that though in the market, each individual pursues

their own "subjective" good, this universal self-interest collectively produces the

common good. In the "system of needs," Hegel's term for the free market, new goods

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[33] *Philosophy of Right*, 199-218.

and new forms of labor are continually created, thus expanding the scope of human freedom.[34] Thus, the market is a perfect example of mediation between individual and society and of what Hegel calls the cunning of reason -- patterns of action which have beneficial results though none of the agents reflectively pursue these results.[35]

Hegel later qualifies that the market also has deleterious effects on human freedom. Anticipating Marx, he suggests that the system of competitive individualism with its increasing division of labor tends to lead both to an impoverished rabble and people's general alienation from the full range of their possibilities and those of other people.[36] Hegel suggests that poverty might be alleviated by state welfare and the stimulation of new markets and that alienation could be addressed by "corporations" -- affiliations of people with similar jobs in the system of needs -- which would mediate between economic agents and the state.

Finally, the state is required to ensure that the various particular wills acting in the market are incorporated into and able to recognize themselves as part of a rational whole. He endorses a combination of a monarch with a legislature and large bureaucracy. He rejects democracy as a process which is irrational and alienating.[37] For Hegel, political participation occurs through the corporations, so as to ensure that people find a recognition-granting solidarity in such participation. While these corporations contribute advice to state policy making, Hegel ultimately views them as too particularistic to make

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[34] See Hegel's discussion of the "System of Needs," *Philosophy of Right*, 227-239.

[35] Hegel states, "In this dependence and reciprocity of work and the satisfaction of needs, subjective selfishness turns into a contribution towards the satisfaction of the needs of everyone else. By a dialectical movement, the particular is mediated by the universal so that each individual, in earning, producing , and enjoying on his own account, thereby earns and produces for the enjoyment of others" (*Philosophy of Right*, par. 119).

[36] *Philosophy of Right*, par. 243.

[37] *Philosophy of Right*, par. 308.

state decisions. The corporations play an important role of providing publicity of state policies and securing public agreement about the rationality of their society.[38] In the end, Hegel argues that it is educated state bureaucrats, operating separately from the egoistic market, who are able to disinterestedly develop policies which further the common good and the health of the whole state. Thus the modern state with political representatives who take the holistic perspective of state administration, is the concretization of the historical development of reason which has finally come to know itself as a product of its own reflection.[39]

Hegel's sees himself as preserving what was valuable in Kant, namely a universalism based on a confluence of the recognition of duty and the general freedom.[40] discussion of ethical life gives his universalism a concrete grounding lacking in that of Kant. People are considered as beings in need of recognition, thus requiring systematic social structures to support their moral agency. They require meaningful, understandable links between themselves and the state's political and economic realms. The moral duties and rules which the state develops are created in a framework which incorporates the self-realization of individuals. The entire framework is given plausibility because it is grounded in actual institutions rather than in terms of a conception of how things ideally should be. Hegel seems to provide a powerful outline of the way that universal, reason-based freedom is actually being achieved.

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[38] Hegel discusses the process of constructing public opinion in *the Philosophy of Right*, pars. 314-318.
[39] For the assertion of the universalistic perspective of the bureaucratic middle class, see *Philosophy of Right*, par. 297.
[40] See, for example, Hegel's addition to par. 133, *Philosophy of Right*, where he remarks that Kant has appropriately stressed the dependency of moral autonomy on duty.

4. Critique of Teleological Universalism

While Hegel's concept of ethical life offers a concreteness lacking in moral universalism, it does so at the expense of supporting particular interests and worldviews which are presented as universal. Hegel's location of freedom in modern insitutions betrays three uncritical tendencies. First a tendency to incorporate assumptions about essential natures which violates the dialectical methodology. Second, a failure to recognize ways in which current institutions inherently produce forms of injustice, domination and alienation, which contradict the attempt to find universal freedom in them. Finally, Hegel's attempts to solve these tensions by referring to the state as a rational subject which is both the product and tool of an inherently teleological world, a highly dubious notion.

First, in arguing for the patriarchal family as a necessary form of rational ethical life, Hegel relies on elements of biologism. Hegel's endorsement of heterosexuality and of the male as the head of the family and its representative in civil society and the state relies on arguments that natural sexual differences dictate forms of social life. Hegel's argument for the necessity of women's confinement to the roles of housewives and mothers is given a dialectical framing: it is a mediation between spheres of social life and between biological and social existence. However, dialectic cannot explain the specific need for women to play this mediating role while men engage in the "universal" tasks of economics and politics. Hegel's general demand for universal individual self-realization seems to require that ultimately everyone could live out a life with both particular, emotional, physical bonds and reflective engagement on the functioning of society. To accept that these roles be systematically divided between men and women, and limited to

expression in a monogamous heterosexual family, thus justifying patriarchal relationships, is ideological.

Hegel also draws on biological arguments to justify the need for class differences. He suggests that the division of labor is in part a reflective of natural differences.[41] Hegel's social constructionism does not permit him to justify social arrangements biologically -- at least, not without discussing the possibility of mediating those differences through alternative institutional arrangements. Alternative arrangements are imaginable in the case of both gender and class divisions, and were being proposed as Hegel was writing.

A second set of problems relate to Hegel's inability to demonstrate how a society based on a market economy could be described as yielding universal freedom. Hegel never solves the problem which he raises regarding poverty. He acknowledges that some form of systematic solution, as opposed to reliance on contingent charity, is required by human dignity and social stability.[42] However, state welfare tends to be inconsistent with both the functioning of the market on the one hand and the self-esteem of individual beneficiaries on the other. Nor is it a viable general solution for states to endlessly expand their markets into other nations. This can only work for some states and makes the situation worse in other states, and even the global market is ultimately finite.

Furthermore, economic alienation spills over into political alienation and general social disaffection. Those who do not have a basis to develop their skills and receive recognition through labor in the system of needs, are not prepared to act as ethically

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[41] Hegel speaks of "an inequality posited by nature," *Philosophy of Right*, par. 200.
[42] *Philosophy of Right*, par. 242.

responsible citizens; hence Hegel's assertion that the unemployed become a rabble.[43] On the flip side, social and political alienation do not simply arise for the poor. Even if one takes the state to have a beneficent role in redressing the effects of the market, a large portion of people's lives remain dominated by the participation in the world of work. Writing recently after Hegel, Marx argues that Hegel's separation of the roles of bourgeois (economic agent), homme (man or person), and citoyen (citizen) presuppose the lack of actual freedom in any sphere of life. In fact the imperatives of the market begin to dominate personal and political freedom as well as business activity.[44]

To be free, on Hegel's own definition, a person must recognize himself or herself as part of a rational society. Hegel suggests that through the associations of the corporation as well as through the functioning of the bureaucratic state,[45] everyone will be able to gain meaningful recognition as a particular individual and be able to understand society as a whole.

However, the viability of the corporation as a mediating force between individual economic agents and the whole state is doubtful. It seems dubious to think that corporations could transcend class differences within industries and become places in which all receive recognition for their individual contributions and have their interests represented within the state. If the corporation could secure the attachment of individuals to each other and the larger state, it is not clear that this endorsement would not be based on false consciousness, as in fascist nationalism.

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[43] *Philosophy of Right*, pars. 243-5.

[44] Karl Marx, "On the Jewish Question," in *The Marx-Engels Reader*, ed. Robert Tucker (New York: W.W. Norton and Company, 1978), 46.

[45] I ignore Hegel's claim that a monarch is necessary for a rational society. His defense of hereditary monarchy is idiosyncratic and, in comparison to the rest of his ideas, passe. The other institutions composing ethical life are also relatively separable from the monarch.

Hegel also suggests that the power of corporations to contribute to state decisions would have to be limited, due to the particularity of their perspectives. It seems that without a democratic process through which people can challenge the structure of the state and the process of the market, political freedom is limited to assenting to the state as it is. The fact that corporations of this sort have not developed in the modern world, despite their necessity to protect against the alienation of the free market and liberal state, supports this argument that they are inadequate to the task Hegel assigned them.

Ultimately Hegel's argument that modern liberal, patriarchal, capitalism provides universal freedom is predicated upon his claim that the bureaucratic state is a rational whole capable of self-knowledge and fair adjudication of difficulties which arise. The latter rests in turn on his claim that bureaucrats can take a universalistic perspective. However, Hegel's bureaucrats, who he describes as professionals and intellectuals, will generally be males from the upper social classes, so are unlikely to provide universal representation to the working class and women. Furthermore, because of the influence of corporate and other powerful lobbies, state bureaucrats are not in a position to criticize and correct for domination, but rather tend to maintain the status quo. Finally, legislation is circumscribed by the market and the family, so laws tend to respond to retroactively to the most egregious and obvious injustices, while failing to proactively formulate just norms.

To claim that the bureaucrats can take on a universal perspective is to take the state for granted as a coherent, rationally functioning whole. Though particular individuals do not necessarily recognize its rightness, the state is a macro subject which realizes freedom. However, this conception of a collective subject is highly dubious.

Actual states lack a unified perspective and agency. Though individuals are not coherent separate from society, societies themselves are not unities which collectively embody the combined ideas, values, desires, and cultures, etc. of all of its members. People live their lives as individuals and, at least in the institutional framework given by Hegel, if not in all societies, have differences in culture and value and have asymmetrical relationships. Universal freedom cannot be merely posited by their all living under a constitutional system guided by educated bureaucrats.

Hegel's support of the state as a collective is partly predicated on his general theory of teleology. However, Hegel assumes that the world is becoming increasingly rational, under the direction of modern states, instead of demonstrating it. The assumption is highly questionable. For example, though the modern world has greatly increased productive capacity, this capacity has not been consistently used to pursue human fulfillment. The employment of technology by the modern economy, state, and family has lead to poverty, unemployment, alienation, war, and environmental degradation of a magnitude and quality unknown centuries ago. Furthermore, it appears that the very systems which Hegel believes will lead to freedom play a role in preventing rational reconstruction. The prevalence of the market means that the totality is not rationally planned and the fact that the market grows on the basis of exploitation of labor belies attempts to describe the invisible hand as a form of the cunning of reason. If progress is possible, it is not an inevitable and continual march. Hegel's teleological universalism does not provide the tools for distinguishing genuine advancements from false ones, for he ratifies all products of modern institutions as thereby rational.

Hegel's theory of ethical life provides a universalism located in practices through which human freedom could be realized. Thus Hegel supports his view by drawing on actual sources of motivation, identity formation, and institutional organization. However, we saw that while Hegellian universalism thus avoids certain aspects of Kantian abstraction, it fails to be sufficiently critical as a concept of political freedom. First, we saw that Hegel violates his own method by drawing on assumptions about biological essences to support the division of labor and the patriarchal family. This raises questions once again about whether enlightenment conceptions of universalism do not inevitably incorporate content which favors dominant groups and betrays its universalism. Secondly, Hegel's argument that freedom can be attained within contemporary institutions is incomplete, given the extent of domination within the family and the market, and their affect on any political measures. Finally, Hegel attempts to solve the tensions in his universal ethical life by suggesting that the modern state is a rational macro subject produced by the internal teleology of the world, and through its bureaucrats can attain universally valid structure, an assumption which seems false. Thus it appears that attempting to outline ways in which predominant institutions emobody freedom achieves a concrete universalism at the expense of being insufficiently critical. In fact, in failing to address forms of domination and conflicts within society, Hegel's ethical life might itself be said to perpetuate a form of abstract universalism.

5. Marx's Materialist Universalism

As we saw above, Marx criticized Hegel's theory of ethical life as ideological and still abstract. Yet Marx borrowed the method of thinking dialectically in order to

establish a critical universalism with practical intent. Marx thought that through criticism of the failure of moral and teleological universalism, it would be possible to recognize possibilities for genuine emancipation. For Marx, Hegel's teleological idealism had to be dropped and material conditions and social relations -- particularly those of ownership and the division of labor -- had to be viewed as organizing principles of history and thought, without assuming the world was moving towards a rational totality. Thus Marx developed the thesis that ideology, conditioned upon relationships of domination, further served to reify contingent relationships as naturally given facts.[46] Political economy, the scientific prediction of the patterns of production and consumption which is used to secure the stability of the state, is only possible with the assumptions of private ownership, wage labor and universal free exchange in the pursuit of profit. The laws of political economy are actually predicated on the commodification of all goods, including human labor power.[47] Marx showed that capital accumulation, i.e. profit, is based on the purchase of labor power which produces more value than is necessary to reproduce it.[48] This is to say that political economy is predicated on the exploitation of the working class by the class that owns the means of production. Political economy thus serves to both legitimate and obscure capitalist domination.

Furthermore, ideology, or "hegemony" as Gramsci later calls it, infuses everyday understandings of the world. Marx discusses this process most suggestively under the section of *Capital* termed "the fetishism of the commodities." There, he claims that in universal market exchange, the labor and network of social relations which produce the

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[46] Marx, "The German Ideology," in Tucker, 173.
[47] Marx, "The Grundrisse," in Tucker, 236-244.
[48] Marx, "Capital, Volume One" in Tucker, 329-343.

world of objects are subordinated to considerations of profit. Thus the social world is subordinated to and obscured by the exchange of things and, at bottom, money as the medium of all exchange.[49] By theorizing the conditions for universal autonomy and freedom without a critique of commodification and its corollary class society, Kant and Hegel fail to conceive of emancipation from capitalism's systematic domination and alienation.

Marx, of course, argues that domination and alienation can be overcome by the proletariat becoming class conscious, abolishing capitalism, and instituting socialism. Production and distribution would be planned for human actualization instead of profit; thus all could attain freedom.[50] Though he sometimes writes as if the road towards communism is inevitable, it can only be said for certain that Marx sees some of its conditions arising under capitalism: the proletarianization of the mass of humanity, increasing poverty and crises of overproduction leading to destabilizing misery and dissatisfaction, increasingly organized communication through urban production centers, and a level of technology and social division of labor which makes the elimination of scarcity and a short working day possible.[51]

Marx does not write at length about how socialism or communism would be organized. In his early work, Marx referred to a species being from which people are alienated under capitalism.[52] However, he drops direct allusion to such a teleological standard in his later writings, suggesting that he recognizes difficulties in defining the good life in a way which applies to everyone and which is not limited by historically

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[49] "Capital, Volume One," 319-329.
[50] See for example, Marx and Engels, "The Communist Manifesto," in Tucker, 469-500.
[51] See "Communist Manifesto," 473-483.
[52] Marx, "Economic and Philosophic Manuscripts of 1844," in Tucker, 66-125.

available conceptions of agency and does not rest on the romantic conception of a natural, spontaneous freedom that will emerge once the existing order is overthrown.

In his later work, Marx argues that the structure of socialist society cannot be planned in advance in is not the task of the theorist. Though he suggests a few different ethical principles, such as "from each according to his abilities; to each according to his needs,"[53] he does not consistently endorse any principles for governing socialist life. The most consistent normative idea in Marx is, rather, that the class conscious proletariat will correctly perceive what should to be done.[54] This idea of the working class as a revolutionary class, embodying the praxis in which knowledge in directly linked to general emancipation is explicitly thematized by Lukacs in *History and Class Consciousness*.[55] On this view, the proletariat replaces Hegel's bureaucrats as a universal class who are able to take on a general perspective and realize the common interests of humanity. Whereas Hegel's bureaucrats were ascribed a universal standpoint by the status of the state as ethical totality emerging in a teleological history, Marx's proletariat gets its status by virtue of its creating the world through its social labor, by being the majority of humankind, and having it in its interest to abolish class relationships altogether.[56]

Marx's version of enlightenment universalism retains Hegel's practical grounding in actual social tendencies. Yet rather than uncritically endorsing existing institutions, Marx's universalism is based on the conditions for achieving universal freedom, thus

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[53] Marx, "The Critique of the Gotha Program," in Tucker, 531.
[54] In the "Communist Manifesto," (482-483) Marx and Engels speak of the proletariat as a revolutionary class, having it in their interests to abolish all class differences. In his "Critique of the Gotha Program," Marx goes on to say that during and following the revolution, there would have to be a dictatorship of the proletariat before democracy could be established (538).
[55] Georg Lukacs, *History and Class Consciousness* (Cambridge, MA: MIT Press, 1992), 83-222.
[56] "The Communist Manifesto," 482-483.

remaining consistently critical of domination and practically helping to conceive of the conditions for emancipation.

6. Critique of Materialist Universalism

Marx's version of enlightenment universalism, like those of Kant and Hegel, is not sufficiently critical, and is even in some ways remains overly abstract and impractical. Critics charge that Marx lacks a clear normative basis for his critique of capitalism and support of socialism, arguing that the notion of the proletariat as a universal class is incoherent. Furthermore in only centrally thematizing struggles over the emancipation of labor, Marxism fails to theorize the conditions for a genuinely universal pursuit of freedom. Finally, actual social and political circumstances require a rethinking of Marx's practical conditions for universal freedom.

The notion of the proletariat as a universal class, influentially promulgated in the Lukacsian interpretation of Marx, is dubious. First, it is not clear how Marx explains his own knowledge that there exists something like the standpoint of the proletariat. If he cannot "write the cookbooks of the future," it also difficult to know how he knows who will write them. Even if we grant Marx this initial vision, it is not clear what gives the proletariat its universal normative perspective, or from where this content will come. Clearly the proletariat has interests in overcoming its exploited status, but in terms of setting up new relations of production and whole new distributive systems, the fact that the proletariat is oppressed does not give it access to institutionalizable alternatives or methods of evaluating their relative justice. At times Marx suggests that the predominant moral concepts such as freedom, equality and happiness are all capitalist ideologies,

calling into question whether such standards have any role to play in the just society. Marx even suggests that the idea of human rights is something which is specific to alienated, egoistic life in capitalist society and would no longer exist under communism.[57]

Lukacs's Hegellian Marxism suggests that in its status of socially laboring to shape the world, the proletariat acquires an understanding of itself as the force which determines how the world works and develops an interest in and capability of attaining universal freedom. However, laboring does not directly imply a conception of justice. It provides knowledge of some ways in which objects can be manipulated and what some of the difficulties and pleasures in such manipulations are. Presumably some ideas of justice might occur in the deliberative process of laborers cooperating, but the way in which to conceive of this cooperation is not discussed by Marx.

Marx might reject the notion that the proletariat should be viewed as a single macro subject along the lines of the Hegellian state. Rather, he might argue, shared experiences and collective action gradually lead to critical insight and a motivation to change the world. Yet, it remains the case that the critique of capitalism and conceptualization of a socialist alternative require more normative guidance than Marx provides. Without a concrete conception of moral reason and political organization, there is no clear normative ground for overthrowing capitalism and replacing it with new institutions providing a qualitatively new and higher form of freedom.

Marx's failure to provide a political ethic which can guide criticism is heightened when takes into account the problem that society is not constituted by production alone,

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[57] For example, in "On the Jewish Question," Marx argues that "the rights of man" merely preserve the rights of egoism and self-interest (Tucker, 43).

and domination is not limited to the exploitation of wage labor. Feminists have noted that Marx spends little time discussing the reproduction of society through child rearing and culture, though these are also essential to modern society and are areas in which men have tended to subordinate women. In her *Feminist Politics and Human Nature*, Alisson Jaggar argues that Marx waffles between explaining patriarchal gender relationships through economic causation or through natural gender differences. Both accounts are implausible. The first fails because there are many features of male domination which do not further the expansion of capital, or directly respond to struggles over the division of labor, such as the historic underemployment of women, violence against women, and other cultural forms of discrimination. An economic account also will not explain why it is specifically men and women who play the economic roles that they do. The biological account is inadequate for the reason which should be clear to Marx: human nature is a social and historical artifact and cannot be used to explain social organization such as the division of labor. [58] The exclusion of women and racial or ethnic minorities from full cultural and political membership and the exploitation of their physical and emotional labor through the patriarchal family and slavery demonstrate that wage laborers do not necessarily represent universal interests. Also, the way in which women and minorities are discriminated against within the (wage laboring) work force indicates that the proletariat itself is not a unified group, with one set of interests, one perspective. Wage laborers have various statuses and share in the benefits of capitalism to varying degrees, a point which is even more clear if one considers the inequalities between the proletariats of the "first" and "third" worlds. Domination, and hence the need for social criticism and

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[58] Alison M. Jaggar, *Feminist Politics and Human Nature* (Totowa, NJ: Rowman & Littlefield, 1988), 69-79.

political struggle, is not limited to exploited labor. Thus, universalism requires either supplementation by additional perspectives or a more general normative underpinning than that provided by Marx.

Finally, an assessment of the contemporary economic and political world casts doubt on Marx's assessment of the means to and forms of emancipation. Industrial wage laborers have not become the great proportion of humanity that Marx predicted. Service workers and professional and managerial dealers in paperwork and information make up growing percentages of workers in the most industrialized capitalist societies.[59] Also, the possibilities of a revolutionary class consciousness among the proletariat seems to be farther away than when Marx wrote. Rather than becoming increasingly exploited, threatened by unemployment, and political in their joint resistance to this phenomena, it seems that with liberal reforms such as the minimum wage, union bargaining, unemployment benefits, public sector investments and public works projects, and the lure of consumerism in a world replete with differentiated goods and services, workers are far from a revolutionary consciousness.

Furthermore, after the recent failure of experiments in socialism and their general record of authoritarian government, abuses of human rights, inefficiency and ecological hazards, there do not appear to be any remaining concrete alternatives to capitalism.[60]

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[59] Though some Marxists would argue anyone who sells his or her labor power is part of the proletariat. On this definition, the proletariat remains the vast majority of humanity. Furthermore, on an international level, while the developed North has seen a rise in professional workers, relatively unskilled labor compose a large percentage of humanity.

[60] There is, of course, much debate about what the implications of the collapse of communism in Europe are for the critique of capitalism. First, the crises in communist economies can be argued to have been largely caused by the need to compete with capitalist economies, implying that communism might be workable if adopted worldwide. Second, as many note, communism did not take the democratic course envisioned by Marx. Finally, many critics of capitalism now endorse forms of market socialism largely untried in Europe. In any case, it remains true that the failure of economic systems designed in order to realize Marxist aims casts doubt on whether the project is workable and in precisely what form.

These social conditions and historical trends make it still more implausible to describe the standpoint of the working class as the standard of social criticism. Nor, without a consistent normative standpoint and an exposition of practical alternatives, is it clear that socialism is a desirable and viable political goal.

Marx's conception of the enlightenment, like Kant's and Hegel's, is subject to charges of incorporating uncritical content and ultimately of abstractness. Centrally, Marx does not provide an adequate philosophical normative grounding for the critique he undertakes and the struggles he imagines. His notion of a universal class, though more sensitive to conflict and contingency than Hegel's, remains dubious. As well as maintaining traces of a metaphysical account the core of the human nature, he is not sufficiently critical in recognizing various forms and dimensions of domination. Finally, though Marx offers a concrete, practically-oriented universalism, its applicability to the contemporary world is questionable.

7. The Postmodern Rejection of the Enlightenment

The history of enlightenment theory raises the question of whether any philosophically defensible universalism can be sufficiently critical and practical to function as a political ethic. It is now widely held among theorists concerned with political ethic that neither an abstract moral universalism nor a concrete ethical or materialist universalism is defensible.

There is, of course, a long tradition of empiricist philosophy which rejects the rationality of any discussion of values on the grounds of lack of verifiable content. However, much recent skepticism about moral universalism is based primarily on the

extent to which human nature and rationality are historical artifacts and the extent to which theories about them have themselves been instruments of domination. It is argued that the lesson of modern theory is that human reality is profoundly constituted by socio-historical ways of life and languages and that it is thus impossible to say anything about humanity which is valid across all cultures, languages, historical periods and social differences. The world can neither be comprehended as a coherent rational totality nor as containing movements which could instantiate a concrete universality. Any theory about the world, including about morality, is itself a part of that world and is bound up with the web of meanings and power relationships which govern the world. The effort to complete the enlightenment project by specifying universally valid normative principles, linked to a theory of general emancipation, must be abandoned. These contemporary, historicist rejections of normative universalism tend to fall under what is called postmodernism; however versions of these criticisms are also made by many feminist and communitarian political philosophers.[61]

Postmodernists draw on Nietzsche's genealogical account of the historical rise of morality, as well as Marxist critique of ideology, to argue that moral talk itself is not innocent and makes a choice between possible value systems. Foucault argues further that efforts to shape the moral self can generally be seen a forms of power which construct subjects according to the demands of the modern world. Even efforts at humane reform exert a normalizing power as their regimes of knowledge are used to

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[61] Both "postmodernism" and "communitarianism" are notoriously problematic terms, not clearly defined, and not accepted by many of those thinkers who are taken to paradigmatic of the movements. However, I take it that each term does, by general understanding, refer to a range of positions, some of which I will elaborate below.

discipline individuals.[62] On this reading, no formulation of practical reason stands outside the matrix of discourses which hold power over the self. Politically, Foucault has argued that there is always resistance to power, but has been skeptical about the ability of theory to make any general claims about the practical conditions or normative grounds of resistance. He suggests that theory at best can "problematize" regimes of knowledge/power.[63]

Others, such as Lyotard[64] and Derrida,[65] drawing on psychoanalytic and linguistic theory, argue that the very concepts and terms in which moral language is expressed contain inevitable exclusions and inconsistencies. The attempt to say anything universal about rationality and freedom suppresses difference and excludes certain discourses and ways of being. Moral and political universalism rest on metaphysical assumptions about the coherence of subjectivity and/or stem from a will to power, and serve to erase or suppress differences and reify forms of exclusion. It is suggested that emancipation needs to be reconceived in terms of open, just relationships to particular excluded, repressed or dominated groups or individuals.

Such "postmodern" conclusions do not stem solely from the direct theoretical descendants of Nietzsche and Heidegger, but also from neo-Marxists. The representative thinkers of the Frankfurt School, which aimed to carry out Marxist social critique with a complete theory of modern culture, psychology, and government as well as economics,

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[62] See for example, Michel Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality,* ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 87-104.

[63] See "Polemics, Politics and Problematizations: An Interview with Michel Foucault," in Paul Rabinow, ed., *The Foucault Reader* (New York: Random House, 1984), 384.

[64] Notably in *The Differend: Phrases in Dispute* (Minneapolis: University of Minnesota Press, 1988).

[65] Notably "The Force of Law: The Mystical Foundation of Authority," *Cardozo Law Review* 11: 919, and *The Politics of Friendship* (London: Verso, 1997).

came to similar conclusions about the impossibility of a theory of the conditions for emancipation. Horkheimer and Adorno's *Dialectic of Enlightenment*, the most systematic exposition of the Frankfurt school's stance on the enlightenment, argues that enlightenment always has a dark side of exclusion and self-sacrifice. The modern world's ethical ideals along with its cultural productions and scientific and technological worldviews, are seen as predicated upon an instrumental rationality in which reasoning subjects subject their thought to the demands of a mechanized system. Though they accept much of Marx's critique of modernity as characterized by systematic reification, Horkheimer and Adorno find no contradictions within capitalist society which might lead beyond the iron cage of instrumental reason.[66] Documenting the rise of consumerism and mass culture in democratic countries, the frequent fascistic tendencies of the working class, and the lack of freedom in existing forms of socialism, they see no modern trends, social movements, or ideals which can serve as the basis for a theory of emancipation.

Communitarians have joined postmodernists in the criticism of moral universalism. Here it is argued that universalism fails to account for the way in which norms are ultimately relative to the practices of particular communities. A standpoint outside such communities is impossible to justify consistently, as the theorist must write from a certain perspective, in a certain language. Michael Sandel has famously argued that the liberal enlightenment project of constructing general principles of justice which could be recognized by any rational being presupposes a false notion of an unencumbered self with no personal and cultural commitments.[67] Alasdair MacIntyre has argued that

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[66] Max Horkheimer and Theodor Adorno, *The Dialectic of Enlightenment* (New York: Continuum, 1994).
[67] Michael Sandel, "The Procedural Republic and the Unencumbered Self," in Shlomo Avineri and Avner de-Shalit, eds., *Communitarianism and Individualism* (Oxford: Oxford University Press, 1992).

rationality, in the final analysis, is a matter of clarification on the part of the individual

agent of who she or he is, what tradition she or her is a part of, and what resources that

tradition has for addressing contemporary issues.[68] From the communitarian viewpoint,

as well as the postmodern, the enlightenment distinctions between reason and emotion

and reason and tradition, leave us with one-sided, contingent, and stultifying conception

of moral agency. Thus, Sandel and MacIntyre undertake a Hegellian-style critique of

liberalism but, unlike Hegel, offer no general theory of moral reason with which to

replace it.

Universalism, both liberal and Marxist, has also been a target of feminist

criticism. Feminists have argued that it is not an accident that Kant, Hegel, and Marx,

though expositing the need for freedom for all rational beings, did not see this as

implying a systematic criticism of male domination and, at least in the case of Kant and

Hegel, directly supported patriarchal gender relationships. The rallying cry of

universalism has generally been a false one which both continues and covers up many

exclusions. Iris Young has argued that the (enlightenment) "ideal of universal

citizenship" works against the emancipation of oppressed groups by, first, assuming the

presence of a general will which is in turn used to exclude those who are not capable of

adopting this standpoint, and, second, preserving the advantages of the privileged by

giving them equal treatment as the underprivileged.[69]

The abstract concepts of subjectivity, autonomy, and rationality have historically

and psychologically been associated with maleness. Luce Irigaray, for example, draws

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[68] Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988).

[69] Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in Ronald Beiner, ed., *Theorizing Citizenship* (Albany: State University of New York Press, 1995), 175-207.

on psychoanalysis to critique philosophical theories of knowledge and subjectivity as "phallocentric" -- modeled specifically on masculine experience while suppressing the feminine on which it relies.[70] Furthermore, in order to secure a generality that might hold for all reasoning beings, moral universalism requires abstraction from particular attachments, emotional expression, and experience of the body. The definition of reason in contrast to emotion and body seems to endorse ways of reasoning which are predominantly masculine and may be used to deny the rationality of women and the claims that they make.[71] This array of feminist criticisms suggests that any ethical theory couched in enlightenment terms will tend to legitimate or, at least, be insufficiently critical of sexism.

Similar arguments could be made with respect to other groups, particularly racial and ethnic minorities. The United States began to systematically exclude blacks from full citizenship at the same time that the liberal doctrine of human rights based on reason was being formulated. Public discussions of rationality and reasonability frequently bear more or less subtle racial, ethnic and class coding. Because of the history of racist use of enlightenment theory to deny rationality to nonwhites, and because of actual differences in styles of thought and political interests along racial and ethnic lines, the continuing attempt to provide a universal moral framework for thinking about political issues appears to be a colonial justification of European ascendancy.

It could be argued that the philosophical critique of the enlightenment is paralleled in the nature of political struggles for freedom. It seems that besides the

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[70] Luce Irigaray, *Speculum of the Other Woman* (Ithaca, NY: Cornell University Press, 1985).
[71] The exclusion of the emotive element in universalist theories of morality is famously criticized by Carol Gilligan, *In a Different Voice*. For an example of the discussion of the exclusion of concern for the body, see Alison Jaggar's critique of liberal feminism, *Feminist Politics and Human Nature*, 46-48 and 186-190.

neoliberal forces attempting to preserve economic growth and reactionary forces urging a return to traditional mores, politics is characterized by a plurality of struggles for the emancipation of disadvantaged groups -- women, Blacks, Latinos, American Indians, gays and lesbians -- to name some of the most prevalent in the United States alone. Politics alone. Such struggles, because they are based upon the identities, interests, perspectives, and values of particular groups, appear to defy an ethic based on universalism. It seems that such groups have little motivation or ability to undertake a holistic critique of contemporary society which characterizes the various forms of domination and alienation and theorizes ways in which they can be overcome together. In light of contemporary pluralist politics it seems naïve to defend enlightenment universalism. In fact, it seems that universalism is disadvantageous to precisely those groups who already face oppression and who are most concerned to struggle for the increased freedom.

8. Conclusion: The Challenges Facing Normative Universalism

Thus an array of arguments suggest that moral universalism inevitably abstracts from real contexts in a way which makes it, at best, inapplicable to the actual pursuit of freedom and, at worst, ideological in its effects. This analysis of the history of universalism and its criticisms, as represented in the work of Kant, Hegel, Marx, and contemporary critics of the enlightenment yields several general categories of criticism.

First, formulations of philosophically rigorous moral universalism, as in Kant, abstracts from concrete circumstances and conditions, thus fails to lead to practical guidance. Such universalism also tends to abstract from important concerns and

perspectives, including emotional responses, sensitivity to context, and motivations based in actual identities. However, universalisms of the ilk of Hegel's and Marx's which attempt to generate concrete content, based in the actual world, result in their own difficulties. To the extent that their content is based in present tendencies they ideologically affirm existing conditions and institutions as rational and just, when in fact they are unjust. On the other hand, to the extent that they cast their lot with particular struggles, they risk excluding other concerns from their purview and remaining insufficiently critical. Finally, from the standpoint of postmoderns, all of these attempts to assess the possibility for human freedom in sweeping, universal terms incorporate covert content which supports dominant groups and perspectives and suppresses differences.

If critical theory is to serve "the self-clarification of the struggles and wishes of the age,"[72] as Marx once wrote, it is not clear that it can take the form of enlightenment universalism. For such universalism tends to be both too abstract to be critical of domination in all its myriad forms and impractical as a political ethic which can illuminate the terms of emancipation. If enlightenment political ethic cannot be formulated which avoids these various tendencies, then it seems that rational universalism will need to be replaced by postmodern, pragmatic, and/or communitarian conceptions of particular critiques and struggles.

In the next chapter, I outline a political ethic formulated to preserve normative universalism, while learning from the critique of enlightenment abstraction and

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[72] Karl Marx, "Letter to A. Ruge, September 1843," cited b y Nancy Fraser, "What's Critical About Critical Theory: The Case of Habermas and Gender," in *Unruly Practices: Power Discourse and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989), 113.

dogmatism, namely the discourse ethics of Jurgen Habermas.

CHAPTER III. HABERMAS'S DISCOURSE ETHICS

These historical attempts to formulate a universalistic normative political framework and their subsequent criticisms have served as the background for the work of Jurgen Habermas. Habermas, who studied with Horkheimer and Adorno, was aware that the internal criticism of the enlightenment had undercut its own theoretical basis and that it appeared impossible to provide any general framework for assessing the contemporary possibilities for human freedom. Nonetheless Habermas has pursued a new theoretical program aimed at preserving normative universalism while incorporating the insights of the critiques of previous conceptions of the enlightenment. In order to avoid not only groundless or relativistic postmodernism but also the abstractness of previous universalism, Habermas analyzes society in terms of communication and the validity of social norms in terms of an ethic of discourse.

Discourse ethics preserves from Kantianism a universalism in which morality is based upon reason and ultimately upon the inclusion of all of humanity. However, discourse ethics incorporates the Hegellian critique of Kant, as well as later developments in the philosophy of language, social psychology and sociology, in arguing that normative rationality must be viewed as an intersubjective, dialogic process. Rather than attempting to reconstruct the transcendental conditions for a subject to gain knowledge of the world, Habermas examines the presuppositions of agents who make claims about what ought to be done. Also, like Hegel, Habermas develops an analysis of the institutions of modern society in order to show how the normative framework can be effectively employed in practice. His analyses of the public sphere and his interpretations of law are attempts to show that discourse ethics is not an empty ideal or one which

brackets out important ethical considerations, but rather is a concrete political ethic. Though finding an inherent rational content within certain modern concepts and procedures, Habermas attempts to incorporate Marx's critique of Hegel's ethical totality, by demonstrating ways in which the use of reason can be shortcircuited by social forces. Habermas analyzes systematic distortions in communication, reinterpreting the commodity fetishism and other forms of contemporary domination as results of the overextension of the logic of certain functional systems. Finally, Habermas refuses the Marxist solution of the rationalization of society through a rational totality in the governance by a universal class. Rather, the possibility for emancipation is located in the potential for democratic challenge to social institutions and practices.

I will take up the themes in the following order. First, I explain discourse ethics as a linguistically grounded normative universalism that draws on Kant and subsequent criticisms. Second, I describe Habermas's general method of reconstructive science, as an effort to explain the possibility of universally valid assessments of human rationality without relying upon the absolute foundation of transcendentalism, including an assessment of the ways in which Habermas draws on psychology and sociology to support discourse ethics. Third, I describe the way in which Habermas relates his theory to social and political institutions, conjuring Hegel but incorporating Marxist criticisms and other contemporary social-theoretical insights. Finally, I show how Habermas defends his project as a preservation of a critical theory with radically democratic content, which nonetheless avoids the problems facing Marx.

1. Habermas's Discourse-Based Normative Universalism

A. Intersubjectivism and Communication Theory

Habermas, like Hegel, builds his theory of moral reasoning around the insight that all forms of thought and agency agency are intersubjectively founded. Though philosophy has traditionally conceived of forms of reasoning as involving the attempt to justify the knowledge of an objective world by individual knowing subjects, such processes are always conditioned upon the existence of a community which provides a source of understanding and validity. Habermas draws on the sociology of George Herbert Mead and later linguistic theory to provide further support for Hegel's initial rejection of the individual subject as the basis of knowledge. In the *Theory of Communicative Action*, Habermas traces Mead's explanation of the way in which animals evolved from first instinctively making and responding to gestures to using symbolic language in a communicative and not rigidly determined manner. Gestures came to elicit expectations on the part of others and, in turn, the gesture itself became done in part with the expectation of response. In language, a system of rules exists regarding the use of the same symbol with the same meaning. Supplementing Mead's theory with Wittgenstein's argument against the possibility of a private language, Habermas argues that a language with meaningful utterances requires a community of language users interacting with one another. The ability to have a rule-governed language, and thus more and less valid utterances, is dependent upon having a community which give acknowledgement of correct and incorrect uses of language.

Habermas also follows Mead in drawing a theory of personal individuation through communicative sociation. He argues that being able to make a meaningful

utterance depends upon understanding of the expectations of others, and thus for the individual to take up social roles.[73] Through this linguistic process means that the individual develops a conception of various perspectives from which their own statements can be viewed, an individual is presented with a conception of themselves as a "me" who is an object for others. Yet, in formulating propositions in light of a conception of this "me" and those perspectives of others one comes to take the standpoint of a subject who is not limited to that specific role of the me but who is forced to make his or her own interpretive claims.[74]

Through social interaction in language, reality becomes constituted on several different levels, or in various intersubjective worlds. First, people mutually refer to a world of objects, in reference to which they warn each other, make demands from one another, expect the each other to manipulate in certain ways, etc.. Secondly, subjects refer to a social world of certain normative expectations. Though, the objective world is also socially constituted in that the reality of objects and truth of claims made about them depends upon a linguistic community, social norms depend directly on the mutual recognition of their validity by those who are going to carry them out. Finally, in communicating with one another, individuals refer to an inner world expressing the thoughts and feelings of each. Thus, the call "fire" can refer to the fact of an object in the world, can be a call to act in the normative ways appropriate to handling a fire, and can say something about the internal reality of the speaker (fear, excitement, awe, etc.). Each of these realities exists for the community of speakers because they recognize the claims of each other to refer to these realities, and because the statements they make can be

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[73] Habermas, *The Theory of Communicative Action*, Vol. 2 (Boston: Beacon Press, 1989), 15-22.
[74] *Theory of Communicative Action*, Vol. 2, 22-27.

challenged as violating the rules of valid language use. Thus, if mere smoke were found instead of a fire, the speaker might be corrected in his or her objective claim. The normative demand of a response to the fire might also be challenged, perhaps for the fire not being so large that it warranted calling others to action. Finally, one might challenge the sincerity of an expression of emotion in reaction to the fire. Because claims are sometimes revealed to be untrue, normatively wrong, or insincere, other claims can be defended as true, right, and sincere.[75]

Habermas also takes up the concept of the lifeworld from phenomenology. He argues that although claims made with regard to these three worlds can at times be explicitly thematized and challenged, speech generally tacitly assuming many normative, objective and subjective features about the world. These communally shared, tacit understandings are called the lifeworld. The nature of the lifeworld is historical and can change as aspects of it become explicit and are criticized.[76]

B. The Quasi-Transcendental Argument for Discourse Ethics

Although Habermas agrees with Mead's evolutionary account of language, in which a coordinated system of gestures originally conferred an advantage in fitness, he argues that speech acts now have to be viewed as having a meaning and validity which is not directly pragmatic. In arguing for this, he draws on the speech act distinction between the illocutionary and perlocutionary force of an utterance. While sometimes shouting something like "Go attend to the fire" can be judged to be successful insofar as the hearers perform the action that the speaker wanted (perlocutionary success), claims

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[75] *Theory of Communicative Action*, Vol. 2, 27-42.
[76] *Theory of Communicative Action*, Vol. 2, 119-152.

can also be assessed from the internal validity which they contain on the three levels above (illocutionary success). As a result of such an utterance, someone may attend to the fire as wished, without agreeing with the order; for example, the speech act may take the form of a threat which without being considered as valid, may nonetheless achieve the results intended results of compliance or fear. Of course, even a threat requires agreement on the levels of truthfulness (of the implied power to exercise force) and sincerity (of the intention to exercise force). Agreement on these matters internal to the speech act involve the illocutionary force of the act and depend upon assessment of the validity of the speaker's claims. Likewise, if someone agrees to the request, "Please attend to the fire," or to the moral claim, "You ought to attend to the fire" this agreement can be distinguished from an agreement in action which does not stem directly from recognition of the validity of the claim.

Discourse ethics depends on the fact that there are phenomena which are appropriately deemed moral. The classic phenomena are the experiences of a person of being wronged and the guilty experience of a person who recognizes herself or himself as having done wrong. Following Strawson, Habermas considers the example of one person being injured by another. When the anger of the injured person is accompanied by the claim that the other person ought not to have done this, this is a moral claim. The person is not simply stating that she does not like the fact that the other did this or threatening the other with consequences if he does it again. Though such a speech act may also have these purposes or effects, it also entails the claim that there is a moral rule, the validity of which warrants recognition by the other party as well as the speaker.[77]

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[77] *Moral Consciousness and Communicative Action*, 45-50.

The types of responses that the accused party makes in such circumstances helps to confirm the existence of a domain of shared moral norms. The injurer might on the one hand say "it wasn't I who stepped on you" or "it was an accident" or "I was pushed," referring to facts which excuse the person from having violated a norm (accepted as valid by B as well as A). One also might attempt to excuse the accused party by referring to their being a infant, being insane or for some other reason being incompetent to take into account the moral demands of the situation. If such excuses were accepted, the offended person would generally give up their resentment and claims about a wrongdoing in this case.[78] Regardless of whether they are accepted, excuses accept the accusers claim that there are moral rules which morally competent agents ought to follow.

In other cases, the accused might dispute the moral rule that the injured party claims that he violated. He tries to explain what the actual norms are and/or why the norm cited by the injured party is not valid. Such responses, while disagreeing as to the content of moral norms, agrees with the general presupposition of the accuser that there are such norms and that they are accessible enough to be defended to other rational people.

Finally, in some cases the accused party will admit guilt. Admissions and feelings of guilt further illustrate that people generally accept that there are rules whose validity transcends the arbitrary expression of individual emotional reactions to unwanted circumstances. Thus, when one person charges another with wrongful harm, the three common responses all presuppose that there are cognitively accessible moral norms which are accessible through mutual argumentation. Thus the moral truth is similar to an empirical truth (water is made of hydrogen and oxygen) which could be backed up and is

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[78] *Moral Consciousness and Communicative Action*, 45-50.

amenable to testing. Habermas states that moral truth is not exactly equivalent to assertoric truth. In making objective claims, people refer to an empirical world separate from themselves, whereas in moral statements we refer to a realm of reality which is constituted through mutual recognition. Though valid statements about the empirical world require intersubjectively/linguistically shared standards, the empirical world itself is taken to exist outside communicative understanding, whereas the very existence of norms is conditioned upon the anticipation of their justification through argument.[79] Thus, in describing moral experience and defending the claims involved as objects of argument, Habermas defends a cognitivist and universalist conception of morality. This raises the question of the content which is to be cognitively recognized.

Most cognitivist views of ethics presuppose the content of morality to be given by some standard of impartiality, as in Kant's categorical imperative. Discourse ethics derives its basic ethical principle from the procedure suggested by cognitivism and universalism. As moral experience shows that valid norms can be defended through argument and admit of universal acceptance, Habermas suggests the following principle, which he calls (D): "Only those norm can claim validity that could meet with the agreement of all concerned in their capacity as participants in a practical discourse."[80] This principle explains moral phenomena such as moral resentment, moral debate, and excuse making. It explains these phenomena by referring to an intersubjective reference to a world of social norms whose validity depends upon mutual recognition.

Habermas's ultimate justification of the validity of (D) is that it is inevitably presupposed by participants in discourse. To demonstrate this Habermas's focuses on

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[79] Habermas, "On the Cognitive Content of Morality," .
[80] *Moral Consciousness and Communicative Action*, 66.

argumentative speech. When one makes an argument for a moral claim, one implies that ones own reasons should be sufficient to convince others of the validity of the claims one makes. One might, Habermas goes on, doubt whether these presuppositions really are made. However, if one tried to argue for the skeptical position, that speakers do not suggest that their claims could be rationally accepted by others, one would enter into a performative contradiction. For one's very act of trying to justify that discourse does not involve the expectation of rational persuasion would itself involve an attempt to rationally persuade. The skeptic's very entering into argumentation demonstrates that which she claims to reject. Thus, "every argumentation, regardless of the context in which it occurs, rests on pragmatic presuppositions from whose propositional content the principle of universalism (U) can be derived."[81]

Habermas goes on to specify further the sense of rational persuasion to which communicative actors commit themselves. He argues that it would be nonsensical to say that "Using lies, I [rationally] convinced H that p," for the meaning of rational conviction presupposes truthfulness on the part of the one that is doing the convincing. One can consistently say that "Using lies, I talked H into believing that p," as here the speaker makes no claim about rationality. To show that every speaker presupposes that his or her claims are good reasons and that the listener should accept them as such, Habermas again invokes the argument from the performative contradiction. If one attempted to argue that one could rationally persuade others through using lies, ones act of arguing would contradict the assertion. The act of arguing implies good reasons on the part of the disputant.

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[81] *Moral Consciousness and Communicative Action*, 82.

Habermas's example of a performative contradiction is flawed however. There can be no performative contradiction in arguing to a third party that one rationally persuaded another party using lies. A performative contradiction requires that the act of arguing conflict with the content of an utterance. Thus, an example is required in which one makes an argument that there is no rationale for accepting one view instead of another. Here, the act of arguing for such a claim, of attempting to persuade someone would contradict the assertion that reasons irrelevant. This implies that speakers do assume, in the process making arguments, that validity does depend on reasons.

That validity also includes specifically reasons which can be accepted in inclusive discussion, free of coercion is implied by the implication of an argument to be able to stand up to any relevant objections. Thus, Habermas argues that it would be contradictory to claim that we rationally persuaded ourselves of the validity of a norm through excluding others from discussion.[82] The act of arguing for a claim, and for the rightness of a normative claim in particular, implies that none to whom the claim implies have a good objection and that reasons alone could motivate assent.

In light of the performative contradictions resulting from denying standards of rational validity, Habermas formulates the principle of practical reason, 'U', as follows: "a norm is valid when the foreseeable consequences and side effects of its general observance for the interests and value-orientations of each individual could be freely accepted jointly by all concerned."[83] This principle spells out the conditions for the validity of moral norms by applying the general discourse principle of validity (D) to the nature of moral norms. Since moral claims are made regarding the acceptability of the

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[82] *Moral Consciousness and Communicative Action*, 91.
[83] "On the Cognitive Content of Morality," 354.

interests and value orientations of social norms, (D) implies that valid norms are defined in terms of the acceptability of these in rational discussion. The principle (U) also reflects the interpretation of rational discussion as involving inclusion, and non-coercion.[84] By the presuppositions of speakers, the validity of any normative claim depends on whether it could be supported through an inclusive, non-coercive, open dialogue on the matter.

The question arises whether these presuppositions are in fact common to all speech or unique to argumentative speech. If it were the latter, it would not be clear that the discourse ethic would not apply to norms when they are not being supported by argument and would not command the support of those who do not engage in argument. As Habermas notes, the skeptic can avoid performative contradictions by refusing to support her positions by argument. Since the argument for the discourse ethic rests on the performative contradictions of the skeptic, the possibility of refusal to argue undermines the justification of (D) and (U). Though one cannot consistently argue for skepticism about the possibility of rational argument, consistent refusal to argue would "mutely and impressively" present the case for skepticism and would undermine the discourse ethical attempt to demonstrate that certain standards of rational validity are universally presupposed.[85]

However, Habermas questions whether it would be possible for anyone to live without taking norms for granted as generally valid and relying on these in communication. People regulate their lives through communication with others and raise

[84] William Rehg, *Insight and Solidarity: The Discourse Ethics of Jurgen Habermas* (Berkeley: University of California Press, 1994), 57-62.
[85] *Moral Consciousness and Communicative Action*, 100.

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claims whose validity depends upon assent beyond themselves. Without appealing to the acceptance of others of the validity of one's claims, life would be practically difficult. As critics of Hobbessian individualism have argued, stable social organization is not possible without intersubjective recognition of normative validity. If all are self-interested and/or deny an internal connection to others, then there is no way that they could peacefully regulate their lives without having a power present to enforce norms on them. Any such situation is inherently unstable without an appeal to validity which transcends the individual goals of each person.[86] Furthermore, to the extent that all thought is carried out linguistically, it would be difficult for any person to think in terms which did not refer to shared understanding about the objective, moral, and internal worlds that are embedded in communication. Thus, it appears that everyone who uses language is thereby committed to a justification process in which all those affected should have a say. The skeptic will have difficulty avoiding making communicative claims to validity to the extent that she uses a language in which such claims are implicit. Habermas doubts whether anyone could survive without an attempt to use language oriented to achieving mutual understanding. "No matter how consistent a dropout he may be, he cannot drop out of the communicative practice of everyday life, to the presuppositions of which he remains bound. And these in turn are at least partly identical with the presuppositions of argumentation as such."[87]

It is important to emphasize the status of these inevitable presuppositions of language use. Habermas is not saying that language users inevitably adher to rules of sincerity, non-coercion, etc. Rather language users must generally present their claims as

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[86] *Theory of Communicative Action*, Vol. 2, 210-214.
[87] *Moral Consciousness and Communicative Action*, 100-101.

subject to standards of validity requiring sincerity, non-dependence on coercion, etc..

The recognition of the presupposition of such standards is consistent with acknowledging that actual speech always may fall short of them. Thus, the principles of discourse ethics are counterfactual ideals whose validity is presupposed in actual speech.

The question arises to what extent this argument from the presuppositions of language use, as revealed by performative contradictions, proves the truth of the principles of discourse ethics. Some discourse theorists[88] have argued that this argument from performative contradictions successfully provides a transcendental foundation for morality, as we inevitably commit ourselves to this discourse process. Thus, the conditions for valid assertions would be deduced transcendentally, in the same way in which Kant attempted to deduce valid conditions from the conditions for knowledge of various forms. However, Habermas argues that it is not possible to deduce validity transcendentally and that the conclusions derived from the argument from performative contradictions should be more modest. Habermas acknowledges that though we are forced to speak *as if* we accepted the criteria of the discourse ethic, this does not mean that the criteria are thereby valid.[89] Nor does our linguistic presupposition of universal discourse show that any given norm is justified or even that any norms at all are justifiable. Given the impossibility of actually reaching agreement through a dialogue wherein all those affected participate fully, it is not clear that the discourse ethic implies the validity of any actual moral principles. Thus the correctness of discourse ethics is dependent on other empirical considerations. First, it depends on the extent to which the

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[88] See, for example, Karl Otto Apel, *Towards a Transformation of Philosophy* (London: Routledge and Kegan Paul, 1980).
[89] *Moral Consciousness and Communicative Action*, 64-68.

presuppositions of argumentation should be viewed as the ultimate criteria by which to judge normative matters, or whether norms which conflict with these presuppositions -- such as deeply held cultural values -- should not sometimes take precedence. Second, the validity of discourse ethics depends upon the extent to which the presuppositions of discourse can serve as practical standards of criticism; or, whether discourse ethics, like Kantian moral universalism, succumbs to the Hegellian critique of abstractness.[90] With these conditions in mind, Habermas draws on theories about the general development of moral psychologies and the evolution of the development of moral norms in human societies to supplement his "quasi-transcendental" argument.

C. Discourse Ethics and Reconstructive Science

First, Habermas draws on Lawrence Kohlberg's work on moral development, which suggests that there are linearly ordered stages of moral reasoning. In the early, "pre-conventional stages," norms are based on expectations of punishment by an authority, thus on strategic thinking. At later conventional stages, norms are supported in terms of roles which each person has in society, and obtain a validity beyond individual's strategic reaction to force. Finally, in the last stages of moral development, norms are viewed as based on principles which can be defended through reason. Kohlberg discovered that people generally move through these stages as they go from childhood to adulthood, and problems with each earlier stage motivate the evolution to the next stage. The regularity of the process from one stage next might suggest that each stage is a higher level. However, as is well known a normative hierarchy cannot be derived from

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[90] Habermas describes such an objection of abstraction as the last and most challenging line of defense for the skeptic, *Moral Consciousness and Communicative Action*, 102-109.

an empirical tendency. Yet, if one has an independent linguistically based argument that discursive legitimation confers validity on norms, then this lends further support to Kohlberg's theory. Kohlberg's theory in turn confers some validity on the idea that discourse ethics is an accurate reconstruction of normative learning.[91]

Habermas further argues that this individual moral development is paralleled in the development of societies. As Habermas puts it, the "phylogenetic" parallels the "ontogenetic." Early societies were governed by mores of convention, supported either through threats of punishment. Later views took morality to be based upon independent truth. Finally, in democratic societies, laws, and to some extent other norms, are a matter left to public debate. Even if these discussions are not ideally inclusive, norms are defended as legitimate and tested by the voice of opinion. A politician can no longer defend a norm based on communal tradition or power alone, but must generally make a case that the norm is good for everyone. Habermas analyzes this social development as itself a process of learning, in which each stage results from problems that the former could not solve. For example clashes between traditions, competing understandings of the meaning of tradition, or failures in traditions to deal with new problems, lead to the need to justify solutions discursively.

Habermas also argues that this theory of qualitative learning in social relationships helps to supplement one-sided views of history in historical materialist and other schools of social thought. Marxists sometimes present the evolution of society as determined by changes in the means of production or forces of production. Though Habermas agrees that in many cases it seems that technical developments or new materials do occasion social changes by causing new problems or creating new

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[91] *Moral Consciousness and Communicative Action*, 116-127.

possibilities, these material developments always underdetermine changes in things such as cultural developments (including a work ethic), the full set of economic relationships, forms of government, and moral and legal norms. In fact there are cases in which there is evolution on these levels without significant economic evolution and vice versa. To Habermas, this suggests that it is possible to distinguish the evolutions of forms of communicatively achieved normative structures from the evolution of forms of technical development. The theory of communicative action, both in distinguishing different types of validity claims, and in showing how normative claims can be viewed to be more and less rational, is capable of explaining distinct but interrelated forms of social learning.[92]

Again, it would be difficult to conclude exactly why these developments occurred and, regardless of the cause, impossible to prove that they show a moral advance on a universal scale. However, to the extent that the linguistic basis of discourse ethics and the individual maturation process support the idea that these processes are evidence of advances or learning on the social level, there is once more mutual confirmation of the theories involved. Habermas argues that the parallel between individual maturation and social evolution is not merely coincidental. Both, he argues, constitute processes of learning. Again there is a process of reciprocal confirmation.

Habermas suggests that philosophical theory and science can function in a complementary manner. Philosophy provides sciences with rational reconstructions of the processes it describes, while science in turn helps to confirm the applicability of the science. Habermas has called this conception of theory "reconstructive science." Reconstructive sciences provide reconstructions of general human competencies,

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[92] Habermas, "Toward a Reconstruction of Historical Materialism" in *Communication and the Evolution of Society* (Boston: Beacon Press, 1979), 130-177.

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combining analytical argument with empirical observation. Habermas argues that in addition to this theory of moral development, Freud's psychology, Marx's economics, and Chomsky's universal grammar all provide theories about human competencies, attempting to not only explain what happens with predictive regularity but also to reconstruct what makes processes more rational.[93]

2. Discourse Ethics and Politics

A. Various Uses of Discourse Ethic

Though discourse ethics is sometimes referred to as if it were one thing, there are actually several different uses to which the same normative outlook based upon features of communication can be put to use. Habermas defends his principle U as the conditions under which moral norms are justified. He does not assert that the discourse ethics would necessarily be used to make ethical arguments as well, that is social norms which are relative to a grounding in an ethical tradition. Thus, he notes that it would be more appropriate to call his theory "discourse morality."

It should also be noted that in defining what it means for a norm to be valid, the first understanding of discourse ethics as the fundamental moral principle does not mean that it is used to determine what it is right to do in a given circumstance. Particular normative judgments require a separate moment of applying norms. However, Habermas and others have argued that discourse ethics can also be applied to the process of application, such that the application of given norms would be correct if all those affected

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[93] *Moral Consciousness and Communicative Action*, 14-20.

by the application could agree to it with all its side effects. Thus, this is a second type of discourse ethic, also supported by the quasi-transcendental argument.[94]

Finally, many critics argue that the discourse ethic may not be appropriate as a complete foundation for all moral justification and judgment. A morality based on discourse seems ill equipped to handle obligations to those who cannot speak, including children, the mentally impaired, future generations, animals, plants, landscapes, and ecosystems. It also seems that people acquire obligations based upon individual integrity, which are commonly thought of as moral, but which have little to do with the views of all those affected.[95]

However, some of those who accept the latter criticisms nonetheless view discourse ethics as an adequate basis specifically for the validity of the norms of social cooperation. On this view, discourse ethics would serve as political ethic for criticizing social norms and offering those terms on which more just norms would be founded. Such a defense is still capable of drawing on Habermas's quasi-transcendental argument, to the extent that communicative presuppositions and facts about cognitive development can be drawn upon in normative and functional ways, as a source of political criticism and procedural guidance. It is this conception of a discursive political ethic that I am concerned with defending. I leave aside questions of whether the discourse ethic is appropriate for addressing all moral obligations, centering on whether it can serve for social criticism. With this in mind, I now elaborate on the meaning and implications of a

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[94] The distinction between justification and application is discussed in more detail in chapter 6 below, 159-169.
[95] Rehg, 32.

political ethic based on discursive universalism.

B. The Public Sphere

If the discourse ethic is to be accepted as a political ethic, it would have to shown that the norm of uncoerced consensual discourse can be sensibly applied to actual societies and institutions. We saw that it was difficult to link Kantian morality to the actual political realization of freedom. As a neo-Kantian theory of the conditions for normative validity a discourse ethic appears to involve similar abstractness.

In Habermas's early work, the *Structural Transformation of the Public Sphere*, he traces the development of a form of political dialogue in modern society in which the idealized norms of the discourse ethic are actually operative. With the spread of the market economy through expanded productive capacity and trade, individuals acting increasingly as private economic agents became aware of a separate interest which each had, and which was not necessarily protected as it might be by their government. This experience of a privateness was further cultivated by the evolution of the institutions of family and the arts. The rise of the family as a distinct sphere, along with the corresponding idea of romantic love, contributed to the conception of a world of distinct individual subjects. Modern forms of art, especially the novel, also helped to create and express new forms of subjective experience. This new self-awareness of people as having private interests which could be furthered in various ways by public policy along with the development of ways of disseminating information created a new concept of public space. Whereas previously publicness had been dominated by the appearance of figures acting out social roles, particularly the royalty acting as a dramatic center for

authority, there formed a public sphere of informal debate about political matters as well as an expectation that the government should itself be subject to the outcome of policy discussion. Though public arenas were characterized by exclusions on the basis of gender and class, Habermas contends that nevertheless an ideal of general participation in public affairs became partially instantiated in this modern public sphere. If this theory is right, then at the same time that capitalism lead to social alienation and stratification it also was instrumental in raising the idea of government being founded on rational debate, to which all should in principle be included.[96]

Thus, Habermas's view again can be contrasted with those of Marx and his followers, including Lukacs, Weber, and Horkheimer and Adorno, who presented social rationalization as simply the increasing broadening and intensification of an instrumental rationality which comes to form an iron cage constraining all social developments. Rather, argues Habermas, the process of enlightenment has a trajectory of emancipation through mutual understanding as well as a trajectory of instrumental control which can either further emancipation or work against it. He thereby attempts to reaffirm Hegel's location of emancipatory potential within the evolution of modern institutions and forms of rationality connected therewith.

In the *Structural Transformation of the Public Sphere*, Habermas ends up tracing the decline of the modern sphere through the subordination of politics to economic considerations and methods of reasoning, thus recapitulating the traditional arguments of the Frankfurt School.[97] However, in his recent work on law, politics, and society,

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[96] Habermas, *The Structural Transformation of the Public Sphere* (Cambridge, Mass.: The MIT Press), 1-140.
[97] *Structural Transformation of the Public Sphere*, 141-235.

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Between Facts and Norms, Habermas argues that the public sphere remains a source of democratization, which is not fundamentally undermined by mass media, social diversity and increasing globalization -- those forces frequently understood to make participatory democracy impossible. Habermas's renewed optimism appears to be drawn from largely two arguments that interpret contemporary political phenomena. First, Habermas sees the increasing institutionalization of human rights and the rule of law, as a necessary compliment to discursive democracy. Second, social movements play a continuing role in keeping alive the public sphere and stimulating continual rational debate about the justness of social norms.

C. Link between Democracy, Human Rights, and the Rule of Law

In *Between Facts and Norms* Habermas extends his theory of the discursive basis of modern legitimacy to the analysis of specific features of the modern constitutional state. He argues that discourse ethics is well suited to derive the foundations of the rule of law, a system of political and legal rights, a government with various branches, and a democratic culture involving political debate. At first glance discourse ethics appears to side with the republican tradition going back to Aristotle, which holds that political participation is the most fundamental norm guiding politics. Thus, discourse ethics seems to go against the liberal tradition which defends a fundamental set of rights which is to protect individuals against societies. Rights claims might be recognized as important norms, but this would be simply one possible result of communicative action of participants. Habermas is clearly influenced by and sympathetic to Hannah Arrendt's attempt to reinitialize a conception of the citizen as active participant rather than

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protected client and consumer.[98] Thus discourse ethics appears to choose the rights of the ancients over the rights of the moderns, or perhaps to choose democracy over rights.

However, Habermas argues that human rights, guaranteed by positive law, are "equiprimordial" with democracy. The argument is most straightforward with voting rights and freedom of association. Being legally permitted to participate in politics and form opinions through associations, is a condition for norms to be considered products of the deliberation of those affected by them. Habermas holds that the same is true of civil and social rights. These rights allow people to develop the conditions of autonomous agency, requisite of reflective and participatory citizenship. Drawing on similar reasoning to that used in his discussion of the rise of the public sphere, Habermas argues that citizens have to have material needs met and have the freedom of movement, ownership, exchange, association and speech, in order to develop and put forth claims about the social world. At the same time, Habermas argues that it is only democratic participation, as recommended by the discourse ethic, which can complete the promise of rights to equally protect the autonomy of all citizens. For, given that there are various interpretations of what equality means and what freedom of action requires, it is only through the dialogue of citizens that norms can be tested as securely representing their autonomy. Thus, the discourse ethic has the positive capacity to directly link normative sources -- democracy and rights -- and kinds of rights -- political and association, on the one hand, and civil and social, on the other -- that have generally been viewed as

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[98] Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958).

antagonistic. This project provides a prospect that there is a role for thinking how the discourse ethic is or can become embodied in aspects of contemporary society.[99]

Habermas also sees a role for discourse ethic in reinterpreting the meaning of the process of law formation. Discourse ethics implies that the legitimacy of law is based on procedural justification in a public sphere in which all affected are able to criticize and suggest alternatives. This leads Habermas to differentiate his account from both natural law accounts of legitimacy, which base law on a priori moral norms, and functionalist accounts, which tie legitimacy to ability to maintain the operation of current systems. Habermas sees discourse ethics as drawing on the insights of both positions, for the law can be viewed as both a factually given set of rules which functionally maintains social systems and as a set of norms which are capable of justification in practical discourse and warrant obedience for their own sake separate from their support by given legal sanctions. Because legal decision making draws on both functional and moral reasoning, Habermas argues that law exists as a category between facts and norms. In fact, the relationship between fact and norm is dialectical here, for the stabilizing force of modern law has been a condition for its rational legitimacy at the same time that to the extent that the legal order is defensible as legitimate, its functional stability is thus enhanced.[100] In order to defend himself against Hegel's claim that moral universalism tends to undermine the necessary shared ethical commitments which underpin political morality, Habermas has argued that a new form of solidarity is present in a kind a of constitutional patriotism,

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[99] Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge, Mass.: The MIT Press, 1996), 82-131.
[100] *Between Facts and Norms*, 1-81.

in which there is a shared commitment to the historical project of realizing the rule of law and the common good therein.[101]

The increasing worldwide recognition of human rights, codified within the United Nations Declaration and in the constitutions of many of the world's governments, further supports the case for the discourse ethic's applicability. Habermas suggests that this internationalization of constitutionally guaranteed rights and the rule of law indicates the existence of an actual, empirically conditioned recognition of generalizable interests. Regardless of the role of an ambiguous process of globalization, the seemingly universal adoption of the politics of human rights, with its apparent compatibility with various cultural traditions, supports the potential of a universal ethic of discourse.

D. Social Movements and the Continuing Viability of the Public Sphere

In *Between Facts and Norms*, Habermas also draws a connection to his earlier work on the public sphere, arguing that the legitimacy of social norms depends upon a functioning public sphere in which norms can be criticized and replaced. Habermas locates the public sphere within what recent social theory has termed civil society. Whereas Hegel and Marx used the term 'civil society' to refer to the market, for Habermas it refers to a sphere distinct from both the market and the state. Civil society is constituted by voluntary associations and networks which serve as sources of cultural understandings. They include things such as political parties, clubs, churches, and trade unions. Among other things, such associations serve as sites of political discussion in which norms are asserted, questioned, and debated. To the extent that such groups enter into debate with each other and such debates are publicly accessible through various

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[101] See, for example, *Between Facts and Norms*, 500.

media, a public sphere exists. Though separate from government, this public sphere, avers Habermas, serves as a check upon and a resource for government lawmaking. In particular, Habermas argues that social movements have furthered the process of democratization by challenging existing laws or asserting the need for new rights. Though Habermas once suggested that social movements such as the feminist, peace, environmental, and minority rights, represented merely particular interests bound up with a preoccupation with identity and a reactionary resistance to modernization,[102] he now appears to view their political contributions more positively as contributions to an ongoing process of determining the content of universal rights.[103]

By locating the public sphere within the associations of civil society, Habermas with Hegel, and against Kant, describes social processes within current institutions which can serve as sources of deliberation about general interests. However, Habermas also locates the source of universal norms in voluntary associations rather than a unified bureaucratic state. Thus, he does not simply accept the state as rational totality, which in fact is subordinated to the market or constrained by other instrumental considerations. The civil society analysis also differs from Marx in not attempting to identify a particular universal class with an immediate practical interest in democratizing the whole of society. Discourse ethics instead recommends a pluralistic and multi-cultural approach to the pursuit of justice, though one ultimately oriented to rational agreement.

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[102] *Theory of Communicative Action*, Vol. 2, 393-394.
[103] *Between Facts and Norms*, 329-387. For a still more complete discussion of the relationship of civil society to political discourse, see Cohen and Arato, *Civil Society and the Public Sphere* (Cambridge, Mass.: MIT Press, 1992).

E. Discourse Ethics, Social Criticism, and Political Action

We have seen that Habermas defends discourse ethics as both a framework practical reason which lends itself to the reconstruction of individual and social learning processes, and the political process within contemporary democracies. However, this discussion has not demonstrated that discourse ethics has any practical implications. For, reconstructing human rights, constitutional law, and the contributions of civil society to politics, as derivable from discourse ethics, merely serves to show the compatibility of discourse ethics with current levels of democracy. The question arises whether discourse ethics has any implications for how the world should be changed. Habermas and others have argued that discourse ethics does in fact have various political implications, both in terms of the critique of norms which are illegitimate and represent domination, and in terms of recommending a democratic process through which justice ought to be pursued.

First, discourse ethics' principle that norms ought to be based upon open, inclusive argument suggests that unjust norms are those which are effects of exclusion or distortions in political processes. Habermas has argued that one of the major factors distorting politics is the tendency for political decisions to be left in the hands of experts. .
He argues that while the autonomously functional systems characteristic of modernity, primarily the market and the administrative state, have been necessary aspects of increasing freedom, these institutions and the instrumental calculations which they engender, begin to structure all spheres of life. Thus, when things such as the nature of the organization of the workplace, job tasks, environmental regulation, the form and content of education, and the nature of child rearing are all heavily dictated by profitability and financial considerations, there is no room for the rational discussion of

norms. Habermas calls this reinterpretation of the concept of reification the "colonization of the lifeworld." Everyday understandings of what is possible and what is right are dictated by the market, such that the contingent, criticizable nature of these norms is no longer visible. Since this colonization thwarts rational discussion about norms, the discourse ethic can criticize such processes as systematically distorting communication.[104]

Habermas has also argued that this colonization is present in the regulations of the welfare state. The state increasingly structures the lives of the citizens who dependent on it as clients of schools, prisons, hospitals, and entitlement programs. The norms of administration are increasingly determined by experts who claim to have the most effective techniques for obtaining the social stability sought by government. This reference to instrumental calculation, reserved to expert decision makers, again belies ways in which social norms are not the result of inclusive discussion among those affected by them.

The discourse ethic also suggests that there is a need for the particular participation of groups of the oppressed in order for them to be equally included within the norms of society. In particular discourse ethics suggests that true equality within a given set of legal norms and cultural background, cannot be assumed because of an apparent lack of discriminatory language within the law. For example Habermas argues that the feminist movement has lead to a reinterpretation of what constitutes equal rights. By pointing out ways in which sexual harassment, discrimination against women who take leaves for pregnancy and other caretaking, and lower pay for work which is viewed as women's, feminist have demonstrated that women do not have equal opportunity

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[104] *Theory of Communicative Action*, Vol. 2, 332-373.

within existing employment practices. As a result of this criticism, some laws and corporate policies have been passed which prohibit sexual harassment, allow pregnancy leaves, etc. Because such norms are supported as interpretations of what equal rights for all entails, and can be considered as the realization of general interests.[105] Though, the wide divergence between formal and actual equality has long been noted by feminists and Marxists among others, discourse ethics contributes by pointing out that only the political participation of groups which describe ways in which they are unfairly or wrongly treated, can help to bring norms in line with what is fair to everyone.

In addition to the reinterpretation of the meanings of norms in light of the experience of social groups, it is also possible to expand the community of those who are considered potentially effected parties. Thus, to the extent that we live in a global society in which the norms of one country, and especially industrial superpowers, particularly the United States, affect others and in which it is possible for us to enter into deliberation with others, there is an obligation to extend democracy in this fashion. Thus, discourse ethics implies the effort to construct global normative expectations, including international law. Even without international law, the discourse ethic suggests that to the extent that national policies need to take into account the claims of others who are affected by them.[106] Though the form and extent of such obligations are notoriously vague, discursive universalism has implications for immigration policy, famine relief, and humanitarian intervention.

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[105] *Between Facts and Norms*, 409-427.
[106] See for example Habermas's discussions of humanitarian intervention, *Inclusion of the Other*, ed. Ciaran Cronin and Pablo De Greiff (Cambridge, Mass.: The MIT Press, 1998), 146-150, and immigration, *Between Facts and Norms*, 507-515.

The above considerations generally suggest criticism of current norms as the result of undemocratic practice, involving exclusion of effected parties, if not direct coercion and deception. In some cases, it seems possible to project what direction norms might take were there to be more open, inclusive, non-coerced dialogue. However, to a large extent discourse ethics suggests that it is participants themselves who must work out the appropriate social norms. The theorist cannot use the principle U to generate substantial principles of justice. This being said, there also is a role for discourse ethics in contributing to reflection about the processes by which institutions might function so as to allow for a genuinely discursive democracy. In addition to a call for non-governmental associations this analysis implies that institutions such as corporations and bureaucracies might be structured so as to allow input and criticism more directly from those most affected by them. It suggests that such associations need to ultimately to attempt to persuade others of the rightness of their claims, employing factually grounded, normative argument oriented. Thus, while favoring the criticism of norms from individual standpoints, it suggests a limit on the employment of identities, private standpoints, or group interests. Rather it suggests a multicultural politics in which groups are prepared to entertain the views of and speak to those who have different perspectives. It suggests that institutions be structured to approximate the ideal of deliberation insofar as this is possible. Deviations from participation should themselves be ratified or defended as projection of what is ratifiable by actual discussion, could it occur.[107]

In recommending the critique of distorted communication, the rectification of forms of political exclusion, the democratization of social institutions, and a participatory and deliberative orientation to decision making procedures, discourse ethics provides a

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[107] *Between Facts and Norms,* 342-359.

distinctive framework for political critique. Unlike the universalisms of Marx and Hegel, discourse ethics suggests that there are systematic barriers to the realization of freedom and provides a standard to where those might lie. Thus, while Habermas's theory of democracy resembles Hegel's in locating the democratic potential within institutions of contemporary society, a society which he sees as the result of normative as well as instrumental progress, he does not endorse Hegel's teleology. The process of emancipation through discourse is neither inevitable nor consistent consequent of the nature of human rationality and the rational structure of the modern state. Rather, it is a matter of active political struggle by social movements which are able to criticize existing social norms and bring about changes in interpretations of rightness and other aspects of the world with normative implications. The discourse ethic shares with Marx the recognition that currently unacknowledged universal interests might be located which existing political tendencies prevent from being realized. However, unlike Marx it does not identify an agent of emancipation, and leaves the content of emancipation to a large extent to participants to work out in dialogue.

With the discourse ethic, Habermas makes sense of the possibility of a political universalism in which each individual is not only taken into account by but is also an author of social norms. The theory is designed to avoid the problems of impractical abstraction and uncritical dogmatism which plague other expressions of enlightenment universalism.

Habermas's reworking of enlightenment universalism has, of course, received numerous challenges. Critics of universalism from postmodern and communitarian standpoints charge discourse ethics with ideologically recapitulating forms of domination

and alienation. It is alleged that Habermas endorses a culturally specific form of reasoning; employs models of subjectivity, rationality, and politics which are covertly exclusionary and discriminatory; brackets out the central impact of identity formation on norms; and rigidly separates the morally right from the ethically good in a way which reifies modern alienation. The elaboration of some of the most prevalent criticisms and the offering of a discourse-ethical reply is the task of the rest of this dissertation.

CHAPTER IV. UNIVERSALISM'S COVERT CONTENT: POSTMODERN CRITICISMS OF DISCOURSE ETHICS

The most sweeping objections to the discourse ethic include postmodern

arguments that the ethic contains a covert content which renders its universalism false.

Critics charge that discourse ethics, like previous expressions of enlightenment

universalism, tacitly favors the perspectives and interests of those in power. Thus, the

ethic helps to justify domination rather than remaining consistently critical of it.

Modern political systems have long claimed to be universal, in granting equal

recognition to everyone's rights and including everyone as a political participant. Yet this

claim has been made by governments, societies, and constitutions which have permitted

slavery, denied political and civil rights, and generally permitted systematic social

inequality. Any claim to universality is susceptible to ideological use, as the privileged

can use their power to present current norms as if they were universal. Unjust and

undemocratic societies have explicitly supported themselves with reference to

enlightenment political theory, such as that of Kant, Hegel, and Marx. In fact, these

enlightenment thinkers themselves seemed to view their universalisms as consistent with

various forms of domination. This history of the misuse of enlightenment ideals raises

the question whether all forms of universalism do not covertly justify domination. Thus,

some critics of the enlightenment argue that domination might be better criticized and

freedom more effectively pursued through an ethic that makes no claim to universality.

However, defenders of universalism, such as Habermas, reply that the fact that

universality has not been realized politically in no way refutes it *as a norm*. Rather, to

the extent that political institutions claim universality but actually involve domination,

they can be criticized for failing to attain their own stated ideals. In fact, it can be argued

that in order to be consistently critical of any and all forms of domination, political theory must retain universal conditions for the validity of social norms.

Yet, many current trends in political theory nonetheless display skepticism about the viability and desirability of explicitly adopting a norm of universality. Such skepticism has been a central theme among many of those positions associated with the term "postmodernism."[108] Many postmodern theorists have either directly argue or imply that Habermas's discourse ethics, like other forms of enlightenment universalism, covertly favors the interests and perspectives of those in power. If valid, these criticisms imply that the discourse ethic is another false universalism.

In this chapter I take up what I consider to be three of the most clearly stated and influential forms of postmodern objection to the universalism of discourse ethics. First, Michel Foucualt and Judith Butler argue that the construction of normative concepts to whose demands people are subject, constitutes a will to power, thereby refuting the claim to universality for any ethical perspective. Jean Francois Lyotard and Iris Marion Young argue that the attempt to achieve universality through a process of discourse inevitably perpetrates forms of exclusion and domination. Finally, post-structuralists such as Drucilla Cornell, draw on psychoanalytic theory to argue that universalisms based in the rational potential of discourse subtly supports patterns of domination and subordination. I explain each postmodern position, including how it constitutes a rejection of discourse ethical universalism. I follow each criticism with a defense of discourse ethics, arguing

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[108] The term "postmodernism" is famously imprecise and hotly disputed. In fact, most theorists associated with the term -- e.g. Foucault and Derrida -- reject it. I use it simply to refer to a loose configuration of positions which suggest that enlightenment universalism has covert content. Some of the critics I will discuss --e.g. Judith Butler and Drucilla Cornell prefer to think of their positions as "poststructuralist," borrowing from French structuralism but also breaking with what they take to be its reductionist and uncritical tendencies.

both that the criticisms are committed to inconsistencies and that discourse ethics in fact to a large extent avoids the difficulties attributed to it. Finally, in each case I argue that discourse ethics is preferable to alternative political ethics suggested by its postmodern critics.

1. Foucault and Butler: the Normalizing Power of Discourse

The poststructuralist positions of Michel Foucault and Judith Butler have resulted in influential criticisms of enlightenment conceptions of politics, which cast doubt on discourse ethics along with other any other articulated conception of human freedom and morality. While Foucault does not articulate a sustained theory on normative matters, his works repeatedly suggest that ideals about normative correctness are forms of power, which construct and regiment those subject to them. Foucault's work stresses the way in which power is administrated through various forms of knowledge -- sometimes described as "discourses" -- including those of medicine, psychology, and law. In each case, though the discourse attempts to outline the conditions for normal subjectivity, these processes of "normalization" actually create new forms of subjectivity and identity. Modern psychology did not simply discover the illness of insanity. Rather by labeling people, separating them from the rest of society, and forcing them to undergo a treatment regimen directed at the recovery of sanity, created a new form of the insane subject as well as its counterpart -- the sane individual.[109] Likewise, conceptions of sexual deviancy do not simply, pace the Freudian repressive hypothesis, force people to sublimate innate desires, but rather actually create new forms of sexual experience.[110] Finally, the science

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[109] Foucault, *Madness and Civilization*, trans. Richard Howard (New York: Vintage Books, 1973).
[110] Foucault, *The History of Sexuality: Volume I: An Introduction* (New York: Vintage Books, 1980).

of monitoring and reforming people through prisons creates new conceptions of deviance and of the responsible person who curtails such deviance.[111] In sum, the human sciences do not discover innate forms of human subjectivity, but rather actively construct subjectivity.

Furthermore, while the sciences claim to pursue the benefit of those it describes and treats they actually serve to maintain power over these individuals, by getting them to internalize social norms. The discourses of sexuality subject the individual to a power which is bound up with pleasure,[112] while the discipline of criminology exercises its power through a "disciplinary coercion [that] establishes in the body the constricting link between an increased aptitude and an increased domination.

Foucault endorses Nietzsche's genealogy of morals, in which concepts of morality are described as exercises of power.[113] Nietzsche sees moral universalism as a slave morality that involves the internalization of a repressive self-control. Foucault's concept of normalizing power extends Nietzsche's genealogy of morals, by putting it in a linguistic framework and identifying power as residing in various institutions, sciences, and languages directed at describing and encouraging healthy, moral, free subjectivity. Foucault and Butler see social norms and their support by concepts of morality as not only limiting self-expression but also supporting domination. Conceptions of normative validity are used to rationalize the power of the wealthy, professional, governing classes over others.

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[111] Foucault, *Discipline & Punish*, trans. Alan Sheridan (New York: Vintage Books, 1979).
[112] Foucault speaks of "perpetual spirals of power and pleasure" with "The pleasure that comes of exercising a power that questions, monitors, watches, spies ... and on the other hand, the pleasure that kindles at having to evade this power..." and "power that lets itself be invaded by the pleasure that it is pursuing" (*History of Sexuality*, 45).
[113] Foucault, "Nietzsche, Genealogy, History" in *The Foucault Reader*, ed. Paul Rabinow (New York, Pantheon Books, 1984), 76-100.

Foucault argues that even when an effort is made to wield power in a way which benefits those subject to it, this leads to a form of "governmentality" which ends up restricting freedom rather than furthering it. Here, even as norms are framed in an effort to procure freedom and happiness, the manipulation of society with this goal in mind inevitably reconstitutes yet another form of power. Thus welfare measures which aim at the freedom and happiness of clients lead to ever new regimentation and normalization of people's lives. Prison reform, intended to make facilities humane and oriented towards "correction" of criminals, results in a regimentation of existence restricting freedom. In general the administration of education, health, welfare, census taking, etc. all serve as ways of categorizing, observing, and controlling people such that their very self-understandings become bound up with the discourses which dominate them.[114]

Butler argues that theories of the essence of subjectivity always authorize some to speak at the expense of silencing others. She argues that the disciplinary power of socially constructed forms of subjectivity is largely at work in sexism, racism, and imperialism. She cites as an example the way in which the television presentation of the Gulf War, with the heads of U.S. generals juxtaposed against small maps of the Middle East and pictures of "smart" bombs correctly hitting targets, helped to support a conception of a universal subject in complete mastery of the world about him.[115] In fact, Habermas supported the actions by the United States and their allies in the Gulf as a legitimate exercise of international law, providing evidence for Butler's contention that the idea of universal discourse supports the interests of those in power. For Butler, power

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[114] Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality*.
[115] Judith Butler, "Contingent Foundations: Feminism and the Question of 'Postmodernism'," in Seyla Benhabib, et al. *Feminist Contentions* (New York and London: Routledge, 1995), 42-45.

is consistently at work in dominant forms of construing subjectivity and in discussing

normative issues. Butler holds that "... it is important to remember that subjects are

constituted through exclusion, that is, through the creation of a domain of deauthorized

subjects, presubjects, figures of abjection, populations erased from view."[116]

For Foucault and Butler then, social norms and any orienting political ethic, must

be rejected as exercises of power. Thus, they imply that an ethic such as Habermas's is

false and harmful not only in its pretension to universality but in its very attempt to

outline conditions for normative acceptability. Discourse ethics would be one more

attempt to regiment and normalize individuals so as to maintain power over them. When

asked directly about his relationship to Habermas's discourse ethics, and specifically

whether the norm of consensus could serve as a regulatory principle, Foucault responds

that the farthest he would go is to say that "one must be against nonconsensuality" though

he argues that "one must not be for consensuality."[117] For her part, in a reference to

Habermas, Butler suggests that "recourse to a position -- hypothetical, counterfactual or

imaginary -- that places itself beyond the play of power, and which seeks to establish the

metapolitical basis for a negotiation of power relations, is perhaps the most insidious ruse

of power."[118]

For Foucault and Butler, the task of critical intellectual is not to lay the normative

foundations for political action, but rather to problematize the ways in which agency is

constituted. Such problematization would show the ways in which the apparently natural

is socially constructed, the apparently objective, is socially interpreted, and the apparently

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[116] "Contingent Foundations," 47.
[117] Michel Focuault, Interview by Paul Rabinow, Charles Taylor, Martin Jay, Richard Rorty, and Leo Lowenthal, "Politics and Ethics: an Interview," in Rabinow, 379.
[118] "Contingent Foundations," 39.

benign furthers domination. Thus rather than deriving any general political ethic in

response to contemporary conditions, social critics can at best point out the contingent

and possibly alterable bases of social institutions and forms of agency. Butler argues that

the prospects for emancipation lie in the art of performative resignification, the effort to

disrupt dominant discourses. Through various transgressions, e.g. gender bending,

protest, etc. social actors could resist the terms of their construction. Foucault also came

to advocate an ethic of "care for the self" in which individuals would resist domination by

mimicking or otherwise playing off against dominant forms of identity construction.[119]

In resisting oppression based on socially constructed categories such as gender,

race, and sexuality, it is important to not be restricted to asserting the rights of non-

dominant groups, but rather to undermine the very bifurcation of people into the

categories of men and women, white and black, heterosexual and homosexual. When

such categories are undermined, and when the concepts of freedom and subjectivity are

no longer taken to have foundational regulatory meanings, the structures of domination

will themselves be undermined. On this account, the philosophical provision of a

general normative framework limits in advance the terms in which subjects might find

emancipation.[120] Though Butler and Foucault agree that in some sense politics should

aim at universal moral consideration, they claim that it is a mistake to make any general

claims about the conditions for subjects to attain freedom. Every term, be it 'subjectivity',

'autonomy', 'dignity', or 'humanity', is bound up with the implementation of power, which

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[119] Foucault, "On the Genealogy of Ethics: An Overview of a Work in Progress," in Rabinow, 340-372.
[120] "Contingent Foundations."

though it presents itself as benign and objective, is not. Such normalizing terms merely cement dominant forms of agency.[121]

2. Discourse Ethics and Normalization

While Foucault and Butler's work contains important insights about the subtle workings of normalizing power, it is mistaken to infer from such tendencies that social norms in general, or those supported by a discourse ethic in particular, should be rejected as bound up with unjust power. Critics of Foucault have pointed out that the claim that social knowledge and practice are inevitably bound up with normalizing power cannot be drawn upon consistently or usefully for normative critique or political action.[122]

It is clearly the case that evolving discourses, especially the social scientific and normative, are bound up with new forms of identity, and such constructions frequently support forms of domination. Practices such as those of prisons, military training, credentialing procedures, medical treatments, education, sexual practices etc. do discipline people into forms of behavior, which exhibit partly a sense of external coercion but which also, centrally, construct individual identities such that their realization is compatible with existing institutions. This thwarts freedom by preventing the recognition and pursuit of alternatives.

However, this tendency for social forms of knowledge to be used to normalize and discipline should not lead to a general skepticism regarding the possibilities of reasoning about norms and acting socially so as to further freedom. From disciplines

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[121] "Contingent Foundations," 35-57.
[122] See, for example, Nancy Fraser, "Foucault on Modern Power: Empirical Insights and Normative Confusions," in her *Unruly Practices: Power Discourse and Gender in Contemporary Social Theory*, 17-34.

which train people to be obedient and uncritical prisoners, patients, wage laborers, wives, etc. can be distinguished emancipatory forms of knowledge. Presumably some forms of education, work, and joint action can provide positive forms of freedom for those who engage in them. Were this not the case, social criticism of the sort that Foucault and Butler undertake would not make sense.

Minimally, social criticism and political action directed at emancipation requires some conception of wherein lies relative freedom. Foucault and Butler equate freedom with resistance to identity-constitutive discourses. Yet the implication that all socialization involves domination is untenable. Saying that subjecting people to social norms involves domination is to equate real freedom with the activity of a subject free of socialization. This presupposes that there is an individual or body prior to or outside of socialization who might be emancipated from social practices and norms. Such a conception is incoherent. On the one hand, any way in which we conceive of a pre-social self to be emancipated, would itself be formulated in social terms. Furthermore, while little can be said about a self prior to socialization, such a self, would seem to be one which did not use language, was not involved in relationships with others, did not rely upon systematic forms of knowledge in either pursuing its survival, its enjoyment or the terms of its treatment of others. Such a self would no longer be free, would not even be a human being. The recommendation of an ethic of care for the self or of resisting resignification cannot explain the generation of agency which could resist domination. Foucault and Butler's own social-constructionism leads them a paradox. On the one hand there is no self outside society and yet the equation of society with power leads them to look for freedom external to it. In a recent discussion of Foucault, Butler addresses this

paradox. She asks how it is that resistance can take place if agency is socially

constructed form of power. One ends up looking for a core self within the body or

unconscious psyche, a self whose existence appears dubious and insufficiently accessible

as the basis for emancipation. Butler hopes to find a productive tension can emerge out of

this paradox of a individual who attempts to resist social construction and a society which

tends to construct the very mechanism of resistance in favor of its own interests.[123]

Because power which works through identities must presupposes aspects of those

identities not subsumed by the power, there is "something like the unconsciousness of

power itself." Freedom would lie in tracing and resisting these imperfect workings of

power.[124]

However it remains mysterious in what way domination provides the resources of

freedom, if there is not some positive potential for learning about freedom which is not

merely resistance to power. In the latter scheme, resistance appears to be either blind or

itself inevitably constituted by the framework of domination. A more plausible view

would attempt to construe under what conditions individual freedom could coexist with

normalizing influence of society. Habermas's communicative paradigm is an attempt to

do precisely this.

Foucault and Butler's ethic of resistance further demonstrates the normative

limitations of their projects. Their suggestion that freedom should be pursued by

resisting and playing with prevailing forms of discourse results in an ineffective and

undesirable individualism. First, for reasons already discussed, the suggestion does not

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[123] Butler, "Subjection, Resistance, Resignification: Between Freud and Foucault," in Butler, *The Psychic Life of Power* (Stanford, Cal.: Stanford University Press, 1997), 83-105.
[124] "Subjection, Resistance, Resignification," 104.

specify which forms of identity should be resisted or with what they should be replaced. Political action is left to the individual who cares for himself or herself by playing off against social norms or by engaging in transgressions. Without normative principles however, acts of resistance could easily themselves irresponsibly harm others. In fact, while individual resistance to institutions and identities, in the form of gender bending, draft dodging, stealing, etc. may weaken dominant institutions and may provide a kind of freedom for the individual resistor, such forms of resistance generally presuppose the continuing domination of other members of society who do play by the rules.

Furthermore, the Foucauldian ethic does not promise any type of collective action which might lead to new forms of social life in which freedom was institutionally embodied. Without joint action, based on mutual understandings, it is difficult to conceive of any effective resistance to domination in its forms such as class, race and sex inequality. Even were individualistic forms of resistance to result in the collapse of existing institutions, an adequate replacement would only be workable with widespread agreement about normative matters. This is to say that a freedom ethic requires more positive guidance than the logic of resistance to hegemonic forms of subjectivity.

To locate power within discourses directed at morality and freedom per se, is to leave no space in which a normative criticism of power could be conceived. This is why Foucault inevitably falls into contradictions when he begins to assign a normative status to his genealogies. A criticism of power as illegitimate presupposes that some more freedom conducive arrangements are conceivable. In addition to "problematizing" current forms discourse as social and historical products, Foucault's work seems to suggest that aspects of these institutions are wrong and could be changed in favor of

something better. Yet he provides no normative standpoint with which to recommend

relatively just, non-dominating institutions and norms. A critical normative standpoint

will not equate power with knowledge, socialization, or normative rules per se, but rather

will distinguish those practices, principles and rules which further freedom from those

that do not. Foucault and Butler's discussions of power is strangely abstracted from a

critique modern conceptions of legal and political legitimacy which are designed

precisely in order to normatively distinguish unjust from just power relationships.[125]

Discourse ethics attempts precisely to specify which socially generated norms are

compatible with freedom. Social norms which are the result of public consensus

formation and can be reconsidered and challenged by those subject to them, may involve

normalizing power, but it is a power which people hold together and subject themselves

to. If nobody is coercively affecting the dialogue and there is no standpoint which could

be said to be a relatively better guide to justice, then it is not sensible to say anyone is

being dominated, subjected to unjustified power. In many cases, of course, individuals

are subject to norms whose validity they do not accept, or would not accept without

indoctrination.[126] In such cases, discourse ethics allows us, with Foucault, to charge

existing discourses with maintaining forms of domination. Normalization that supports

domination can be criticized as such from the standpoint of all those affected by such

discourse. While it is conceivable that subjects are so greatly constructed by predominant

social norms that they will simply agree to limitations on their freedom, this is no fault in

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[125] Habermas, "Questions Concerning the Theory of Power: Foucault Again," in his *The Philosophical Discourse of Modernity*, trans. Frederick Lawrence (Cambridge, Mass.: The MIT Press, 1996), 289-91.
[126] In such cases, it is still sometimes sensible to speak of this power as legitimate insofar as we recognize the power to be in the interests of that person who is subjected to it upon reflection, as when someone who is suicidally depressed is detained from killing themselves, or insofar as it is believed that the person would recognize the norms in question with time to reflect and engage with others, as when a criminal is arrested for violating community laws.

the discourse ethic since no ethic can flourish amidst systematic and intractable social construction. To the extent that it is possible for insight to be generated in critical reflection and to be ratified through discourse with others, the discourse ethic provides an ethic capable of criticizing forms of dominating normalization and discipline. At the same time, the discourse ethic recognizes that the institutions and norms of education, welfare, work, criminal justice, etc. could be constructed in ways consistent with the freedom of those subject to them.

3. Questioning the Justness of Discursive Universalism: Lyotard and Young

To this point, I have argued that normative conceptions of justice and freedom are not necessarily bound up with domination but are in fact necessary to conceive of emancipation. I also noted that the discourse ethic is one way of distinguishing between valid norms and those which involve domination. However, the argument that some normative concepts or procedures are necessary does not constitute a defense of discourse ethics or enlightenment universalism. Others argue that the universalistic orientation of such a theory commits it to domination. In fact, some theorists argue that the idea of a universalism based on inclusive political discourse has particular difficulties. Such theorists point out that dialogue, even, or especially that directed at consensus, generally results in certain exclusions and favors certain perspectives and interests. I discuss criticisms of a dialogical universalism to this effect by Jean Francois Lyotard and Iris Marion Young.

Lyotard, one of the few philosophers actually to refer to his own thought as "postmodern," is one of the most prominent critics of enlightenment universalism and has

specifically attacked Habermas's version of it.[127] Lyotard draws on recent insights in analytic philosophy of science and language to cast doubt upon any general theory of normative correctness, particularly one built on rational consensus. In his work, *The Differend: Phrases in Dispute*, Lyotard argues that the concept of power-free consensus is incoherent and cannot serve as a basis for normative validity. To demonstrate the impossibility of genuine consensus, he draws on Wittgenstein's philosophy of language.[128] Lyotard argues that language use can be viewed as various games or genres in which speech is given meaning only in relation to the other aspects of that particular game. It follows from this holistic theory of meaning that one genre of discourse cannot be translated into another. From this, Lyotard infers that when political dialogue occurs between people who speaks different idioms, any decision which is reached will occur in one idiom at the expense of the other. Aspects of the other, different idiom will have been suppressed, mistranslated, or ignored, in the terms of the agreement. Likewise when judgments are made within a general genre of discourse about matters conducted in another genre -- e.g. legal decisions -- the decision will fail to do justice to the different idiom regardless of attempts at inclusion or interpretation of different views.[129] The effort to attain agreement through dialogue therefore always constitutes an unjust suppression of a dissensus. It is this suppressed, untranslatable rift between genres of discourse that Lyotard calls a "differend."[130] The differend is of political significance because when a social dialogue contains various idioms, as they often do, any agreement

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[127] *The Postmodern Condition*, trans. Geoff Bennington and Brian Massumi (Minneapolis: University of Minnesota Press, 1984) and the *Differend: Phrases in Dispute*, trans. Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1988).
[128] *Differend.*
[129] *Differend*, xi ff.
[130] *Differend*, xi, 3-14.

or decision will be made in terms which favor one idiom and suppress or distort the others. Nor is there any way to mediate fairly between various genres of discourse, for any such process would itself merely create new differends.

Lyotard uses the example of the attempt to do justice to victims of the Holocaust through legal means; this is impossible, as the claims of the victims are not easily recognized within law. The claim that one has witnessed a gas chamber is undermined by its very ability to be stated in court.[131] Injustices of translation occur when "the plaintiff is divested of the means to argue and becomes for that reason a victim,"[132] now a victim of the adjudication process as well as the initial crime. The inability to come up with a law which covers international violations of human rights particularly of this magnitude appears to be an extreme example of a general problem with attempts (or pretenses) to respond to unfairness in an evenhanded manner. The difficulty of presenting proof of injustice and the unfairness of placing the burden of giving proof on the plaintiff has also been noted in cases of rape, sexual harassment, and discrimination in employment, housing, education, etc..[133] Such wrongs arise because "the 'regulation' of the conflict that opposes [the competing parties] is done in the idiom of one of the parties while the wrong suffered by the other is not signified in that idiom."[134]

On this view, the goal of political consensus is hopelessly unattainable and

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[131] *Differend*, 3-4.

[132] *Differend*, 9.

[133] In my view these are better examples of the problem of attaining fair understanding across differences in idiom than Lyotard's example of the Holocaust. On the one hand his claim about the difficulty in this case seems exaggerated, since there is evidence of mass exterminations and since this evidence is widely accepted as revealing a massive injustice. On the other hand, to the extent that there is a problem of recognizing wrongs, it is does not appear to be an injustice on the part of idioms of adjudication that they require evidence and cannot listen to the dead. One could only call it an injustice were there some conceivable just alternative.

[134] *Differend*, 9.

undesirable in effect. The very attempt to try to reach agreement through rational discourse leads to exclusion or distortion of some claims. Agreements will be reached in idioms which are dominant, and thus will tend not to do justice to the claims of those who speak in a marginal idiom or whose claims are foreign to those who make decisions.

For Lyotard, an adequate political ethic would recognize the inevitability of dissensus and thus permit agonism. At the end of the Postmodern Condition he suggests "give the people free access to the memory and the data banks. Language games would then be games of perfect information at any given moment."[135] He thus appears to endorse an anarchical democracy, in which agreement would not be expected. This political view appears to respond to the political reality of cultural pluralism, not only in global politics but also within states. It also lends support to the common suggestion that it is necessary to be sensitive to differences in culture and social situation and that an irreducible plurality of political perspectives must be accepted. Lyotard's postmodernism seems to accord with political programs which call for revisions in school curriculum in favor of diversity over canonical texts, self-governance for various ethnic communities, and the general basing of political commitments on unique forms of identity and perspective rather than universal principles.

Many feminist writers also offer versions of the argument that inability to transcend differences signals a need to move from enlightenment universalism to a postmodern pluralism. One of the most prominent critics of the politics of unity suggested by deliberative models of democracy is Iris Marion Young. Young draws on the different and relative privilege of the standpoint of the oppressed in order to refute the

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[135] *Postmodern Condition*, 67.

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ideal of consensus found in Habermas and others. Young argues that the search for generalizable interests is biased toward the positions of the politically dominant group which, like dominant scientific paradigms, are presented as universal and rational. The views of the marginalized and oppressed, on the other hand, are unlikely to be heard and recognized as rational.[136]

Young argues that even if an attempt is made to understand what others share with ourselves, that this assumption of symmetry leads to a colonizing view in which differences are not recognized as such and taken into just account. Young notes that proponents of discourse ethics have sometimes suggested that a dialogic approach allows people to reverse positions with those differently situated from themselves.[137] This, she argues, is a mistaken view of attaining the understanding required for justice.

People from a privileged social positions, suggests Young, cannot necessarily understand what it is like to be disabled or to be sexually harassed or to practice a Native American religion. When we assume that these experiences are understandable and susceptible of evaluation from our own perspectives, we do a greater injustice than when we accept that we cannot fully understand. Young specifically cites a decision in Oregon to refuse medical coverage to disabled individuals on the basis of voters' general belief that they would not want to live like this; the disabled who do live in such conditions widely believed their lives completely worth preserving and deserving of medical care. Similarly, Young notes, women are exasperated at men's response to sexual harassment

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[136] Iris Marion Young, *Intersecting Voices: Dilemmas of Gender, Political Philosophy, and Policy* (Princeton, New Jersey: Princeton University Press, 1997), 60-74.

[137] Young's principle target of criticism is Seyla Benhabib's discourse ethics in which justice depends upon putting oneself in the place of concrete others. I take it that as Benhabib's position is a version of Habermas's and is one way in which the way that his position might be understood, this is a potential criticism of Habermas's discourse ethics as well. For Young's critique of Benhabib, see *Intersecting Voices*, 38-59.

by asking why victims did not file a complaint if they felt harassed. All of these examples show that it is difficult for those who have had different experiences and are differently socially situated to put themselves in the place of others or to fully understand their claims. Thus any political ethic based on the assumption that it is possible to do justice to others by putting ourselves in their places is misguided.[138]

Discourse ethics, in its goal of rational consensus through dialogue, assumes that all members of society who are affected by things such as sexual harassment policies and handicapper laws -- namely everyone who is subject to the law or who pays taxes -- can recognize and agree on certain general interests. In fact, Habermas has sometimes written that the aim of normative discussion is to restore a "disrupted consensus"[139] which suggests to Young that Habermas in fact holds something like Rousseau's view that a shared general will predates political discussion and only needs to be uncovered.[140] It appears that it would be unreasonable to expect that in such cases consensus could be reached in a manner which did justice to all the various normative perspectives and experiences involved. Not is fair consensus impossible, but the very demand for consensus threatens to reify dominant perspectives. Marginalized dissenting views are likely to be misconstrued in terms of hegemonic perspectives or heard as incompatible with general interests. As Young puts it, "The less privileged are asked to put aside the expression of their experience, which may require a different idiom, or their claims of

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[138] *Intersecting Voices*, 41-44.
[139] For example, Habermas writes, "By entering into a process of moral argumentation, the participants continue their communicative action in a reflexive attitude with the aim of restoring a consensus that has been disrupted" (*Moral Consciousness and Communicative Action*, 67).
[140] *Intersecting Voices*, 65-66.

entitlement or interest must be put aside for the sake of a common good whose definition is biased against them."[141]

Young shares with Lyotard the view that the inevitability of differences and disagreement should be acknowledged and the drive for consensus rejected. However, she diverges from his anarchical and agonistic politics. For Young, a more adequate normative ground for politics includes the importance of recognizing others on their own terms. She recommends a kind of communicative ethics in which difference is viewed as a resource, rather than something to be overcome. She argues that justice means that people have to engage each other with an attitude of "wonder" or "enlarged thought," which recognizes the other as other, as different and non-symmetrical, deserving of respect but not necessarily similar to or susceptible of understanding from, ones own position. [142] For example Young suggests that when the handicapped testify with regard to the difficulties they face that others ought to understand that they cannot share the experience in question.[143] Young suggests a politics in which different voices are recognized as involving irreducible views but in which each's thought is thereby enlarged. In order to resolve differences in a manner consistent with universal respect, Young, again unlike Lyotard, endorses a "fair procedure" -- presumably a vote.[144]

The positions of Lyotard and Young share a concern that given the impossibility or difficulty of transcending particular perspectives and the tendency for discussion to favor the terms and perspectives of those with power, an ethic based on agreement

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[141] *Intersecting Voices*, 66.
[142] *Intersecting Voices*, 54-59.
[143] *Intersecting Voices*, 72.
[144] *Intersecting Voices*, 67.

through discourse inevitably suppresses differences and exacerbates marginalization and domination.

4. Difference and Consensus in Politics: Response to Lyotard and Young

The concerns raised by Lyotard and Young raise important issues about the extent to which discourse ethics does in fact support universal freedom.[145] However, the argument -- made explicitly by Lyotard, and suggested at times by Young -- that discursive universalism wrongly suppresses differences leads to immediate contradictions. To the extent that this argument suggests that it is wrong to exclude different individuals, perspectives, and claims from political discussion, it takes for granted the discourse ethical norms it tries to refute. For to say that the exclusion or repression of certain voices is wrong is to hold out a norm that all voices should be included in any normative dialogue about which they have something to say. Furthermore, in arguing against Habermas, Lyotard presents arguments which he takes to have a validity which ought to be recognized by others who do not already share his postmodern idiom. This act of arguing for a normative position contradicts his claim that the resolution of disputes through rational persuasion is impossible in fact and unethical in effect. The effort to reject rational politics through political argument commits what Habermas has called a performative contradiction.[146]

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[145] It seems unfortunate that Habermas's extensive response to postmodernism, *The Philosophical Discourse of Modernity*, includes no substantive mention of Lyotard, one of the most outspoken critics of Habermas's commitment to a modernist project.

[146] I assume here that Lyotard is in fact sincerely attempting to assert arguments which he takes to have general normative validity. Lyotard would avoid contradiction if he were not making claims which he thinks can rationally persuade others, but is just saying things which may influence people to agree with him. However if, contrary to appearances, Lyotard is solely after political influence, then one could ask with Amy Gutmann, "why bother with intellectual life at all [as postmoderns such as Lyotard do], which is not the fastest, surest, or even most satisfying path to political power." See Gutmann's "Introduction" to the

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The impossibility of consistently maintaining that discourse ethics has unjust exclusionary content shows that it is difficult to avoid a political commitment along the lines of the discourse ethic, if one is concerned with criticizing domination. However, this argument from the performative contradiction does not constitute a complete defense of discourse ethics. It may be that about metatheoretical issues we inevitably fall into contradiction. In fact the use of the norm of non-contradictory illocutions may already beg the question in favor of Habermas's conception of rational discourse. It is possible that though it is contradictory to reject the discourse ethic, the ethic nonetheless in practice supports domination. Young and Lyotard could argue that although one should oppose any and all exclusion, a theory of universal inclusion nonetheless *effectively* perpetuates exclusion. The question becomes whether the discourse ethic's goal of rational consensus is viable or desirable given tendencies to covertly exclude or suppresses dissent and difference.

Lyotard and Young's skepticism about the norm of consensus through discourse rest to a large extent on the difficulty of achieving understanding across differences of perspective which result in different language use. I will not discuss in detail the claim regarding whether different forms of discourse are so incommensurable that translation is impossible. However, it should be noted that this thesis of Lyotard, based on the work of Wittgenstein, is questioned by many contemporary theorists of language.[147] Even if translation is always indeterminate, this would not demonstrate that understanding across differences in language and culture are impossible. Discourse ethics need not establish

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volume *Multiculturalism* (Princeton, New Jersey: Princeton University Press, 1994), which she edited, 18-19.

[147] For example, Donald Davidson, *Inquiries into Truth and Interpretation* (Oxford: Oxford University Press, 1985).

the possibility of exact translation, any more than it need establish the possibility of perfectly non-coercive speech. What discourse ethics needs is, first, that it is possible to relatively understandingly take into account the claims of others, and, second, that any assertion of the validity of political claims commits one to taking into account, interpreting, and responding to the claims of others as best as one can.

The claim that any agreement through dialogue involves an act of domination has absurd implications. Since every act of communication involves an exchange of language across differences, Lyotard's argument suggests that every process of understanding does injustice to the speaker. As I argued above in my response to Foucault,[148] human freedom depends upon normatively regulated social practices. These practices require communication between people. If justice is possible at all, some forms of communication must involve taking into account the claims of others. In fact, when people recognize an injustice, they do so in language, in terms which are partially shared with and can be communicated to others. And, when people claim that an injustice is committed or that social norms are unjust this presupposes that the infringing party or neutral adjudicators can and should recognize the validity of the injured party's claim. If the wrongfulness of an action or norm cannot be understood then there is no injustice. It is for this reason that we reserve the terms injustice to those who are capable of moral understanding. We do not call animals, robots, or the weather unjust for they are incapable of recognizing our claims.[149] Of course, sometimes the perpetrators of injustice

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[148] 93-98.

[149] There are of course experiences about which one cannot find words which would convey the experience or its normative implications to others. However, when one cannot describe an experience at all, it is not yet an experience of injustice. To the extent one describes something as an injustice, one begins to formulate it in language which might be raised to others. Though one may in fact despair of articulating the experience sufficiently or of gaining appropriate understanding by others, the idea that one has been

may not comprehend the wrongfulness of what they do, and might be absolved because of it, but to say that what they do is wrong and to expect them to stop doing presupposes that they are in principle capable of understanding the claims made by others. In fact, Habermas has argued that when we enter into moral discourse with each other, we do commit ourselves to assert claims which could be accepted as valid by others and to respond to claims which challenge our normative assertions. When sexual harassment, Native American land rights, or handicapper accessibility is discussed, those supporting changes in social norms argue that claims have been unjustly ignored. Those who would dispute their claims are challenged to themselves articulate reasons which would address criticisms raised and make their own claims accessible to others.

This process of attempting to reach agreement on normative matters through dialogue does not entail being able empathetically to come to understand exactly what it is like to be the other party. One can reach understanding of a the claim that something is normatively wrong without mentally reproducing the experience of injury which the wronged party suffers. One can recognize that sexual harassment, lack of handicap accessible facilities, or denial of land rights is wrong, without having been harassed, having been unable to gain access, or having had tribal lands seized. Nor need one be able to imagine precisely what it would be like. It is difficult to describe the type of understanding involved into insight of the validity of the claims of others; I will try to describe some features of this below. Here the point is that validity of normative assertions is recognized in dialogue rather than an empathetic exchange of perspective. Discourse ethics appropriately thematizes this process of testing validity through political

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wronged implies that it would in fact be possible, under some conditions, to articulate what is wrong and for others to understand it.

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dialogue. That discourse ethics is not based on perfect understandings is no shortcoming. As perfect empathy, accessing the private language of the other, is not possible, there is no injustice in not basing an ethic on this possibility.[150]

This is not to say that translation of idioms and otherwise adequately addressing differences is not a problem in politics. Though normatively valid claims always must capable of being articulated in terms those subject to it could agree to, on any given occasion the marginalized may not be able to articulate their claims or gain sufficient understanding. When normative claims are raised from standpoints which differ in culture or social position from those which are socially dominant, they are likely to be misunderstood. This is a limitation of discourse ethics as a successful political ethic. However, it is not a fatal flaw, for three reasons: one principled, one empirical, and one comparative.

First, discourse ethics does allow for the criticism of any processes by which claims are not fully understood. When whites, males, and the abled judge issues of land rights, sexual harassment, and handicap accessibility in a colonizing manner that refuses to listen to or understand the those whose needs and experiences are different from their own, this can be criticized as a failure to fully take into account the claims of all those affected by norms in question. Refusals to listen to, as well as misunderstanding of, different perspectives can be criticized as violations of the presuppositions of valid political decision making. When a law is passed denying treatment to people with disabilities without having consulted those who experience such disabilities to see what they think about such a law, this is a failure to sufficiently take into account the claims of

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[150] Sometimes Lyotard writes as if it were unjust that discourses did not take each other into perfect account — thus charging discourse ethics with failing to attain the impossible.

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those most affected by a norm. Such examples show that notions about what others would think about their situation, and thus how it is just to treat them, need to be tested in discourse. Of course, the criticism of exclusion and misunderstanding does not guarantee that the perspectives of the marginalized will be justly recognized. Participants can genuinely attempt to understand the views of others and fail due to prejudice.[151] However, no political ethic can guarantee success, for it will always be possible for parties to incorrectly apply or fail to carry out what the ethic implies. At best an ethic can provide the normative requirements of acceptable actions and hence terms with which injustices can be criticized. It remains for political actors to successfully make their case in those terms.[152]

Secondly, it appears that historically political discussion across differences in culture, social position, and experience has been successful in leading to new normative insight and just normative agreements. In fact Lyotard and Young's own citations of example of people whose claims are generally not taken into account shows that it is possible to recognize them and thus take them into account. The fact that Lyotard decries the injustices of the victims of the holocaust and that Young decries the mistreatment and misunderstanding of handicappers and Native Americans implies that one can come to recognize the justice of the claims of those differently situated, or who speak different idioms. The example of religious toleration has become a classic example. Parties

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[151] Or, of course, participants can cynically assert the validity of claims they recognize as wrong, simply in order to preserve power.
[152] This discussion raises the question whether discourse ethic is so lacking in direct content that it facilitates unjust interpretations, or fails to criticize existing practices, and thus should be replaced by a more substantive ethic. I take up this issue in chapter 8.

whose religious beliefs previously committed them to the view that other religions were blasphemous came, through discussion, to perceive that each religion ought to be tolerated. Thus, discussion lead to normative insight not reducible to the prior views or idioms of any party. Other examples of non-reductive normative persuasion abound. Those who once did not recognize the wrongfulness of racial segregation, sexual harassment, prohibitions on homosexuality, lack of handicapper accessibility, etc., came, through a process of public discussion, to recognize such things as wrong. Clearly these cases do not show that reason triumphs inevitably and easily without struggle. However, they do show that normative persuasion is possible across differences in culture and experience, and that those in power are not in principle incapable of recognizing the fact and injustice of their domination.

Understanding across differences is facilitated by the widespread, if not universal, adoption of the language of human rights. The concepts of equal rights to liberty, dignity, opportunity offers terminology in which claims regarding injustices can be easily raised and understood as such. There is of course disagreement about exactly what equal liberty, equal dignity, equal opportunity mean and what would constitute a violation of them. However, they nonetheless serve as bridging concepts by which one party can claim -- in terms partially accessible to, but also contested with, others -- that an interest has been violated which is universally shared, though not currently recognized as such. Thus, when issues facing handicappers are raised in terms of rights to opportunity, access and dignity, they are put in terms, whose use others do not immediately share, but within which there is territory for expansion in a way which is acceptable to everyone. The framework of rights lends itself to the resolution of conflicts in which people who do not

extensively share cultures or experiences can reason with each other about the conditions for acceptable coexistence.[153]

Furthermore arguments regarding fundamental differences in culture or worldview are frequently exaggerated. In the United States, for example, it is highly questionable to what extent there are groups who are demarcated by culture. It is more appropriate to say that people inhabit many different cultures or that there are no cultures but simply cultural activities, practices, objects, etc. which tend to evolve within groups and be adopted by other groups. While a stronger case can be made that there are various socially constructed identities with corresponding perspectives -- namely those of gender, class, race, ability, and age -- the distinctness of perspectives and the difficulty of dialogue across them is easily overstated. While such social groups sometimes exhibit inability to dialogue, marked by communicative breakdowns or separatism, and at other times dialogue in manners which compromise one party, understanding is also possible among them. For such groups widely share languages and practices which both encourage and require shared understandings on normative matters.

These considerations suggest that there is not an overwhelming problem of translation and understanding which undermines the possibility of consensus as a normative standard. In fact, the ideal of consensus serves to criticize precisely those forms of misunderstanding and misrecognition with which Lyotard and Young are concerned. Any claim that reaching understanding through language necessarily suppresses dissent fails to differentiate those forms of communication in which topics of

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[153] "Remarks on Legitimation through Human Rights," *Modern Schoolman*, LXXV (January 1988): 87-100. Habermas argues that though human rights may not be the only normative solution to problems raised in the course of modernization, it is a solution which is not merely relative to a given culture, but lends itself to redefinition according to the needs of particular contexts.

discussion are subtly shifted into terrain on which the powerful can dominate or in which they fail to understand or respond to claims of the less powerful, from those discourses in which there is relative success in achieving understanding across perspectives.

The issue arises whether there is a preferable alternative to discourse ethics based on postmodern insights. I suggest that neither Lyotard's anarchical carnival of discourses nor Young's ethic of openness to others and procedural resolution of disagreements better addresses difficulties of exclusion than discourse ethics. First, Lyotard's recommendation of a flourishing of dissenting voices is not an adequate political ethic. Some actions do injustice to others. Such actions are frequently supported by assertions which are presented as justifications. If there is no norm of consensus, then it is not clear by what standard injustices could be criticized. A laissez faire toleration of the views of others is not an adequate response to a situation in which social injustices are perpetrated through means other than expectations of normative agreement. For example, redistribution of wealth, reorganization of the economy, new norms regarding the treatment of minority groups and regarding relationships between men and women, etc. all require that some parties recognize the validity of or are made to act according to norms which they do not currently recognize. This is not likely to happen without dialogue across idioms about the demands of justice. In fact, postmodern sensibilities much like Lyotard's are frequently used to argue against even discussing social justice. For example, Tristam Engelhardt draws on the "postmodern" view that no universal standard of justice exists to reject in principle any universal right to health care.[154] Lyotard's rejection of attempts

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[154] "Remarks on Legitimation through Human Rights," *Modern Schoolman*, LXXV (January 1988): 87-100.

to achieve normative agreements across difference is more harmful than emancipatory for those who are marginalized.

Young's endorsement of efforts to dialogue across difference and reach tentative procedural agreements are meant to avoid the irresponsibility and individualism suggested by Lyotard. Yet, Young's position only differs from Habermas's in that she addresses in greater detail those attitudes and practices which might facilitate the agreement that Habermas wants, and in that she is more willing to accept imperfect compromises rather than consensus. However, though Young presents the attitude of openness to the other as a "communicative ethic" opposed to deliberative political ethics, including Habermas's, openness to otherness is in fact implied by discourse ethics as well. The demand, implicit in our understandings of political validity, to find mutually agreeable norms implies that one ought to genuinely take into account the claims of others and be willing to expand ones worldview as is possible and necessary to achieve such agreements, so long as this does not involve a coerced compromise on ones own part. Thus, an effective discourse ethic implies the communicative virtues which Young undertakes to describe.

Young's suggestion that political disputes be resolved through "agreed-on procedures" rather than consensus formation also does not improve on Habermas's view. For, if further dialogue could yield consensual agreement, as it sometimes can, then it would be wrong to instead employ a procedure which would result in people being forced to live by a norm which could be revised in ways acceptable to everyone. To concede the possibility of consensus before discussion would preclude the possibility of new normative insight and corresponding consensus, employing communicative techniques

such as Young's wonder and enlarged thought. On the other hand, to the extent that agreement is genuinely not possible, then discourse ethics also implies that the next best alternative is agreement on a procedure by which to reach a compromise -- probably a vote. Thus Young's "agreed-on procedures" are the same terms which discourse ethics would also fall back on were genuine consensus not possible.

In conclusion, while Lyotard and especially Young, raise important problems and considerations in the pursuit of justice through discursively achieved understandings, these concerns do not refute the universalistic intentions of the ethic nor its means of inclusion through rational discourse.

5. Psychoanalytic Poststructuralism: Critique of Phallogocentrism

In addition to the challenges discussed above there is at least one other major strand of postmodern criticism that universalisms, including discourse ethics, carry an oppressive covert content. This strand draws on psychoanalytic theory to argue that theories about reason and agency tend to implicitly portray some agents as more fully rational than others. Critics argue that supposedly universal theories implicitly suggest a worldview on which some groups are devalued and subjugated by others. This claim is frequently made by poststructuralist feminists who see the theories of rational agency as an extension of male domination.

For example Drucilla Cornell argues that conceptions of a rational subject are associated with a masculine agent who masters his world. The authority of such an agent requires that others are seen as lacking similar authority. It is argued that the conception of reason used to justify knowledge of the world, typically constructs this knowledge at

the expense of constructing others as non-knowledgeable, a dependence which it refuses to recognize. Cornell, following Lacan, holds that "it is the bar to the feminine within sexual difference that serves as the ground of culture."[155] She goes on to argue that theories of subjectivity fail to present a coherent conception of women as agents. Incorporating Lacan's reading of Freud, Cornell argues that 'woman' can have no positive significance, for meaning is understood as stemming from the domination by the phallus.[156] Thus, the very processes of becoming a subject, making meaning, gaining knowledge, and asserting valid claims are coded in a gendered fashion. Cornell accepts that this is in some ways a description of how gender identities are conceived. Thus, whereas men are understood as being full blown persons, women are more frequently conceived under the types of "good, pure women," and "bad women," thus within the confines of male perspectives.[157] That masculinity has been linked to the ability to be of significance is supported by the disproportionate attention given to male sexuality.[158] There is a general tendency to construe a typical person as male, codified in the use of male pronouns to refer to any person. This tends to make it ambiguous whether any statement about humanity in general is meant to include women as well as men. When women claim equality with men, or equality as persons, they are appealing for admission to territory which is biased against them.

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[155] Drucilla Cornell, "What is Ethical Feminism?" in Benhabib, et al. *Feminist Contentions*, 87.
[156] "What is Ethical Feminism?" 86-7. The phallus is not equivalent to the penis but is rather a pscyho-sexual symbolic authority which has become associated with males.
[157] "What is Ethical Feminism?" 77.
[158] For example, Marilyn Frye argues that the comparative concern showed for John Bobbit's penis rather than Lorena Bobbitt's injured sexual organs, is characteristic of a tendency, rooted in psychological categorizations of humanity, to view men's sexuality and interests as more significant than those of women. See Frye, "The Necessity of Differences: Constructing a Positive Category of Women," *Signs: Journal of Women in Culture and Society* 1996, vol. 21, no. 4.

A similar argument could be made that images of typical, rational agency covertly support racist thinking. I suggested in chapter two that the widespread social acceptance of a racialized understanding of humanity seems to be a condition for the simultaneous endorsement of universal human rights and African slavery. Toni Morrisson argues that a "white literary imagination" has consistently used black characters with traits such as incompetence, immorality, mysteriousness, and backwardness, as a background for the action of white agents.[159] The frequent use of the imagery of moving from darkness to lightness to symbolize acquisition of knowledge and goodness, also suggests that concepts of reason and subjectivity, as such, tend to be racially biased. Against such a background of racist understandings, philosophical theories of rational agency could likewise be understood to apply foremost and most centrally to whites and implicitly support conceptions of members of minority groups as less than fully rational.

To the extent that universal theories of rationality draw on foundational theories of what it means to be a rational person, they tend to covertly reinforce prejudices that some people are more rational than others. For Cornell, any theory which attempts to secure a normative political ground based on conceptions of the conditions for human agency, is bound to reflect the dominant psychological views of what it means to be a human and what it means to be an agent. Thus adoption of discourse ethic as political ethic. though not explicitly biased, would in fact be biased towards those who concepts of rational speech evoke as political actors and it would further marginalize others. Cornell's concerns are shared by Young, who argues that deliberative models of democracy fail to recognize that power involves not only economic and formal political

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[159] Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (New York: Vintage Books, 1993).

rights but also in the "internalized sense of the right one has to speak or not to speak."[160]

Discursive universalism, feminist critics suggest, not only fails to criticize this symbolic

inequality but also exacerbates it.[161]

Cornell concludes that the appropriate response to phallogocentrism is to reject

theories about reason and agency per se. Rejecting such humanistic, moral bases for

feminism, Cornell supports what she calls an "ethical feminism." Such a project involves

taking advantage of the lack of precise definition of woman under the patriarchal order,

using such imprecision in order to stretch the meaning of what ethical relationships

involve. "The impossibility of absolutely fixing the meaning of Woman yields endless

transformative possibility."[162] Cornell stresses that feminist politics, when successful,

has lead to changes in understanding of meanings of identities and social reality. For

example, recognition of date rape and sexual harassment requires a simultaneous

extension of understandings of the meaning of gender and of what constitutes an assault

or a harm.[163] The prohibition of such acts does not flow directly from an understanding

of the moral virtue of accepting each person as one, but requires an interpretive shift as

well. Cornell also endorses a temporary adoption of a liberal framework for thinking

about rights, favoring Rawls's concepts of an "overlapping consensus" among various

visions of the good life and a "wide reflective equilibrium" in which moral principles are

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[160] *Intersecting Voices*, 63.
[161] For Cornell's rejection of Seyla Benhabib's feminism, for its "Habermas[sian] attempt to theorize the legitimacy of a normative rational sphere ..." see her "Rethinking the Time of Feminism" in Benhabib, et al. 145-156. For a direct criticism that Habermas fails to do justice to "alterity," animated by similar concerns for psycho-structural sedimentation of power and the need for aesthetic resignification, see Diana Coole, "Habermas and the Question of Alterity" in Maurizio Passerin d'Etreves and Seyla Benhabib, eds., *Habermas and the Unfinished Project of Modernity* (Cambridge, Mass.: The MIT Press, 1997), 221-244. I focus on Cornell as a representative of psychoanalytic poststructural feminism, since her reasoning is relatively clear and relatively distinct from other post-structuralist positions, such as Foucault and Butler's.
[162] "What is Ethical Feminism?" 87.
[163] "What is Ethical Feminism?" 79.

continually rebalanced against intuitions about what is right in particular cases.[164] This enables her poststructuralism to avoid an amoral rejection of basic rights. Thus, psychoanalytically-based poststructuralism envisions a continuing deconstruction of identities rather than an ethic of rational discourse.

6. Discourse Ethics and Symbolic Domination

It is indisputable that apparently unbiased, universal forms of speaking can contain subtle psychological forms of exclusion. The criticism that universalisms such as the discourse ethic perpetrate such symbolic domination is more challenging than other postmodern complaints, resting as it does on an interpretation of covert meanings of the ethic and an analysis of empirical tendencies. However, the objection must be addressed for, if the concept of a universalistic rational discourse favors Western, white, bourgeois male agents and presupposes the subordination of others, then the ethic is politically inadequate. A defense of discourse ethics would have to show that it does not have inherent phallogocentric tendencies and that it is superior to alternative ethics designed around the resistance to such tendencies.

First, the phallogocenrtic accusation shares with other rejections of universalism as oppressive certain contradictions. Once again, it seems that when Cornell and others object to the exclusions committed in the name of universalism, they themselves accept the norm that any and all exclusion and subjugation is wrong. Thus, it seems that they are committed to endorsing what they purport to reject. There appears to be a performative contradiction in the claim that one can not construct general normative theories, for poststructuralists seem to infer normative conclusions from this argument.

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[164] "What is Ethical Feminism?" 80-81.

Cornell's rejection of predominant categories as oppressive and her recommendation of a aesthetic manipulation of signs instead appears to be a normative position, asserted to be valid. Yet, it is more clear here than ever that the argument from performative contradictions does not suffice to defend universalism. For, it is conceivable that the attempt to formulate and implement a universalist ethic turns out to reinforce pscyhological domination to a greater extent than alternative ethics.

Discourse ethical universalism can also be defended directly against the charge of covert psychological exclusion and subjugation. The discourse ethic does not symbolically undermine, but rather consistently endorses, the full consideration or participation for oppressed groups. As I argued in the previous section, the demand for universal inclusion has been used to empower oppressed groups, as when political and civil rights have been extended to women and minorities. Critics argue that such inclusion always is on terms biased towards white males in power, so that formal equality is not true equality. However, universal inclusion need not take this flattening form, but rather can admit differentiation. For example proposals regarding leaves for pregnancy and child care, as well as affirmative action, are made in universalist terms sensitive to differences. The need to be included on ones own terms and not simply in formally equal consideration speaks in favor of, rather than against, a discourse ethic. For the discourse ethic specifies that the terms of equal consideration need to be determined by those subject to the law rather than by any absolute interpretation of equality that could be applied from the outside.

Discourse ethics can also serve to criticize the tendency to recognize some speakers and actors as more fully rational than others. Denial of full recognition to

women and minorities can be challenged as preventing full inclusion of their voices and insights. This is to say that the terms on which parties discuss political matters can themselves be politicized. In fact, discussions in the public sphere frequently do center on the quality of respect given to various members of society. When women, minorities and others are ignored, denied recognition as agents who can make rational claims, or presented as irrational, such acts can be criticized as thwarting the conditions for justly agreeing on norms. Because the discourse ethic asks us to consider the terms on which everyone might become equal partners in the formulation of social norms, it is well situated to criticize tendencies of exclusion. The ethic cannot guarantee that all such forms of exclusion will be uncovered. Nor is it even immune to being itself construed in ways which support exclusion. However, conceptually the discourse ethic is directed against its own cooption for ideological purposes, and it provides tools for criticizing symbolic domination generally.

A final question is whether psychological exclusion would not be better undermined by a political ethic in terms other than those of a communicative universalism. We saw that Cornell endorses an ethic based on imaginative resignification, with the differences that resignification is to be guided by resistance to phallogocentric logic and is to occur within the framework of a political liberalism.

There are several problems with such a constellation of orienting principles as an alternative political ethic. First, though it embraces human rights stemming from an overlapping liberal consensus, this leaves a weaker ground for universal commitments than the discourse ethic. While political liberalism supports a system of mutual toleration and basic liberties, it is weak regarding the possible expansion of universal rights, such as

in the direction of positive rights. As I noted earlier postmodern sensibilities can be marshaled to reject the expansion of rights to include things such as health care, affirmative action, freedom from hate crimes, workplace democracy, etc. An overlapping consensus provides little reason why new proposals regarding social justice should be entertained when they diverge from liberal traditions. A postmodernism grounded in liberal culture also casts doubt on whether illiberal societies can be judged as unjust for maintaining liberal norms. The extent to which there are human rights which every community should be expected to recognize is very much in debate today. A postmodern liberalism appears to give up any foundation from which one might argue that other nations and cultures should recognize fundamental freedoms. Discourse ethics has the advantage over pragmatic liberalism that it provides a basis to argue for the internal and external extension of human rights, while recognizing that the validation of those rights does depend on their ability to be recognized by all those affected.

This discussion points to the a second problem with an ethic resulting from a combination of deconstruction and liberalism: it is insufficiently participatory. Neither the recommendation of an overlapping consensus nor that of recreation of identities leads to a democratic process. On the one hand, the liberal overlapping consensus suggests that policy makers need to try to balance the competing interests and perspectives of their citizen clients. Thus it does not support an active participation by citizens in delineating terms of justice. Participation can lead to new insights on issues such as structure of the workplace, the city, and racial and gender justice -- insights which policy makers projecting an overlap of current perspectives and interests could not reproduce.

On the other hand, Cornell's moment of resignification does call for active citizen participation in the deconstruction of identities. However, this activity does not in itself orient reconstruction in a way which is compatible with the freedom of everyone. The creative resistance to dominant forms of identity, as I discussed in my response to Butler, does not in and of itself provide positive normative content indicating the direction of positive change.

The above discussion of undemocratic tendencies leads to a final difficulty with a psychoanalytic, poststructuralist ethic: it does not very well conceive of the oppression and prospects of emancipation even of the women and minorities for whom it is primarily articulated. If one takes the issues of violence against women, unfair burdens of caretaking, emotional support, and housework, and economic inequality and the feminization of poverty as a range of concerns central to feminism, the prospects of a deconstructive political ethic are mixed. In each case, women's domination *is* supported in part by conceptions and images of what it means to be a woman and the relationship of these to concepts and images of what it means to be a man, a person, a citizen, a worker, etc. This suggests that a political solution can and should, pace Cornell, involve the reconceptualization of gender, as well as human identity, work, etc. However, this insight does not determine how gender ought to be reconceived; nor is this reconceiving of sexist categories the only condition for achieving greater freedom for women.

Cornell and Irigaray suggest that the patriarchal refusal to accord positive significance to women opens up a space which can be defined by women themselves. However, if such fissures in patriarchal culture exist, it is not clear what direction positive action should take. There is a great deal of debate among feminists about how gender

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ought to be reconceived. Some suggest that the tie between gender and domination, and the fact that gender is a social construct, implies that resignification should aim at the abolition of gender distinctions. However, others claim that such a program and the corresponding racial politics based on a denial of the reality of race, have the drawback that they say little about how to respond to issues in a world in which gender and race are realities. Others suggest that femininity ought to be revalued so as to give it parity with the masculine, thus allowing women to be recognized on their own terms and to offer a social counterbalance to what is primarily a masculine culture. However, critics respond that this "cultural feminism" uncritically accepts something like traditional femininity, which was constructed primarily according to men's interests. The space of attempting to redefine gender relationships is hotly contested; it appears that there are things to be lost as well as gained. This implies that some conception of judging the relative normative validity of reinterpretations would be useful. The discourse ethic, with its demand, that all those affected have a voice, is a non-dogmatic, democratic conception of how such reinterpretations might be evaluated.[165]

Secondly, resignification does not address the different problems which women face equally well. For example, it does not seem that changing traditional definitions of who a man and a woman are will readily counteract the feminization of poverty, so long as people tend to stay within their current jobs and so long as new constructive efforts are not undertaken so as to address the nature of child care. Resignification clearly plays a larger role in fighting gender discrimination than in overcoming economically based

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[165] In conceiving of debates about how to redefine gender, I draw on Nancy Fraser's "Multiculturalism, Anti-essentialism, and Radical Democracy: A Genealogy of the Current Impasse in Feminist Theory," in *Justice Interruptus* (New York and London: Routledge, 1997), 173-188.

inequality, but sometimes there are intersections between the two which themselves needto be criticized. Feminists have increasingly argued that overcoming women's oppression requires fighting other forms of oppression, and requires consideration of how these forms overlap. Because psychoanalytic accounts tend to reduce oppression to expressions of dominant categories of thought, they are not well suited to conceiving of the way in which power acts with social space, a process which would require exploration of economics, political movements, sociology of groups, and social psychology. Furthermore, while rigidified psychological categories appear to play a central role in sexism and some role in racism, much oppression does not take this form and is not addressed by deconstructive techniques. This is most clear with regard to economic oppression: an economic system which entails poverty and class stratification does not need deconstruction so much as dismantling and reorganization.

The process of resignification needs to be guided by an ethic which insures that it is responsive to the needs of women and men with all their various needs and interests, present and potential. The resignification process will have to go beyond images of what it is to be a woman and also address what it is to be a man, different ways that home life and child rearing can be organized, and how to regulate the economy and distribution of labor. While old conceptions may need to be deconstructed, the path to freedom has to be reconstructed within new forms of discourse and cannot be expected to rise like a phoenix out of the collapse of the old. Discourse ethics, in its demanding that change occur through the channels of public understanding, may be appear to be a less radical form of resistance to domination than psychoanalytic poststructuralism. However, Habermas's conception of freedom might be said to be more radical in a sense, since it

consistently supports inclusiveness and consideration of everyone's claims and offers ways to draw on as well as criticize predominant conceptions of reason and agency.

7. Summary of Lessons from Dialogue with Postmodernism

Though criticisms of the latent content of universalism raise important questions for discourse ethics, they do not cut so deep as to require its abandonment. I have argued that while the dangers of covering over power relationships with the concepts of universal inclusion and rational discourse are real, discourse ethics is directed at the continual criticism of any such identifiable exclusion or domination. Furthermore, the objections themselves contradictorily presuppose the norm of uncoerced agreement by all those affected. Finally, to the extent that postmoderns offer alternatives to discourse ethics, they fail to consistently ground the universal respect that their proponents desire or to allow for a democratic politics in which people jointly strive for common emancipation.

CHAPTER V. DISCOURSE ETHICS AND EMBODIED POLITICS

The charges of covert content do not by any means exhaust the criticisms of the discourse ethic. Other critics focus on the way Habermas, like Kant, locates normative rationality in abstraction from embodied forms of human experience. Critics charge that the discourse ethic recommends political action and reflection in terms which are passionless, rigidly logical, and rhetoric free. Such a disembodied ethic, it is argued, diverges from actual political activity, especially those of women and minorities, to such an extent that it is either inapplicable to actual politics or justifies domination.

Viewed in this way, the discourse ethic leads to three problems. First, it fails to be applicable to actual political discussion, in which rhetoric, images, emotion, and gestures always play a role. Thus an ethic of this kind is not practical. Second, to the extent that the ethic does have any political implications, it appears to bracket out important sources of political insight that can be gained from emotion, rhetorical styles, images, and cooperation. Finally, the discourse ethical notion of rationality is characteristic of the political styles of bourgeois, white western males. To privilege such a rhetorical style and exclude others, including those commonly used by women and minorities, results in a bias in favor of those who already have relatively great power over political discourse. This implies that abstract discourse ethics, like Kant's formal universalism, is not only impractical but also insufficiently critical. Critics argue that discourse ethics ought to be replaced by a model of politics which recognizes and welcomes a plurality of speaking styles and aesthetic performances.

In what follows, I take up first the criticism that discourse ethics inappropriately excludes rhetoric, emotion, gesture, etc. (section 1). I respond by pointing out that

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embodiment and cooperation are not excluded from discourse ethics to the extent suggested by critics. However, after clarifying the discourse ethical view on rhetoric, I note ways in which it is appropriate for politics to abstract from it. I argue against the claim that the style of the discourse ethic privileges white males and could be replaced by an ethic which does greater justice to rhetorical styles (section 2). I then take up the objection that the discourse ethic is biased towards articulate and aggressive debaters, noting ways in which its form of competition implies cooperation (section 3). Finally, I turn to a discussion of Habermas's failure to address the importance of image and aesthetics in politics (section 4). I respond again by noting that discourse ethics does allow a role for these things on the one hand and, on the other hand, also appropriately implies a limit to the aesthetization of politics (section 5).

1. Rhetoric, Emotion, Gesture and Rationality

In addition to her criticisms of deliberative democracy's, including discourse ethic's, overemphasis on the goal of consensus discussed in Chapter 4 above, Iris Young argues that it wrongly excludes gestures, greetings, emotion, storytelling and other rhetorical devices.[166] Such exclusion is done in the name of distinguishing between reason and rhetoric, with the attempt to limit political discourse to the former. Habermas himself has said little about what discourse ethics implies regarding the appropriate role of rhetoric in politics. However, he does repeatedly emphasize that normative matters should be decided by "rational" discourse, implying that he would prohibit irrational rhetoric from political discussion. Furthermore, Habermas's defense of discourse ethics

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[166] *Intersecting Voices*, 70-74.

relies on the distinction between illocutionary and perlocutionary aspects of speech acts. The illocutionary force of a speech act is composed of expressive, descriptive, and normative assertions being made to an audience, such that the audience can understand them and take a position on them. A speech act is perlocutionary to the extent that it attempts to strategically persuade others to act or think in a certain way rather than trying to persuade them through the use communication of claims which the speaker takes to be valid. Habermas suggests that speech acts are rational insofar as they are illocutionary as opposed to perlocutionary. Perlocutionary persuasive measures attempt to move people through means other than rational content, thus tend to distort rather than further communication, including normative discussions. Since rhetorical and emotional speech frequently involve perlocutionary persuasion, discourse ethics appears to imply that rhetoric and emotion should be eliminated from rational discourse.[167]

Young argues that rhetorical use of emotional and figurative language *is* useful for effective communication of any sort. It seems dubious to say that rhetorical aspects of the way a message is delivered do not affect its meaning. "Rhetoric," argues Young, "constructs speaker, audience and occasion by invoking or creating specific meanings, connotations, and symbols."[168] This is to say that the sense of an expression is determined not simply by the literal meanings of the words said and the way that they are grammatically combined, but also by the tone of speech, accompanying gestures, and the symbolic significance of the spoken words uttered to a given audience at a given time. The distinction between the literal meaning given by words' references or technical

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[167] Habermas, *Theory of Communicative Action*, Vol. 1, trans. Thomas McCarthy (Boston: Beacon Press, 1984), 286-295.
[168] *Intersecting Voices*, 71.

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definitions and actual, lived meaning of words uttered in a certain way in a certain context has been made by other theorists of language.[169]

Second, even if it is possible to distinguish between illocution and perlocution or between the content and form of speech, an effective theory of political action has to look at both dimensions of speech. As Young says, "the most ... truthful arguments may fail to evoke assent if they are boring,"[170] or, one might add, in the wrong accent, an off-putting tone, in words which are difficult to understand or insultingly simple etc.. Even when the style of speech does not significantly effect its meaning, the effectiveness of communication depends greatly on rhetorical style.

Furthermore, Young cites research which suggests that women and members of minority groups are more likely to use gestures, emotional language and other rhetoric than are their white male counterparts.[171] This suggests that the philosophical equation of reason with the absence of rhetoric, physical gesture, and emotion, is biased towards the particular styles of those white male professors who write these books. Thus, discourse theorists such as Habermas are charged with endorsing the passionless and rigidly formal political styles common in legislative bodies and corporate boardrooms. These arenas appear to be dominated by white males who are acculturated to and experienced with them.

Similarly, storytelling, though it does not take the form of a deductive argument for a given conclusion, is an important, and perhaps irreplaceable way in which people articulate matters. Stories have of course been an important source of transmitting and

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[169] See, for example, M.M. Bakhtin, *The Dialogic Imagination: Four Essays*, ed. Micheal Holquist, trans. Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 1981).
[170] *Intersecting Voices*, 71.
[171] *Intersecting Voices*, 69.

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explaining norms, especially in non-Western cultures. Young notes that storytelling might also be an important way in which disadvantaged groups could try to explain to others how specific features of their situations warrant particular consideration. For example the Lakota of South Dakota may have no better way to explain the importance of the Black Hills to them than telling stories. The handicapped might tell stories of their obstacles in order to make a case for accessible facilities.[172]

2. Reason, Rhetoric, and Discourse Ethics

While Habermas has said little about rhetoric, discourse ethicist Seyla Benhabib offers a defense of deliberative democracy against Young's charge that it unjustly excludes rhetoric. Benhabib argues on the one hand that "modes of communication like [Young's] greeting, rhetoric, and storytelling ... may have their place within the informally structured process of everyday communication among individuals who share a cultural and historical life world. However, it is neither necessary for the democratic theorist to try to formalize and institutionalize these aspects of communicative everyday competence, nor it plausible ... to build an opposition between them and critical argumentation." But she continues immediately by stating that although "Greeting, storytelling and rhetoric may be aspects of informal communication in our everyday life, [they] cannot become the public language of institutions and legislatures in a democracy." In favor of this latter point, she cites rhetoric's incongruence with the rhetorical structure of the rule of law, specifically its need to rationally clarify that which is good for all. Greetings, storytelling and rhetoric, Benhabib argues, would "have the consequences of inducing arbitrariness," and "limit rather than enhance social justice

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[172] *Intersecting Voices*, 131-2.

because rhetoric moves people and achieves results without having to render an account of the bases upon which it induces people to engage in certain courses of action rather than others."[173]

This response to Young is equivocal. Benhabib seems to be saying both that rhetorical devices would inevitably be part of democratic dialogue and that it is important for dialogue to bracket out rhetoric.[174] It remains unclear, on the one hand, why rhetoric, with its irrational tendencies on the one hand should not be limited in everyday discourse, or, on the other hand, why the impossibility of formalizing communication does not extend to formal political decision making as well. With these lingering questions in mind, I will try to clarify the role of rhetoric in a desirable democratic ethic, which involves both descriptive and normative considerations. I will argue that discursive rationality includes a plurality of rhetorical styles and that the irrationality of rhetoric can generally only be decided within discourse. Secondly, I will propose certain grounds upon which the influence of rhetoric might be restricted in political discussion and governmental action. Finally, I address the issue of ethnic and gender bias in the form of the discourse ethic.

First, rhetoric, so far as it concerns the style of presentation rather than the literal meanings of words employed, is not necessarily perlocutionary. It is true that tone, word choice, gestures, etc. frequently move an audience to respond in a desired fashion, regardless of the content of speech, and in fact are used by speakers for precisely this purpose. However, other uses of tone, etc. serve to clarify utterances' meanings. If

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[173] Benhabib, "Toward a Deliberative Model of Democratic Legitimacy" in Benhabib, ed., *Democracy and Difference* (Princeton, New Jersey: Princeton University Press, 1996), 82-83.
[174] I will henceforth use the term 'rhetoric' to include not only verbal rhetoric but also gestures, emotional speech, storytelling, and greeting.

rhetoric affects meaning, then it has illocutionary as well as perlocutionary effects. This point is most obvious in the case of the choice of a storytelling format. Stories can convey things which could be difficult to articulate in any other form. For example, a story about the history of tribal land, or a story about the experience of a handicapped person, can help explain the importance of the land or accessibility features, better than simply stating that the land is important to the tribe or that it is difficult for a handicapped individual to gain the kind of access which others take for granted. Likewise, use of emotion and gesture can help to sincerely convey feelings on the part of speakers which would not be adequately presented by non-emotional, dispassionate speech. The feelings of people who argue for a point may be relevant to others who are considering the significance of their claims. Political dialogue could not exclude rhetoric, storytelling, emotion, gestures, etc. without eliminating significant contributions to discussion. Since the discourse ethic implies that decisions should be based on a consideration of the effect of norms on everyone, as expressed by those affected, it would have to welcome certain kinds of rhetoric.

Second, even rhetoric which is merely perlocutionary as opposed to illocutionary, it need not be forbidden on a discourse ethical account. Though a use of rhetorical flourish, gesture, polite greeting, etc. may sometimes add nothing to illocutionary articulation of claims which attempt to achieve assent through the uncoerced recognition of validity, it may be neither possible or desirable to attempt to bracket out such forms of speech. For to a large extent it is inevitable that speech acts contain perlocutionary as well as illocutionary effects. Even those with relatively non-passionate, staid and direct speaking styles, inevitably speak with some inflection and choose language partly on the

basis of its ability to please. Ordinary language is not possible without some degree of rhetoric. Since content cannot come without form, it is not possible to eliminate rhetoric from political discourse.

In fact, even perlocutionary rhetoric may aid discourse by making it interesting enough to follow. Jokes, storytelling, and poetic locutions can keep people listening by pleasing them. Though this does not directly add to illocutionary content of a speech act, it enables the reception of illocutionary speech. If people are to be motivated to participate in political discussion and motivated to act on the basis of those discussions, persuasive rhetoric could be helpful. Much rhetoric, even when it does not add new insights per se to discussion, does not cause a harmful distortion of communication, but rather facilitates mutual understanding.

Not only would it be impractical to try to limit rhetoric in public discussion, but it would be unfair to those who use such a speaking style to make their points. Thus, if women and minorities use rhetoric to a greater deal than men, and such rhetoric varies between helpful and harmless in achieving political understanding, it would be wrong to ask people to put aside rhetoric. Finally, while I have been assuming that rhetoric in some cases adds nothing to a political discussion, there is generally no way to distinguish between such irrelevant claims without engaging in the dialogue in which the rhetorical claims are made. In short, there is no way to throw out all the perlocutionary bathwater without also ejecting the illocutionary baby

All of these points in favor of using rhetoric in politics are consistent with the discourse ethic. Habermas's distinction between illocutions and perlocutions is not meant to suggest that rational discourse must only include the former or is not aided in its

success by the latter. The distinction of illocutionary effects is meant to show that speech acts contain claims directed at persuading others in a manner which is understandable and which invites reflexive response. It is this moment in reflecting on and responding to the validity of the content of others' claims that Habermas uses to show that rational persuasion differs from otherwise successfully influencing one's listeners. However, speech acts need not be purely rational illocutions in order to be part of a dialogue which is directed at agreeing upon claims which are rational. Even claims laden with eliptical rhetoric and heated emotion tend to assert things which can be recognized as valid or criticized. Thus, discourse ethics supports the view I argued for above, that useless or irrational rhetoric can only be identified as such in the course of dialogue in which such rhetoric is tested. Discourse ethics also need not deny the points that perlocutionary rhetoric can be helpful in getting illocutions across. The discourse ethic does make a distinction between the message and the medium, between form and content, but the distinction is an analytic one and does not suggest that the two can be ontically separated, or even distinguished with surety in advance of discourse. It is the course of uncoerced discussion which tends to select out rational illocutions from those whose persuasive power rests largely on perlocutionary affects.

To this point I have argued discourse ethics rightly understood implies that it is not practical or desirable to bracket rhetoric out of political discussion. This is most clear with the informal politics of the public sphere, which would be difficult to police for rhetoric. And, to admit that rhetoric is central to the public sphere is already to give it a large role in a discursive democracy, since Habermas and others argue that democracy rests as much on the quality of discussion in this sphere as on the formal legislation,

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administration, and adjudication done by the government. However, it is not clear why rhetoric should be ruled out in these formal aspects of democracy either. The arguments that rhetoric makes significant normative contributions, aids understanding, and is impossible to avoid, all imply that rhetoric does and should play a role in the discussions of legislators, administrators and adjudicators. While limited time and norms of polite public speech may put some limits on the forms of speech acts politicians use, there is no reason to exclude passionate or rhetorical speakers or speaking styles from governmental discussion.

However, it may be valuable or even necessary to limit rhetoric within written laws and policies. This is not because rhetoric is inherently biased, but rather because the law needs to be relatively explicit, so that it can be interpreted and applied consistently and predictably. This directness required of the law dictates that rhetorical devices such as stories or emotional jargon would be inappropriate or superfluous. If various styles of rhetoric have entered into the justification of the law, they can still be excluded from the wording of the law itself. To return to our examples above, once stories were used to show the need for the land rights of native peoples or handicapper accessibility, the policies need not repeat the stories but need only say directly what should be done. Such a law can incorporate the normative content implicit in various styles of speech without their being present in the final document. If law cannot be made completely free of rhetoric, it is a site at which it is necessary to curtail rhetoric and in which this curtailment results from the rational consideration of various forms of rhetoric.

The open proceduralism for which I have argued raises the question whether there are not some forms of political discourse which should be prohibited or curtailed.

In fact, discourse ethics does imply that there would need to be limits on what could be said insofar as some forms of speech act might have the effect of preventing others from speaking. For example if a form of hypnotism or subliminal message proved effective in shaping political will formation, then this would have to banned in advance of discussion. More relevantly, discourse ethics also implies that threatening or harassing language which bullies listeners to respond in particular way, thereby abandoning all attempt at rational persuasion.

Of course, there is a danger in allowing other forms of rhetoric in political discussion, for it can aid demagogic manipulation. Rhetorical appeals to the fear and anger of listeners sometimes encourages them to make unreflected political decisions. Likewise, a use of rhetorically beautiful language may aesthetically please listeners in a way that encourages them to agree with a speaker without critically inspecting the content of his or her claims. Hitler's speeches have become paradigmatic examples of the danger of emotional rhetoric being used to persuade people to support political causes which they might reject upon more calm reflection. Nonetheless, because of the difficulties of distinguishing empty, dangerous rhetoric from the important or harmless, it is not plausible to try to prohibit such discourse, though political education might aim at curtailing it. To forbid people from speaking usually diminishes democracy. The appropriate response to demagoguery is not to ban emotion or rhetorical flourish but to encourage open public debate with various participants as well as to encourage the political education of the public. In situations in which demagogic rhetoric triumphed, as in Nazi Germany, the cause was not principally the ineluctable pull of fancy phrases, but included a variety of factors which eroded the sphere of public debate, including

economic crisis, exclusion of opposing voices, and a breakdown of the rule of law. Thus, I argue that so long as rhetoric does not silence people by shouting them down or threatening and harassing them, it ought to be allowed. Furthermore, the discourse ethic is fruitful for clarifying the justifications for allowing or disallowing forms of dialogue.

While I have argued that discourse ethics does not exclude the various rhetorical forms that Young advocates, I have not addressed the question of whether the discourse model does not in some way favor western, bourgeois, white males. If this is the case, then it is not truly universal and might better be replaced by a model of politics which associated validity more directly with beautiful rhetoric or emotional expression. I argue that the ethic is not biased in principle and that there is no acceptable alternative. First, it is not just white, western, bourgeois males, who make political claims which they take to have a content which ought to be recognized as valid by everyone else affected by those claims. Women, minorities, and others claim validity to their positions and are prepared to argue for their claims. While members of some socially defined groups may on average use more or different rhetorical devices, they do not expect political matters to be decided on the basis of rhetoric at the expense of content. Rather their rhetoric would be justified because it actually is illocutionary in affect, because it is a more effective and interesting way of conveying the content, or because it is harmless way of conveying content. For the oppressed, rhetoric and emotion do not substitute for rational persuasion but rather are an essential or contributing part of such discourse. It is the notion that rational persuasion is not universal but peculiar to white males that most disadvantages women and minorities in political discourse.

Second, even were there an alternative to rationally testing the content of political claims, such an alternative would be undesirable. For it is only by such testing that claims with unacceptable content can be criticized consistently. If rhetorical flourish or deeply expressed emotion were equated with political validity, then well expressed demagoguery is made valid. Since this could justify the most unjust political content, any such ethic is insufficiently critical.

If it is necessary to accept various modes of communication into democracy, a final question arises whether it should not be a requirement that valid political rhetoric rest on a variety of specifiable forms of rhetoric, storytelling and greeting. Such a requirement is not defensible; this is where Benhabib's claim that a democratic theorist cannot formalize types of communication is relevant. On the one hand, if one looks at the quasi-transcendental basis for discursive legitimacy -- namely speech act theory -- there is no contradiction in saying that someone was rationally convinced of the validity of an normative claim without a warm greeting, without rhetorical flourish or deeply expressed emotion, or without a relevant story being told. Whether rhetoric of a certain form is necessary or whether storytelling can advance understanding has to be left to participants in dialogue and cannot be decided a priori. At most one could say that it might be advantageous, from a democratic standpoint, to cultivate various forms of rhetorical expression, including the capacity to tell stories, as well as the capacity to listen to and interpret these various forms of discussion. Capacity to understand various forms of rhetoric would enable the dialogue across cultures necessary for effective democracy. Speaker and listener would have to meet each other half-way, a process which requires effort to present claims in terms understandable by others as well as an effort on the

receiver's part to understand those terms. It would be contradictory to say that one was rationally convinced of the correctness of a political action while refusing to listen to stories and refusing to listen to forms of protest.

To conclude, though Young is right that rhetoric is an important part of political discussion, she is wrong to imply that this tells against a deliberative ethic such as Habermas's. This discussion shows that discourse ethics provides for a more robust role for rhetoric than its critics admit and is not guilty of disembodied abstraction. It also reveals, however, that discourse ethics rightly bases political validity on the acceptability of claims in critical, reflective dialogue, rather than any particular rhetorical style. Likewise, there are some forms of rhetoric which might so hinder the ability to conduct rational discussion that restrictions would be required. Finally, we saw that claims that discourse ethics is not applicable to the forms of discourse of women, minorities and other marginalized groups are mistaken.

3. Communication, Competition and Cooperation

Young raises a related objection to deliberative models of democracy that is sometimes found among those who believe the discourse ethic furthers domination. She claims that the model of argumentation recommended by discourse ethics is "adversarial" in nature and is not conducive to the full participation of those who are non-competitive, who are not as articulate, or who have not mastered those forms of rhetoric which tend to win arguments. While discourse ethics attempts to remain critical of various forms of irrational influence, it seems biased against those who are not as capable of rationally discoursing. Without any explicit requirements that political discourse be cooperative, it

seems that the model of argumentation supports a conflictual atmosphere in which the most adroit gain political rewards at the expense of others. As in a court of law, it seems that clever presentation of arguments and refutation of those of an opponent would give the greatest chance of communicative success. Furthermore, as political debates frequently involve deep differences in perspectives and interests, as well as great investment of egos, participants are unlikely to be particularly charitable towards the less articulate. Without any inherent requirement of cooperation, it seems that a political ethic -- and one based on argument in particular -- tends to devolve into a competitive struggle to refute and persuade others of the rightness of one's views. Thus, an ethic which identifies political validity with outcome of such a struggle favors the interests of the rhetorically dominant. Concerns such as these lead Young to endorse a non-agonistic, pluralistic communicative ethic.

In responding to this challenge, it is first interesting to note that most critics of discourse ethics tend to find it insufficiently, rather than overly, agonistic. In fact we saw that Young as well as Lyotard argued that the discourse ethic suppresses disagreement. Young's criticism of competitiveness is also in tension with her condemnation of deliberative democracy for not permitting a sufficient expression of emotion. Many of the emotional rhetorical styles whose revaluation such a criticism recommends are themselves competitive. Of course, that the criticisms of discourse ethics are in conflict with one another does not mean that one set of such criticisms is not valid.

Though discourse ethics is in some sense based on the format of a debate in which various sides try to prove their cases, there are three features of the discourse ethical competition which make it compatible with a spirit of cooperation and not unfair to the

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less articulate. First, to rationally persuade others requires that one not consistently treat them as strategic obstacles but rather must attempt to respond to their concerns. Unlike victories in courts of law, where success is achieved by winning over the judge and jury, successful political argumentation requires obtaining agreement from those with whom one is in conflict. In deliberative politics, one is forced to make a case that might be persuasive to one's opposition. Thus, various parties are forced to work cooperatively to locate the cause of disagreements and find grounds for agreement. Disputants therefore must minimally acknowledge the concerns raised by others if there is hope of rational political persuasion.

Secondly, the collective pursuit of an adequate solution may create a disposition to cooperate. Though a cooperative spirit is not entailed by the idea of rational political discourse, such persuasion is unlikely without such a commitment to solidarity. Furthermore the process of trying to find a mutually acceptable solution is likely to have the sociological effect of making parties more willing to cooperate. Thus once democratic discussion begins, participants may find a spirit of cooperation which makes the process easier to continue. For example, discussion across racial and cultural groups, though initially heated and competitive could result in mutual respect and concern which enables a reduction in conflict. To what extent political argumentation will engender cooperation remains an empirical question that cannot be conclusively demonstrated here. A philosophical account can only provide some reasons to think that it would.

Third, if competitive argumentation does lead to politics being dominated by certain individuals, this can be challenged as a violation of the norm of equal opportunity to participate. Competitive individuals would be challenged to defend their

competitiveness. Thus open dialogue again tends to undermine rather than reward cutthroat competitiveness. Dialogue could also be formally regulated in a manner which guaranteed participants an opportunity to speak uninterruptedly and which also limited speaking time. One might object that such limitations on competition will only be successful if those who propose them can win the competition to get them accepted. Yet, there is only a vicious circle here if the drive to give a better argument is not sometimes able to undermine competitiveness. Our speech implies the precedence of respect for the better argument, such that to simply reassert ones views without opening oneself to counterargument would contradict these pretensions.

Finally, to some extent discourse ethics does involve a competition to provide a better argument which favors those who are best at making and challenging arguments. However, alternatives which avoid the criteria of argument do not lend themselves to the fair and effective resolution of political debates. When there are disagreements about political matters, argumentation which gives each side an opportunity to assert its normative perspectives and interests and challenge those of others is a way of resolving debates which respects everyone as needing to be taken into account. Alternatives to persuasion involve either coercion of the less powerful or, at best, a benevolent concern untested by the claims of those who are being aided.

Furthermore, though greater cooperation might at times be desirable in politics, it is not plausible to base a political ethic on a spirit of cooperative discourse. For, such cooperation does not exist on issues over which there is deep disagreement, e.g. abortion and affirmative action. An ethic based on a good-willed attempt to aid the opposition could not begin to resolve such debates. More plausible is the demand to make ones case

to the opposition and a commitment to take theirs into account, as suggested by the discourse ethic.

These considerations serve to defend the discourse ethic's basis of validity on agreement through argument. Such argument is not competitive in the form of mere strategic manipulation of opponents for self-advancement, but has an inherent aspect of cooperation. Finally, resolving disputes through uncoerced persuasion of wherein lies the best argument is the most fair and respectful way to resolve disputes.

4. Image, Aesthetics and Communicative Rationality

Perhaps a more radical criticism of the discourse ethic as abstractly disembodied, charges that it inappropriately limits political action to linguistic expression. The discourse ethic appears to deny the political relevance of images and aesthetic displays. In her critique of Habermas's account of the rise of the public sphere, Joan Landes argues that he overestimates the sense in which modern politics is characterized by rational debate as opposed to performative, spectacular, and image-oriented events. She cites historians of the French revolution, held up by Habermas as a time of the flourishing of rational debate, who see this as a flourishing of a new set of images and spectacles, rather than a replacing of image with a rational, dialogic exchange of ideas.[175] In fact, there is disagreement among historians about the extent to which there ever was a flourishing standard of public debate as Habermas suggests that there was in the late eighteenth century in England and France.[176]

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[175] Joan Landes, "The Public and Private Sphere: a Feminist Reconsideration," Johanna Meehan, ed., *Feminists Read Habermas* (New York and London: Routledge, 1995), 91-116.
[176] See the essays in the collection edited by Craig Calhoun, *Habermas and the Public Sphere* (Cambridge, Mass.: The MIT Press, 1992).

Furthermore, Michael Warner argues that if the importance of image in political debate were declining, it is certainly reemerging of late. He cites the extent to which Ronald Reagan exploited imagery to shape public opinion. It has become almost a cliché to refer to the extent to which politics is dominated by "sound bytes," but the prevalence of catchy, appealing presentation over political content lends a stark contrast to Habermas's description of the public sphere.[177] Though it could be argued that the internet presents a new public space in which discursive exchange may flourish again, there is clearly a tendency for the internet to itself become dominated by images.[178]

Landes's and Warner's criticisms are less that discourse ethic is overly restrictive than that it does not allow one to reconstruct the actual process of political will formation, with all its non-linguistic influences. The discourse ethic's idealization could lead to failure to criticize the way in which spectacular images and performative gestures do play a de facto role in securing agreement, in more as well as less pernicious ways. Landes suggests that "Pragmatically, the formal use of language in interaction is best accompanied by a theory and observation of (stylized and informal) bodily gestures and postures."[179]

While Landes and Warner are critical of what they see as an overly idealized description of the public sphere, others challenge the very demarcation of moral claims and rationality from aesthetic reasoning, which is fundamental in Habermas's communications framework. These critics argue that aesthetic claims, with their potential for disclosing and reinterpreting aspects of the world, are an essential part of the

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[177] Michael Warner, "The Mass Public and the Mass Subject," in Calhoun, 377-401.
[178] Warner speaks of the reembodiment of politics, mostly driven by television. Perhaps a new kind of disembodiment is occurring, though one not necessarily in favor of rational, responsible dialogue.
[179] Landes, "The Public and Private Sphere: a Feminist Reconsideration," 109.

most rational political discourse. For example, J.M. Bernstein argues that aesthetic

performances frequently demonstrate the meaning and importance of radical politics

better than discursive argumentation. He cites examples of burning brassieres and draft

cards as political uses of aesthetics not easily replaceable by the assertion of moral

principles.[180] Such displays help lead to the types of resignification advocated above in

our discussion of Butler and Cornell's poststructuralism. In fact, Cornell sees the rigid

distinction of the aesthetic from the moral as a central point of departure from "liberal" or

"modernist" political ethics, including discourse ethics.[181] Thus, since aesthetics is an

important way of resolving apparent contradictions by presenting new forms of

understanding the world, prefiguring any linguistic codification, and since the reforming

of interpretations appears to be necessary both for reaching agreements across differences

and for shaking hegemonic worldviews, then aesthetics is appropriately treated as a part

of normative rationality. The very modern experience of aesthetic validity as existing in

its own sphere, separate from those of truthfulness and rightness, itself arose with

capitalism's systematic institutionalization of art as object of consumption, representing a

kind of private freedom which makes no claims upon the correct forms of social

integration. Such interpretations of art lead the critical theorists of the Frankfurt school,

Adorno in particular,[182] to argue that autonomous art is both in need of criticism and is

the locus of the dreams of a society in which unreified freedom is possible. By linking

political difficulty to dialogue about normative rightness, separated from aesthetic

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[180] J.M. Bernstein, *Recovering Ethical Life: Jurgen Habermas and the Future of Critical Theory* (London and New York: Routledge, 1995).
[181] Drucilla Cornell, "Rethinking the Time of Feminism," in *Feminist Contentions*, 148-9.
[182] Theodor W. Adorno, trans. C. Lenhardt, ed. Gretel Adorno and Rolf Tiedemann, *Aesthetic Theory* (London and Boston: Routledge & K. Paul, 1983).

considerations, Habermas appears to bracket out important sources of normative insight and take for granted an alienated contemporary worldview.

5. The Inseparability of Image and Aesthetics from Normative Reflection

First, a discourse ethicist can acknowledge that image, like rhetoric, plays an important role in politics, and that it is neither possible nor desirable to exclude them. Frequently images are presented as more or less direct claims -- as when a picture is meant to provide evidence of factual considerations or to provide a concrete depiction of what is not easy to describe with accuracy or seriousness. Images of victims, for example, play these roles in normative argument.

That images are not an essentially opposed to discourse is made clear by the fact that images are generally understood in linguistic terms, at least insofar as images are taken to have consequences for action. If one understands an image, one is generally able to give some propositional content to that understanding, describing what is depicted, explaining what emotions are conjured, or norms implied. Images of concentration camps are not understood if one does not know certain facts about the history or doesn't know what murder is. As statements, which "take the place of a thousand words," images frequently need to be accompanied by discourse in order to explain what is happening and what its significance should be taken to be. Interpretations of images and their significance can also be challenged, usually in linguistic form. Thus, a dialogic model of politics does not exclude images.

Certainly images also have distorting and falsifying capacities. Images are used to tacitly draw on and confirm implicit assumptions which might not be able to withstand

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the scrutiny of discursive debate. For example when pictures of welfare recipients or of arrested criminals are disproportionately of Blacks, this reinforces background beliefs that crime and poverty are mainly problems of minorities. Other images, patriotic ones of the flag or armed forces, or familial ones depicting traditional family arrangements and gender roles, serve to support pre-reflective commitment to the status quo. Furthermore, the sensational quality of images, even those which present information relevant to moral debate, e.g. images of victims, can incite irrational responses. Many have found that as television has replaced print media and radio as people's most common news media, audiences have become less critical and content has been watered down. All of these trends have to be concerns for supporters of discursive political ethic. Discourse ethics cuts against such use of images, not by calling for the banning of image, but though calling for active public reflection, such that if images are used, there are also opportunities for discursive responses which might point out tacit assumptions of the images. Like distortive speech -- e.g. the false, the sensational, the misleading -- images need to be countered through discourse. Habermas's description of the rise of the public sphere as a site of rational dialogue may be overidealized. However, it is still relevant as a norm for criticizing the way in which politics did and does avoid rational understanding. Indeed Landes and Warner appear to be critical of the manipulative use of images in politics. Such criticisms appear to presuppose something like the norm of undistorted dialogue.

To this point, I have spoken primarily of images as either distorting or contributing to the political discussion of norms, arguing that discourse ethics rightly welcomes the latter and criticizes the former. However, this response does not address

the concerns about the role of aesthetics in politics raised by Bernstein, Cornell and Taylor. These theorists object to discourse ethics' very distinction between the validity claims regarding normative correctness and aesthetic beauty. Habermas has himself has not articulated a comprehensive theory of aesthetic claims. *The Theory of Communicative Action* sets these aside to focus on normative claims. Thus, though there is not room here for me to develop in any detail a discourse theory of aesthetics, the distinction between aesthetic and normative claims requires some defense. To this end I will first provide some reasons for thinking that Habermas's distinction between forms of action is tenable and necessary and, second, suggest that the distinction of political validity from aesthetic insight fails to provide an emancipatory ethic.

There is not a clear and distinct line between acts which are aesthetic expressions and those which raise claims to rightness. We have already seen that both images and speech can take either form. Furthermore, in art, aesthetics is frequently simultaneous with political statement. Clearly there has been politically oriented literature, visual art, and music. Political actions such as the burning of draft cards, brassieres, or flags frequently involve aesthetic claims at the same time that they make claims to rightness. In such cases, neither the political claim nor the aesthetic claim could easily be duplicated without the other. Some theorists[183] have sought to explain this by describing aesthetics as involving a "world disclosive" function, a tendency to reinterpret the meaning of the world instead of asserting what is factually true about it. Habermas has admitted that in the *Theory of Communicative Action* he mistakenly suggested that world disclosure was a

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[183] For example, Martin Heidegger, *Being and Time*, trans. John Macquarrie & Edward Robinson (New York: Harper & Row, 1962).

minor function of language.[184] Instead, as James Bohman argues, world disclosure generally plays a central role in justification, both in scientific factual discourses and in normative discourses. "Disclosure has to do with the role of rhetoric in communication for changing rigid interpretations, of cases of blocked learning and problem-solving, for making interpretive processes fluid when they have come to a standstill, whether by power, ideology, or other forms of collective bias."[185]

However, the fact that aesthetic and normative claims overlap in this way does not collapse their analytic distinction. They remain as two different general ways in which a claim can be assessed. This is consistent with accepting that insights along one dimension can frame the lifeworld understandings which affect the validity of other forms of claims. Just as claims about factual matters in the world will affect background understandings against which moral claims are made, so will aesthetic-evaluative claims. Particularly in political communicative action, directed at arguments for legal norms and other norms governing social institutions, evaluative claims inevitably play a structuring role. Political institutions reflect not just those claims that all might accept that others make, but also reflect aspects of shared cultural understandings. Challenging political norms frequently involves challenging those interpretations of the good life that have made norms seem unproblematic or natural. However, aesthetic expressions need to be interpreted in order to make significant moral or political claims. Some such expressions have minimal implications for politics, just as apparently valid normative expressions of

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[184] Habermas, "A Reply," in Axel Honneth and Hans Joas, eds., *Communicative Action* (Cambridge: Polity Press, 1991), 221.
[185] James Bohman, "Two Versions of the Linguistic Turn: Habermas and Poststructuralism," in Maurizio Passerin d'Entreves and Seyla Benhabib, eds., *Habermas and the Unfinished Project of Modernity* (Cambridge, Mass.: MIT Press, 1997), 197-220.

human rights raise few aesthetic claims. Though some aesthetic claims can be argued to raise important normative issues, to reach an agreement upon the rightness of a political norm will eventually require a focus on issues regarding normative acceptability to the exclusion of considerations of beauty. Thus discussion of the rightness of a war or of the draft cannot be decided in the terms of aesthetic displays, but has to be unpacked into claims about what ought to be done.

Furthermore discourse ethics rightly rejects the equation of freedom with the overcoming of the distinction between types of validity claims. Bernstein's hope for the overcoming of the distinction between moral and aesthetic claims is neither plausible nor desirable politically. First, it is not clear how the aesthetic would be wedded with the moral and political, given the extent of their separation. As the two types of claims are greatly separated in the modern world it is not clear by what logic they could be brought together. Neither artistic nor political activity contains within its program a guideline for how the other type of action is to be incorporated into it. No rational defense can be offered for the belief that distinct forms of reason could be unified or that such reunification would desirable. The belief that all major dimensions of human interest can and should be mutually supporting presupposes a metaphysics in which a natural relationship between humanity and the cosmos has been disrupted. The wish for the reestablishment of a harmony between beauty and politics is not a plausible ground for current emancipatory action, resting as it does on a utopian rejection of existing forms of reason and social institutions.

This leads to a second point. The project of aestheticizing politics is undesirable. On the one hand, it appears that the relative autonomy of normative, instrumental and

aesthetic reason has allowed for developments which are necessary for human freedom. Instrumental reason has lead to an effective manipulation of the world to effectively meet human needs. Normative reflection lead to a recognition of rights under which some level of freedom appears to be possible for all. Against this background of moral respect and instrumental capability, aesthetic acts support the need for meaning and fulfillment. Attempts to link the three to each other would put at risk the learning made by their relative separation. Of course, to defend predominant forms of rationality by arguing that they correctly solve the problems they are geared towards is circular. Such circularity is impossible to avoid altogether when arguing against irrationalism. However, I take it that to the extent that current forms of reason can conceivably significantly further conceptions of freedom, the onus is on those who argue that authentic freedom cannot be found within these terms to demonstrate why this is so.

Discourse ethics admits of aesthetic considerations insofar as these affect the acceptability of a norm. The discourse ethic does not imply that everything of political significance has to be linguistic in form or devoid of aesthetic value. However, politics ultimately requires discourse about the rightness of norms of action which is relatively distinct from aesthetics. Aesthetic claims are not capable of guiding humanity in its acceptable coexistence. Thus I argue that an aestheticized politics is not a realistic or desirable alternative to the discourse ethic.

6. Conclusion Regarding Discourse Ethics and Embodiment.

We have seen that the discourse ethic is not as abstractly disembodied as critics charge. Habermas has contributed to this misunderstanding by failing to explain the role

of rhetoric and aesthetics in politics, and by referring to the importance of rational discourse, as if a great deal of rhetoric would not even be allowed in a democracy. I have argued that the discourse ethic does imply that various forms of rhetoric and aesthetic expression have an important role to play in politics. At the same time, the discourse ethic appropriately remains critical of the roles that rhetoric and images can play in politics and refuses to collapse normative validity with the aesthetic.

CHAPTER VI. CARING, CONTEXT-SENSITIVITY, AND UNIVERSAL NORMS

The objections to discourse ethics discussed in the previous chapters deal with the difficulty of doing justice to differences, both of perspective and style, within a single political universalism. Another form of criticism of Habermas's ethic is that the norm of rational consensus through dialogue is a rigoristic conception of morality that is insensitive to particular cases. Advocates of an ethic of care have argued that moral universalism, particularly in the Kantian tradition, fails to do justice to the specific contexts in which actual normative judgments are made. For example, it appears that many of the most important obligations stem from the demands of particular relationships rather than respect for the claims of all of humanity. Critics charge that conceptions of universal normative validity should be either replaced or supplemented by an ethic of care for particular others or responsiveness to particular contexts.

It is held that such concerns are of specific political significance for various reasons. First, since women, compared to men, take their ethical direction to a relatively great extent from care as opposed to considerations of universal justice, the discourse ethic, which emphasizes the latter, is again susceptible to charges of male bias. Second, because caring relationships are sites of domination and abuse, a political ethic needs to be able to address adequate forms of caring. Finally, it can be argued that care is a condition for adequate political engagement of others, and needs to be more fundamentally incorporated into politics than implied by a discourse ethic.

I begin by discussing arguments by Carol Gilligan and others that normative universalism fails to do justice to contextual matters (section 1). In response to this criticism I draw on Benhabib's interactive universalism and Klaus Gunther's discussion of

application discourses to argue that discourse ethics is sensitive to particular situations (section 2). I then consider the adequacy of the discourse ethic for reconstructing the nature of obligations in personal relationships (section 3). Finally, I take up the objection made by theorists such as Jessica Benjamin, Jacques Derrida, and Richard Rorty that relationships to others should be a fundamental aspect of an emancipatory political ethic (section 4).

Section 1. The Challenge of the Ethics of Care to Discourse Ethics

Much of the criticism that Habermas fails to do justice to the concern for the particular draws on Carol Gilligan's seminal work, *In a Different Voice*. There, Gilligan offers a critique of Kohlberg's theory of universal moral development. Gilligan questions whether everyone develops through the same stages in the same order, noting differences in moral development between women and men. Furthermore Gilligan questions whether assessing moral issues in terms of principles taken to be universally valid is the single highest stage of moral development, as Kohlberg suggests. Gilligan found that ability to subsume particular cases under general normative principles was only one feature of moral development.[186]

Gilligan questions Kohlberg's interpretation of responses to his famous hypothetic situation of what a man should do whose wife is seriously ill when they cannot afford the needed drug and the druggist will not provide it. Gilligan argues that Kohlberg misinterprets his data in favor of universal justice. Gilligan found that many of those who Kohlberg ranked low in moral development tended to justify their positions by

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[186] Carol Gilligan, *In a Different Voice.*

referring to the importance of the man's relationship to his wife or to concern for the druggist or other people in the community, rather than discussing general principles such as property rights and the value of human life.[187]

Gilligan argues that instead of showing a level of development below universalism, these responses are indicative of the development of another form of important ethical insight. This form of moral development involves attentiveness to the context of a case and care for the needs of particular individuals to whom one has a relationship.[188] Gilligan refers to this normative orientation as an ethic of care, and contrasted it universalistic ethics of justice, such as that advocated by Kohlberg and predominant in Kantian-influenced moral philosophy. The ethic of care appeals to our moral intuition that being good is not simply a matter of recognizing generally valid principles but also includes caringly and sensitively responding to particular circumstances. Furthermore, it allows one to refute Kohlberg's seemingly sexist suggestion that women generally are at lower levels of moral reasoning than men. In fact it suggests that the masculine ethic of justice is one-sided and inadequate as a comprehensive ethic and may help to explain why societies concerned with justice have failed to respond to the needs of particular individuals.

Gilligan's criticism of the predominance of universal justice in moral theory is supported by other strands of social theory. For example, philosophers in the phenomenological tradition have argued that normative judgment must be viewed as contextually bound in a way which universalism tends to deny. Normative judgments, they argue, arise within particular decision contexts, and practical reason must include all

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[187] Gilligan, 25-31.
[188] Gilligan.

of the historical and contextual features relevant to the decision. Hans-Georg Gadamer, the preeminent exponent of a hermeneutic approach, argues that practical orientations should be inferred in a process called phronesis, employing Aristotle's term for a situated ethics. Phronesis "does not propose any new ethics, but rather clarifies and concretizes given normative contents."[189] As a model for this process Gadamer describes the way in which texts, for example religious texts or state constitutions, are continually reinterpreted in light of current historical situations. Gadamer's discussion suggests that an abstract universalism, which attempts to force a general normative framework upon all moral or political issues, is inadequately sensitive to context.

The idea that general norms always do violence in their application to particular cases finds expression in Jacques Derrida's recent critique of the rule of law. Since a law which preexists specific cases cannot take into account all of the particular features of those cases, the law has to be interpreted when it is applied. Thus, Derrida finds the application of the law to particular cases to be an arbitrary and violent process. "Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely."[190] Along with this aporia of applying general rules to particular cases, Derrida argues that justice, with its promise of genuine equality and full consideration, will always be undecidable.[191] Actual legal decisions, though made in the name of justice, will always betray this ideal. Our very expression "to enforce the law" shows how the law, as something extraneous to

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[189] Gadamer, "A Letter by Professor Hans-Georg Gadamer," cited in Klaus Gunther, *The Sense of Appropriateness,* trans. John Farrell (Albany: State University of New York Press, 1993), 180.
[190] Derrida, "Force of Law: The 'Mystical Foundation of Authority'," *Cardozo Law Review,* Vol. 11:919, 961.
[191] "Force of Law," 963.

contexts must be violently applied to them. Derrida concludes that one could never say that a ruling has been just,[192] but rather implies that justice remains an ideal concept which cannot be approached by any actual procedure or set of laws.

There is disagreement, even among advocates of an ethic of care, of the form and extent of its normative implications. Some of Gilligan's followers join Gadamer in arguing that a contextual ethic is a preferable alternative to the ethic of justice, and that we would do well to systematically endorse care as a moral and political orientation. Others, including Gilligan and Derrida, do not argue that care should replace justice, but rather suggest that it provides a different, competing, non-derivative, non-subordinate set of moral concerns. Thus, there would be a plurality of ethical approaches, perhaps with the best incorporating some balance of care and justice.

Both of these general positions imply that the discourse ethic, as articulated by Habermas, is flawed. For the discourse ethic does give absolute priority to a universalizing principle. It implies that norms are moral if and only if the norms and all their consequences could be defended in a dialogue with all those affected. It does imply that politics might be procedurally guided by the pursuit of universal principles, and that the enforcement of the law based on such a procedure would be just. Furthermore, we saw that Habermas's relies precisely on Kohlberg's work to support his claim that moral development involves increasingly universalistic orientations. Discourse ethics rejects context sensitivity as an ethical orientation which could either replace or exist in tension with that of universalistic discursive validation. To the extent that care ethical criticisms of universalism suggest that care for others and responsiveness to particular situations are

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[192] "Force of Law," 961-963.

central sources of political validity, they also cast doubt upon discourse ethics as an adequate political ethic.

Section 2: Discursive Universalism and Contextualism

Habermas has responded to the criticism that discursive universalism is insufficiently context-sensitive by denying that the claims raised by care ethics are of genuine moral import. He suggests that the concerns raised by Gilligan relate not to the justification of norms, which is what the discourse account of validity thematizes, but the application of norms in particular contexts.[193] Here, I first qualify, and then defend this assertion.

First, as Seyla Benhabib argues, there does appear to be a role for context-sensitive caring in the justification as well as the application of norms.[194] To deny this altogether would imply that norms could be recognized as valid free of consideration of contexts. It seems clear that if norms are to be just they would have to take into account concrete contexts in which they are likely to be applied. Norms regarding, for example, assault, theft, welfare, obligations between married couples and employers and employees, etc. all depend upon understandings of types of social and economic circumstances and the needs which individuals have in those circumstances. Thus, political justification requires context sensitivity. It also requires taking into account the claims which people in such circumstances make. In fact, the discourse ethic, unlike Kantian universalism, argues that the consequences to all those affected from following a

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[193] *Moral Consciousness and Communicative Action*, 175-182.
[194] Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (New York: Routledge, 1992), 148-177.

norm ought to be taken into account. Thus, it does require that people recognize important features of action contexts.

With this in mind Benhabib recommends a version of the discourse ethic which she terms 'interactive universalism', in which participants to discourse would be recognized as concrete others and not merely generalized human beings. However, the contrast she draws between her position and Habermas's is exaggerated. For Benhabib holds neither that care should replace procedural univeralism nor that it should provide a supplement that is in tension with universalistic considerations. Rather she claims that "considerations of care must be validated or affirmed from an impartialist perspective."[195] Thus, for Benhabib, attention to context is part of what it means to engage in universalistic dialogue, and the validity of the demands of care can be tested in such a dialogue. Ultimately it is "the discursive procedure alone and not and not some additional moral principles of utility or human well-being define the validity of general moral norms."[196] Benhabib's position does not call into question a political ethic of discourse or its universalism. Rather, care for the particular plays an important role within the discursive process by which generally valid norms would be decided upon.[197]

However, the concerns of care ethicists cannot be completely subsumed within the discourse ethical process of justification. No matter how fair and inclusive the justification process, it is unlikely that it could yield general principles which are inherently sensitive to particular cases. It would be impossible to foresee and take into

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[195] Benhabib, "The Debate over Women and Moral Theory Revisited," in Meehan, 190.
[196] Benhabib, "The Debate over Women and Moral Theory Revisited," 191.
[197] If her interactive universalism differs from Habermas's discourse ethics, it is in her suggestion that a procedural univeralism should be applied to all ethical issues without an assumption of full agreement. Thus, she rejects the morality-ethics distinction, which I will discuss in the next chapter.

account all the contextual issues which arise or might in the future arise in the application of normative principles. It is for this reason, that defenders of discourse ethics have thought that it is necessary to show that the theory implies not only a universalistic system of justification, theorized by (U), but also corresponding discourses of application which determine which norms are appropriate in various concrete, complex, changing circumstances.

In his *Sense of Appropriateness* Klaus Gunther argues extensively for the distinction between the justification and application of norms within the discourse ethical concept of moral reason. Habermas and other advocates of discourse ethics have largely adopted his understanding of these concepts.[198] Gunther argues that there is frequently confusion in moral theory about whether metaethical principles, such as the discourse ethic's (U), are meant to justify generally valid norms (e.g. that lying and killing are wrong and that people have a right to things such as food, housing and health care) *or* individual actions in particular cases (e.g. telling a lie, punishing someone, or using government money to fund a wellfare program). For example, though Kant sometimes clearly argued that metaethics was concerned with justifying only general norms, he confused this when he spoke of justifying maxims of action.[199] Gunther argues that in fact ethical theory, and discourse ethics in particular, has consequences for both the justification of norms and their application in particular cases. However, the two processes require distinct forms of reasoning. Discourse ethics, argues Gunther, has direct implications for the derivation of generally valid social norms, the application of

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[198] For example, see Habermas, *Justification and Application* (Cambridge, Mass.: The MIT Press, 1993), 38, and Rehg, *Insight and Solidarity*, 187-210.
[199] Gunther, *The Sense of Appropriateness*, 12.

such norms requires a somewhat different process of discourse. While justification of norms implied by discourse ethics uses the principles of reflexiveness and inclusiveness to derive general validity, Gunther argues that the application of norms centers on questions of whether a norm is appropriate in a given case, or which norm is most appropriate in cases of conflicting norms.[200] The impartial, rational judgment of appropriateness entails considering all relevant features of the case at hand. Thus Gunther shows that a process of context sensitive application is actually implied by the discourse ethic's concept of universal justification. If this distinction between discursive justification and application is valid, critics of discourse ethics as contextually insensitive would need to show either why these appropriateness discourses would not themselves do justice to particular cases or argue, contra Gunther, that these forms of appropriateness discourse are not compatible with the discursive universalism.

Gunther defends the distinction between justification and application discourses by showing the weaknesses of the two main alternatives, which locate normative reason wholly within either the process of universalist justification or that of context sensitive application. On the one hand some might argue that justification processes should be capable of yielding norms which are susceptible of straightforward application to particular cases. Gunther counters by arguing, first, that it is not plausible for a discursive procedure to justify norms which are transparently applicable to every particular case. By nature, postconventional, universalistic, normative justification abstracts from the burden of responding to particular situations in order to conceive of what generally supports the common good. The ability to take into account diverse and

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[200] Gunther, 41-44.

changing circumstances is limited. Thus, a justification process might justify norms such as that one should not kill, assault, lie to, steal from, or interfere with others and positive rights to social benefits, such as health care, housing, food, etc. While the justification process must take into account typical situations, it inevitably abstracts from many possible circumstances and a full description of any particular circumstance. Such norms do not come with a complete description of what circumstances meet their criteria. It is not always clear what constitutes a violation of a norm, e.g. when an act is in fact a lie, a murder, or an assault. Thus, before particular normative judgments can be made, a new process of reflection is required to test to what extent the norms are appropriate to the case. In fact, the political debates regarding abortion, hate speech, pornography etc. are in large part about how norms which are largely agreed upon should be specifically applied.[201]

Secondly, norms generally do not entail stipulations about their exceptions and how conflicts between them and other norms are to be resolved. The classic example is the case in which a lie would save the life of a person sought by a malicious persecutor. An examination of the case, shows that the norm regarding truthfulness is not applicable because a more important norm is in play, namely protecting a person's life. A conflict of norms, themselves widely regarded as true, is arguably at play in political issues such as affirmative action, where the norms of redressing the results of injustice and facilitating the equality of opportunity conflict with those of distributing burdens and benefits in accordance with individual responsibility, injury suffered, and merit. All of these norms are widely recognized as valid; yet, the social understanding of the validity of these norms does not include a ranking of their relative importance. In fact, Gunther suggests

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[201] Gunther, 59-72.

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that the common description of application discourses as involving "weighing" competing values is partly a distortion of what is involved in application amidst normative conflict. Application discourses centrally involve the assessment that all of those various aspects of the particular case which are of normative relevance have been considered, and an application of the norms in light of such considerations. Such determinations need to involve a new assessment of which social norms are most appropriate for guiding action in the particular case, rather than a prior reference to an absolute ordinal ranking. The relative importance of redressing injuries versus judging people individually might itself have to be decided anew in different contexts.[202]

One could argue that though generally accepted norms are certainly sometimes not clear in their implications for a given case, this simply shows the need for more finely grained justification processes which would hammer out norms that precisely apply to the disputed case. For example, discourse ethics need not imply that lying is always right or wrong but could come to stipulate that "one should not lie except to avoid serious harm." Likewise, we can imagine that a society might come to agreement regarding the rightness or wrongfulness of affirmative action.

However, as Gunther argues, it is not plausible to reach social agreements which determine what should be done in each circumstance.[203] We are not capable of deciding on norms which apply to every case in transparently deductive manner. The affirmative action case is a good example. Though we can not rule out that, despite current disagreement, a society could come to agree either that there are cases in which steps should be taken to overcome past discrimination by giving preference to members of

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[202] Gunther, 207-219.
[203] Gunther, 29-40.

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groups who have been discriminated against, such a decision could not completely specify those conditions under which affirmative action would be justified and in what forms. To decide whether any particular application of affirmative action were justified would require a discourse of application in which all normative features of a situation are raised. This is not to say that some application processes, particularly those in which a conflict of norms arise, do not warrant a revisiting of justification discourses. Without such a revisiting, it might be dubious whether the way in which norms were being chosen over others failed to preserve the understandings of general interests established in justification discourses.

When one takes into account application procedures entailed by the justification of norms, Derrida's critique of the law as inherently insensitive to context appears particularly misguided. For, as Axel Honneth argues,[204] legal decision making has a long tradition of taking context into account, from theories that the law should be interpreted in light of social principles, as on Ronald Dworkin's influential view,[205] to routine considerations of mitigating circumstances. The discourse ethical account can distinguish between "equality" in the application of the law, which rigidly holds all to the same terms, and "equity" in which relevant differences are taken into account. Contra Derrida, the notion of universal law can be understood in a manner which includes taking into account everyone in relevant respects. The discourse approach has the distinct virtue that it recognizes that what constitute relevant respects of equal treatment, what constitutes equity, are matters which must be continually defined by all those affected.

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[204] Honneth, "The Other of Justice: Habermas and the Ethical Challenge of Postmodernism," *Cambridge Companion to Habermas* (Cambridge: Cambridge University Press, 1995), 316.
[205] Ronald Dworkin, *Law's Empire* (Cambridge, Massachusetts: Belknap Press, 1986).

Thus, the assertion that laws inevitably do injustice to context is mistaken.[206] If Derrida's claim is that both the justification of laws which can serve as guides to application and the process of applying the law to individual cases is fallible this is true. However, this is hardly a surprising or fruitful critical conception for the critique of law as inherently unjust. Lawmaking and application share fallibility with all processes of human judgment. The important question is whether there are any conceptions of justice such that attempting to implement them will lead to decisions which tend to be to be more just. The discourse theory of justification and application provides conceptions of universalistic conception of justification, which can meaningfully guide the just application of norms to individual cases.

We have seen that discursive universalism implies a moment of application in which an effort is made to take into account all relevant features of individual cases. Thus, context sensitive, caring application of norms is not only compatible with but actually complementary to a discursive universalism. This, in addition to the effort to take into account all differences in the consideration of the justification of norms, suggests that discourse ethics is responsive to the particular to a degree which is overlooked by its contextualist critics.

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[206] To some extent Derrida's argument might be directed against the existence of a positive law, enforced through coercion. The framework of such a law is limited by the word of the law and the limitations of the interpretive ability of legal authorities. Thus, there may be some conflict between justice and law, insofar as there is an anarchical alternative in which normative judgments were made without determinate rules. However, such an anarchist view, were it to be moral, would still require informally agreed upon norms or laws; for reasons that I explain below, adequate normative judgments need rules and cannot be made solely in response to unique features of cases. Secondly, Habermas defends positive law for reasons similar to typical defenses of the law: it helps to ensure that that which is recognized as right is acted upon and it provides a relatively predictable framework for action in cases in which social norms are unclear. Habermas also finds this protective legal sphere to enable individuals to contribute to normative debate. It might also be argued that the fixing of positive law usefully occasions discourses about normative justification, and thus is instrumental for democracy. There is not room in my general defense of a discursive political ethic to include an extensive consideration of the virtues and vices of positive law.

However, those who stress the contextualism of normative judgment argue that there is no justification process separate from context. Thus, while we rejected the argument that the justification of generally valid norms could lead to transparently applicable results, we have to consider the converse objection -- namely, that it is senseless to try to justify norms distinctly from a consideration of the features of concrete cases. If particular cases involve considerations which cannot be dealt with in justification discourses before the fact, what is the point of the latter discourses? Why not simply respond to the particular case, considering all the features of the situation as described above? Perhaps an adequate political ethic ought to center on interpretive response to the particular case, as in Gadamer's hermeneutics.

A political ethic of hermeneutic interpretation of particular normative contexts is inadequate because the process of evaluating particular cases requires a prior understanding of general normative validity. Gunther draws on Wittgenstein's discussion of language use to make this point. In order to use language appropriately in a given situation, there must be a rule which one is following. Rules do not provide formulaic criteria for application, but they are necessary in order to meaningfully discuss particular cases. This analysis of meaning also applies to judgments regarding the validity of statements, including normative statements. If we think of instances of affirmative action, hate speech, or sexual harassment, it would be impossible to begin to evaluate or justify claims that a particular instance was right or wrong without referring to norms which one assumed to be generally justifiable.[207]

In Gadamer's neo-Aristotelian conception of phronesis, it is the lifeworld

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[207] Gunther, 91-99.

supported by social tradition which provides the background understandings against which the rightness of particular actions or policies can be assessed. Judgments are made by interpreting the current situation, in all its complexity, drawing on traditions which guide the understanding of particular cases. However, such a conception of ethics is inherently conservative in suggesting that the lifeworld cannot itself be made explicit and subjected to criticism which leads to normative learning. To express the possibility of learning, one must have a conception by which justifications of lifeworld norms can be asserted and criticized. Once the matter of the justification of general norms becomes thematized, there is no reason why any provisional understanding of norms should be accepted as valid without being subjected to debate. The resolution of political problems by phronesis presupposes a widely shared tradition within which disputants collectively organize themselves. These conditions no longer appear to be applicable in contemporary societies. The example of the interpretation of texts cannot be extended to general decisions about appropriate action. Whereas the former process involves a prior commitment to the rightness of the text and thus a demand to fit it to the current situation, political debate cannot assume such a prior commitment. It is precisely those situations in which there is a conflict with traditional norms or in which it is called into question whether usual ways of approaching matters is effective that political debate occurs. The discourse ethic's universalistic procedure of justification fulfills this need to justify and continually criticize norms, making sense of how this process can be said to be rational rather than arbitrary.[208]

The insight of hermeneutic approaches, then, is that justice can only be done in

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[208] Gunther, 190-201.

individual cases by a procedure which attempts to interpret and apply norms in a context-sensitive fashion. However, this application does not obviate the need for universalistic justification, but rather presupposes it. For examination of the individual case, though it contains implicit lifeworld norms guiding action, cannot determine whether the normative approach taken to solving the particular problem is consistent with general interests.

These considerations show the need to distinguish between a moment of justification of moral and political norms which abstracts from contexts in order to consider what is in accord with generalizable interests, and a moment of application in which justified norms are applied in a context sensitive manner. Gunther's distinction serves to show both that context sensitive judgment is, to a large extent, compatible with discourse ethics and that it cannot replace it.

Returning to Gilligan and Kohlberg, this discussion reveals the importance of Gilligan's criticism while preserving Kohlberg's argument for universalism. *Pace* Gilligan, context sensitivity is central to normative reflection, as it essential to the application of norms. Thus, one would expect that questions regarding particular moral judgments as asked by Kohlberg would focus discussion on particular aspects of the case. At the same time, insofar as one asks whether a general social norm is justified then reflection shifts from a consideration of contexts to one of universal consideration and discursive argument. It is not plausible to argue that either process is a uniquely masculine or feminine activity, though it is conceivable that gender differences affect relative preferences for and competence in one type of process or the other.

Section 3. Caring Bonds and Universal Discourse

The above argument does not completely address the concerns of care ethicists. Some of the normative concerns stemming from caring attention to particular cases could neither be rationally defended in universalistic justification nor result from a context sensitive application of such universal norms. Namely, obligations and commitments which stem from particular relationships do not appear susceptible to universalist grounding and yet appear to be "moral" obligations. Both Benhabib and Lawrence Blum offer examples of moral obligations which they suggest do not stem from universalism. Blum gives the example of parents having an obligation to keep a watchful eye on their children, such as when they are playing roughly.[209] Benhabib offers the example of the obligation to provide financial assistance to a struggling sibling.[210] If these are examples of moral obligations but are not justifiable within a universalistic ethic, then universalism may be an inadequate political orientation. If their intuitions are correct that these are examples of moral obligations and that they would not be justifiable on the basis of universal principles justified according to a universal procedure, such as the discourse ethic, then they offer important counterexamples to discourse ethics as a theory of morality.

However, it is not clear that these are counterexamples to the discourse ethic as a moral theory. First, if the filial obligations of which Benhabib speaks could not be universalized it is because they are contingent upon certain worldviews in which sibling relationships are viewed with certain importance which is thought to include obligations

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[209] Lawrence A. Blum, "Gilligan and Kohlberg: Implications for Moral Theory," *Ethics* 98 (April 1988): 472-491.
[210] Benhabib, "The Debate Over Women and Moral Theory Revisited," 186-187.

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of financial assistance. Benhabib's intuition is that it is possible for people to rationally adhere to a worldview which does not recognize such obligations. In this case, Habermas would argue that the obligation is *ethical* rather than moral, contingent as it is upon particular worldviews. Though Benhabib's intuition is that this degrades the quality of the obligation to call it merely ethical, it is not clear that this is so. Habermas says at one point that the ethical is generally the most important sphere in our everyday lives.[211]

It may be, however, that there is some sense of "moral," described in terms of absolute obligations rather than those things which merely contribute to one's living a successful life, which includes non-universalizable obligations of the type Benhabib discusses. If so, discourse ethics is undermined as a comprehensive moral theory. However, it would still be viable as a political ethic. Since personal obligations, stemming from relationships with particular bonds and understandings and worldviews which accord them significance, could not be defended in discourse to those who rejected it, it can be argued that they are not political issues. On the one hand, family obligations do not depend on their justifiability in political debate, and the use of political means to enforce them might even undermine the sibling bond upon which they are based. On the other hand, were the individual to reject the obligation, political debate would be unlikely to persuade the individual otherwise and political means of changing the individual would be illegitimate. While this argument generally assumes a discourse ethical view, I suggest it accords with our intuitions about how matters of family obligations ought to be treated.

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[211] *Justification and Application.* This is not to say that it takes precedence over the moral in cases of conflict; the reverse is true. However, ethical considerations arise more often than moral ones and are thus more central to the everyday orientation of practical decision making.

However, it would not be plausible to say that matters of affective relationships are politically irrelevant. Feminism has made clear that relationships are sites of domination and abuse. Thus, an adequate political ethic would have to be applicable to the criticism of personal relationships in this regard. Whereas an ethic of care would be directly capable of thematizing the importance of healthy caring relationships characterized by domination and subordination, a discourse ethic appears to be inapplicable to this domain of human life.

Yet, discursive universalism is not irrelevant to the critique of relationships. Insofar as they are sites of domination or insofar as they involve abuse or neglect which harms individuals or prevents the development of important capacities, such relationships can be criticized in political discourse. Furthermore, the interests in not being abused, neglected, or otherwise dominated in ones close relationships are plausible candidates for universal agreement. Spousal, partner, and child abuse are not merely failures to live in accordance with ethical standards or individual moral commitments, but rather can be argued to constitute violations of acceptable norms of human interaction. With regard to children, neglect which puts them into danger or prevents development into healthy adults can be politically criticized a violation of generalizable interests. Finally, relationships which exhibit exploitation or subtle forms of domination, as feminists suggest that heterosexual relationships tend to, can also be criticized as violations of generalizable interests. The discourse ethic is appropriate for dealing with such issues because they involve obligations to one another about which there is some disagreement but which is susceptible to rational discussion.

This is not to suggest that the discourse ethic can easily solve these problems. It may be difficult to reach agreements about parental, spousal, and friendship obligations. Furthermore, even were agreement to be reached about norms, it is not clear what form of political action is appropriate to enforce such norms. However, this is not a failing of a discourse approach so much as a difficulty in addressing a complex problem which tends to occur in diffuse, private locations and is deeply rooted in practices of particular families and society in general. A discourse ethic permits the range of political approaches to addressing abuse, from laws and police intervention to education. In fact, to the extent that the problem of abuse is embedded in social customs in need of criticism, the discourse ethic usefully suggests the political importance of contesting predominant norms of social interaction in the public sphere. Whether they result in legal coercion or not, such public understandings have the potential to alter standards of acceptable behavior and thus private practice.[212]

Finally, the question arises whether the care ethic would not be able to better address the political issues arising within personal, affective relationships than does the discourse ethic. It seems that the standpoint of care is more valuable than that of the discourse ethic for systematically enabling people to recognize where needs lie and motivate action in order to meet those needs. In Blum's example, two parents can both recognize the validity of the principle that children ought not to be neglected while playing dangerously, but one might nonetheless be much more attentive and able to recognize the children's needs. It seems that parents, spouses, and friends would be much more likely to engage in nurturing rather than neglectful or domineering relationships if

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[212] I address in more detail in Chapter 9, 272-280, the extent to which Habermas's distinction between public and private domains prevents him from being sufficiently critical of sexist domination.

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they acted according to an ethic of care rather than one of universal discourse. Indeed, it seems that it would be particularly inappropriate to bother attempting to engage in universal justification of one's familial and affective relationships.

The caring that is valued in such relationships might be viewed as applying universal norms in a context sensitive manner, *pace* Gunther. On this reading, a parent's watchful eye is a way of recognizing his or her child's needs and ensuring that the child is not neglected or abused. However, this does not appear to completely capture the virtues of the caring relationship. In such relationships, care for other individuals appears to engender its own commitments without regard to whether they involve moral principles worked out in universalistic debate. Thus, caring appears to have a value which is not derivable from universal concerns *and* which appears to be politically relevant. Thus, it must be conceded that the ethic of care has an irreplaceable value, which involves both ethical considerations regarding what the most valuable forms of relationship are, and moral considerations about how best to pay attention to the needs of others.

Discourse ethics has two responses to this claim regarding the moral and political importance of caring relationships. First, it could be argued that to the extent that caring does further important moral and political norms, the discourse ethic might itself be said to imply that one ought usually to exercise an ethic of care and not bother with attempts to reflect upon universal discourse. That is, such a eschewal of discursive justification might itself hypothetically be discursively justifiable.

However, secondly and more importantly, the care ethic cannot replace or subordinate the discourse ethic as a standard of social criticism or a criteria for resolving political disputes over right norms of behavior. If inadequate care is to be politically

criticized, a standard of assessment is needed in order to determine what obligations are generally valid, such that someone who fails to recognize or act according to these obligations can be said to be violating a right. This is to say that family or friends do not violate obligations in not caring as much as they possibly can -- but only by failing to meet some reasonable level of care. Secondly, care is not always a good thing. Care can be excessive and either compromise the giver or stultify or suffocate the receiver. Care can also be oriented in the wrong direction or distributed in unfair or wrongful manner. This is to say that care itself sometimes needs to be subjected to criticism. The normative ground of such criticism and of the test for when caring is morally acceptable, needs to be in terms which are removed from the context of particular caring relationships. Discourse ethics, with its universalism which is sensitive to contextual differences, but not dependent on them, is a plausible candidate for such a political project.

Thus, while caring is of central importance to human relationships, and frequently can and should be allowed to happen without justification from universalistic discourse, when political disputes do arise regarding appropriate forms of care, something along the lines of a discourse ethic is required.

Section 4. Care and Politics

To this point I have argued that discursive universalism is compatible with context sensitivity, particularly in the application of norms, and with caring bonds as an important source of ethical obligation on the one hand, and a moral obligation on the other hand, to the extent that it is justifiable from a discourse perspective. Yet these points still do not exhaust the concerns of critics who find the discourse ethic overly

abstracted from caring and the contexts of relationships. Critics argue that caring bonds are actually a condition for a working discourse ethic and are not subordinate or external in the manner that Habermas and other discourse theorists tend to suggest. It is argued both that such bonds are a condition for the development of the type of subjects who can engage in discursive politics and are an essential part of a democratic political process.

Jessica Benjamin argues that traditional conceptions of autonomy are flawed in that they treat moral subjects as agents who are self-sufficient and need not depend on anyone else. Instead, Benjamin, echoing Hegel, argues that recognizing oneself and developing into an autonomous agent require the mutual recognition of others. She argues specifically that this recognition requires an element of unconditional love, one in which nonetheless both parties come to see the other as a distinct being who in turn recognizes herself or himself as similarly an individual. She argues that women's treatment in ways which lead to weaker ego boundaries, as well as men's in ways which lead to rigidly demarcated ones, are important contributors to patriarchal oppression. An adequate political response to women's oppression requires critical reflection upon the quality of intersubjective caring relationships and not merely a readiness to enter into discourse which is non-coercive and inclusive on traditional understandings of these terms. Since certain forms of affective relationship are conditions for moral agency and for overcoming domination, that it is a mistake for any political theory to bracket out the affective bases of self-formation. Benjamin argues that Habermas's intersubjective framework does not adequately distinguish between recognizing the other as external and as one who can be assimilated to one's own view. The first process is always imperfect, always tending to merge into the second, though Benjamin suggests that relationships are

just to the extent that the first is kept alive. A proper political ethic needs to say something about not only how individuals are differentiated but also about the quality of the bonds through which they receive their own integrity and self-esteem.[213]

Derrida couples his criticism of universalistic conceptions of justice with a call for a politics of friendship. The friendship relationship, argues Derrida, is one in which there is a dual normative ground, one of respect for the other as a person, and one of benevolence resulting from a particular bond. Derrida has recently argued that the flaws of universalist conceptions of politics include a failure to respond to others in their particularity, a condition for mutual freedom. Following Emmanuel Levinas, Derrida argues that there are interactions such as gift giving whose ethical status cannot be thought of in terms of equality. A gift by definition is given without an obligation on the part of the giver and without an expectation of equal return on the part of the receiver. The gift is an act of benevolence towards a particular other. It is this moment of freely encountering one another and giving to one another that is missing in traditional concepts of universal justice. The latter accounts say nothing of how one ought to encounter a particular, concrete other in politics.[214]

Derrida sees in friendship the possibility for a healthy combination of equality of respect and open appreciation of the particular. Derrida discusses two relationships to the other in friendship, "the one maintains the absolute singularity of the Other and of 'my' relation to the Other ... But the relation to the Other also passes through the universality of the law. This discourse about universality which can find its determination in the

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[213] Jessica Benjamin, *Shadow of the Other: Intersubjectivity and Gender in Psychoanalysis* (New York and London: Routledge, 1998), 79-108.
[214] For a discussion of the relationship between Derrida's politics of friendship and Levinas's ethics see Honneth, "The Other of Justice," 311-315.

regions of morality, law, or politics always appeals to a third party, byeond the face-to-face of singularities."[215] While friendships can always deviate from this norm in either direction. This does not conflict with a recognition of a need for universal respect of people, but it suggests that responsiveness to the particular is neither secondary nor derivative. Derrida suggests that these two principles are equally necessary but are in conflict, for treating the friend, the particular other, as an equal begins to conflict with the need to treat them individually, while treating them individually can lead to a favoritism and paternalism that is not compatible with the norm of equal respect.[216] Derrida prefers the friendship relationship as a model to those which are frequently used in politics -- that of fraternity -- for the latter suggests not only a sexist metaphor, but also a racist and nationalist one of blood ties, with their commitments to domination and irrational commitment to mystical organic ties. Derrida's call for a politics of friendship is for a politics which acknowledges its dependency on particular connections, but which is not necessarily predisposed to certain gendered, racial or nationalist conceptions of solidarity, but rather involves a universalist impulse as well as the particular one.[217]

Richard Rorty makes a parallel argument that the effective pursuit of justice in U.S. politics does not require concepts of universal rights, but rather requires a greater feeling of solidarity and connectedness between people. Rorty argues that the extension of concern for others necessarily expands gradually as people are able to develop concrete connections between themselves and others.[218]

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[215] Derrida, "The Politics of Friendship," trans. Gabriel Motzkin, Journal of Philosophy 85 (1988): 641-642.
[216] Honneth, "The Other of Justice," 315-319.
[217] Derrida, trans. George Collins, *The Politics of Friendship* (London and New York: Verso, 1997).
[218] Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989), 189-198.

These criticisms challenge the discourse ethic to account for the role of caring

relationships both as social condition for the development of individuals who can engage

in democratic politics and in the effective democratic encounters with concrete others.

In reply to such criticisms, it can be argued that a discourse ethic does indicate the

forms of caring conditional for democratic politics. First, it does not refute the discourse

ethic to say that affective bonds may serve as a condition for the kind of political

discourse that Habermas endorses. Though he has not addressed in detail the conditions

for the development of individuals who could undertake the forms of political will

formation expressed by discourse ethics, Habermas acknowledges that not all social

circumstances provide equally good, or even minimally adequate, conditions for

communicative action.[219]

Regarding the conditions for the development of moral agency and its relationship

to politics, Axel Honneth's recent work on struggles for recognition systematically places

affective bonds into a discursive universalism. Honneth draws on Hegel's theory of the

realization of selfhood in a struggle for recognition, as well as Benjamin's object-relations

psychology to argue that affective relationships are an important aspect of individual

development with normative consequences. The emotional support given in affective

relationships provides recognition of personal needs and physical integrity which allows

for the development of a basic self-confidence. Such a form of respect is itself a

condition for the development of the two other forms of recognition, namely cognitive

respect providing social rights and self-respect, and social esteem necessary for self-

esteem.[220] While, Honneth's argument focuses on the variety of forms of respect, it also

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[219]*Moral Consciousness and Communicative Action*, 207.
[220] Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, 92-130.

lends support to the thesis that a mutual respect implies support for all those forms of relationships required for that respect. The discourse ethic implies the ability to give the respect required to equally balance the claims of various individuals in society and thus likewise implies the need to cultivate forms of life which provide the necessary love and esteem.

Honneth goes on to argue that, though loving relationships are a central condition for successful human life, including receiving self-respect and self-esteem, it is only the latter issues are central to the political process. "Love," asserts Honneth, "as the most basic form of recognition, does not entail moral experiences that could lead, of their own accord to the formation of social conflicts."[221] On the one hand, this may be overstated as we have already seen ways in which personal relationships do have consequences for terms of successful mutual recognition. However, on the other hand, it is correct insofar as even the criticism of current forms of misrecognition within relationships generally refer to the way such abuse or neglect impinges on development violating the conditions of universal respect as well as of love. Thus, political debates are generally about the terms of universal respect and the general fostering of the ability to pursue the good life and achieve esteem. When forms of relationships are politicized they are done with the goal of furthering the conditions for democratic inclusion, moral respect, and general well being. Thus it is possible to recognize affective relationships as a condition for a functioning discourse ethic and still hold affectivity is not intrinsic to the content of the ethic.

This response still does not address Derrida and Rorty's claims that the political

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[221] *Struggle for Recognition*, 162.

process itself requires a caring orientation to the individuality of others. It seems that a universalistic orientation not supported by a feeling of connection to other political agents could not result in collective action which simultaneously acknowledged the individuality of each participant, that is truly democratic politics.

In response to this objection, Habermas has repeatedly argued that "any universalistic morality is dependent upon a form of life which meets it halfway. There has to be a modicum of congruence between morality and the practices of socialization and education."[222] While a particular form of life is not implied by discourse ethics, and could not expect to be justified in universalistic political forum, not every form of life is compatible with discourse ethics. Habermas infers that a minimal amount of social solidarity, such that people would be oriented to dialogue with each other about appropriate norms, is required. Habermas conceives of this kind of solidarity as a kind of "constitutional patriotism," in which everyone would have some commitment to the continuing shared project of finding principles which allow life together in morally acceptable terms. The relationship between solidarity and the universalistic pursuit of justice through discourse appears to be not simply one dimensional. Solidarity is not only required by discourse about justice, but in some ways is furthered by it. Furthermore, the relationship between solidarity and justice can be argued to be inherent within the logic of normative argumentation, for the very idea of rational normative persuasion entails the idea of searching for a common ground. Thus, solidarity provides an intrinsic link between justice and relationships of attachment. Discourse ethics does require some learning in this affective dimension insofar these are a condition for

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[222] *Moral Consciousness and Communicative Action*, 207.

engaging the claims of others. Habermas has argued that morality has to solve the two

tasks of justice and solidarity simultaneously, since each presupposes the other.[223] He

has recently argued that the law can serve as a source, albeit an indirect one, of solidarity

as well as of equal respect.[224]

As Honneth has argued, the moment of solidarity appears to be insufficient for an

affective ground to meet the concerns of Derrida and Rorty.[225] While solidarity provides

a motivation to pursue a common political agenda, it does not address the ability and

inclination to respond directly to others in their particularity, with an ability to recognize

their assertions of their needs. Yet, the same logic by which Habermas infers that

solidarity is required to meet discourse ethics halfway implies that an openness to the

concerns of others is implied by the discourse ethic. Only with an ability to recognize

and be concerned about the individual claims raised by others, will we be able to enter

into democratic dialogue.

To recognize that discourse ethic requires such an element of concern still

distinguishes it from the ethics of Derrida and Rorty. For Habermas's ethic still

appropriately does not link political justification to affection along the lines of friendship.

Replacing or supplementing universalism with such a condition is neither necessary nor

desirable for an adequate political ethic. Friendship is too strong an affective bond to

predicate a political ethic upon. In cases in which such ties are lacking, such an ethic

does not explain why the people should engage each other to resolve political differences

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[223] "Since moralities are tailored to suit the fragility of human beings individuated through socialization, they must always solve two tasks at once. They must emphasize the inviolability of the individual by postulating equal respect for the dignity of each individual. But they must also protect the web of intersubjective relations of mutual recognition by which these individuals survive as members of a community." (*Moral Consciousness and Communicative Action*, 200).
[224] *Between Facts and Norms*, 448-449.
[225] "The Other of Justice," 315-319.

or listen to criticisms that other parties are making. The willingness to resolve issues in a way acceptable to everyone and secure a society free of domination can sufficiently motivate concern for the particularity of other individuals, without people liking one another or feeling particularly good will towards one another. While the latter bonds are welcome and may facilitate the ethical resolution of conflicts, they cannot be considered necessary components of a political ethic. Too often such bonds are lacking in political disputes. In such cases it is more feasible to require of parties that they take into account and respond to the claims of others than that they develop an active concern that these claims are realized.

It may be true that there is some social tendency, as stressed by Rorty, to slowly widen one's circle of concern, from oneself, to ones family, to a local community, to a nation, and to a world. However, while this demonstrates the relative force of affective bonds it does not explain the obligation to respect the claims of those who are distant and with whom we have no ties. A moral politics requires that the human rights of those distant from us take precedence over the less important needs of those with whom we have an affective bond. A democratic ethic implies that we need to justify ourselves to and take into account the claims of those who we affect regardless of how connected to them we feel. A politics based on feelings of social connection cannot in the foreseeable future replace one based on a justification of human rights within a framework of democratic inclusion.

Section 5. Conclusion

I have argued that the discourse ethic entails aspects of caring and context sensitivity to a greater extent than admitted by its critics or, in some cases, than recognized by Habermas himself. I have shown how context sensitivity enters into both the processes of interactive justification and appropriate application of universal norms. I have also argued that discursive universalism is compatible with recognizing the importance of caring relationships and that such bonds do not constitute a competing political ethic.

CHAPTER VII. THE DISTINCTION BETWEEN MORALITY AND ETHICS

In defending discourse ethics as a form of universalism which does not undermine the value of affective relationships, I relied in part on the difference between moral and ethical claims. Moral claims are those regarding right action which are susceptible of universal rational agreement or rejection. The meaning and validity of moral norms are thus context independent. Ethical claims, on the other hand are about evaluative considerations regarding the well lived life whose validity is relative to particular historical cultural conceptions of value and admit of relative degrees of acceptance or rejection. Thus, Habermas holds that there are moral discourses which attempt to reach agreement about right norms and evaluative discourses regarding the correct understanding of historical cultural standards of value. The discourse ethic is significant for both, for the validity of each type of claim is dependent upon its ability to be ratified in a discursive procedure. However, the distinction is important to Habermas's project of explaining validity in terms of dialogue, for while it holds out the expectation and possibility of universal agreement about some normative issues it makes it clear that such agreement is not to be expected about others.

A political ethic differs from either a moral or ethical standpoint. For discourse theory suggests that a political ethic directed at formulating valid law and other general social norms is similar to, and has a special complementary relationship to, morality, but also draws upon ethical and other considerations. Political discourse, like morality, makes claims about right action and reaches agreements expressed as universal obligations. Political norms must thus be compatible with the general interests of morality, for the latter as universal claims stemming from the demands of inclusiveness

of claims, trump other considerations. A discursive political orientation presupposes that open deliberation can criticize norms for failing to fall within general interests and thus lead to the discovery of norms which do, in fact, preserve the interests of everyone.

However, a political ethic differs from morality in important respects. First, not all moral issues are relevant to political regulation; for example it has been noted that while morally required, truth-telling probably cannot be legislated. Unlike morality, law and politics are context- dependent, requiring consideration of the nature of legal regulations, background social conditions, and ethical values.[226]

With the morality and ethics distinction, Habermas's theory shares with other contemporary expressions of liberalism a rejection political legitimation through appeals to any conception of the good life. He bases politics on universal discourse as opposed to particular community values. This involves rejecting the political enforcement of a conception of the good life, allowing these matters to be decided by other institutions and individual choices. Thus, the distinction between morality and ethics clarifies the scope of the discourse ethic and provides a discourse ethical interpretation of the influential and intuitive political distinction between the right and the good.

However, the distinction between morality and ethics is itself susceptible to challenge. In fact, for many thinkers, for example some communitarians, the separation of reasoning about the moral from social standards of value is precisely the problem with contemporary expressions of political universalism. Procedural universalisms, it is charged, are divorced from the very standards of value that would give them substantial content and allow them to be effectively become part of actual social institutions and

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[226] In *Between Facts and Norms* Habermas repeatedly distinguishes between the validation of legal norms and that of moral norms. See, for example, 151-152.

worldviews. Just as Hegel criticized Kant's attempt to abstract moral reason from its situatedness in a community of thought, communitarians argue that procedural universalism is made empty by its attempt to bracket out all particular ethical commitments. Communitarians in the Hegellian tradition, such as Charles Taylor, would replace procedural universalism with a universal morality derived from shared ethical traditions. Other communitarians reach more relativistic conclusions, finding that individual communities must inevitably base their political commitments on particular ethical standards. Communitarian concerns are also taken up by many feminists and supporters of minority political movements, who argue that universalism ought to be eschewed for a politics based upon an ethos stemming from group identity.

Below, I outline the main objections to the distinction between morality and ethics. These include the claims that morality is inherently based on ethical standards, that morality and ethics are inseparable in practice, that a procedural morality lacks substance and motivating power, and that even procedural morality tacitly presupposes its own standards of the good life (section 1). I then offer a response to these objections from the standpoint of discourse ethics. I argue that the distinction between morality and ethics is not only defensible but also necessary for a workable and acceptable political ethic (section 2). I go on to show how the distinction plays itself out in actual politics (section 3). Third, keeping with the discussion of actual politics, I will address the role of identity and solidarity in political ethics (section 4). This will lead to a discussion of the relation of discourse ethics to political motivation (section 5). Finally, I take up the question of whether the discourse ethic presupposes its own substantive ethical standards, thereby violating its pretension of neutrality (section 6).

Section 1. Challenges to the Distinction Between Morality and Ethics.

In an essay on Habermas's ethics, Charles Taylor explicitly objects to the distinction between morality and ethics. Taylor, like Habermas, is committed to thinking of reason, selfhood, and agency in intersubjective, linguistic terms. However, he argues that the nature of intersubjective reflection militates against Habermas's demarcation between morality and ethics.

On the one hand, Taylor notes that the distinction between morality and ethics "starkly contradicts our moral consciousness. From the standpoint of our normal conception it would seem bizarre to define our form of life as simply a question of health and to uncouple it completely from the moral dimension."[227] Ordinary English use, Taylor suggests, does not distinguish between absolute obligations stemming from universal reason and obligations relative to conceptions of the good life. Rather we speak generally of "strong evaluations" -- decisions and ways of living which can be better or worse. While the issues associated with procedural morality, such as just distribution and fundamental rights, are important, Taylor argues that they should not be presupposed to trump other concerns such as "self-development, authenticity, sincerity or thankfulness."[228] It seems to denigrate the latter important issues to say that they are merely relative to a particular culture. Much of moral reflection involves the attempt to balance all of these various commitments, including those which involve recognizing issues of justice.

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[227] Charles Taylor, "Language and Society," in *Communicative Action*, ed. Axel Honneth and Hans Joas (Cambridge: Polity Press, 1991), 32.

[228] Taylor sees discourse ethics and other procedural moralities as emphasizing the virtue of charity over these other virtues. ("Language and Society," 32).

Taylor also argues that even those norms which would seem to follow from the demands of moral universalism -- namely issues of basic human rights and distributive justice -- themselves tend to be supported by claims about identity, who a person or community is, and the ethical evaluations stemming from an understanding of oneself as part of certain traditions and projects. "Our deliberations on those purposes to which we should accord recognition are inextricably linked to those considerations on what we as humans are."[229] Even our senses of justice and conception of reasonable normative deliberation are given content by our ethical worldviews. For Taylor a proper appreciation of the fact of linguistic intersubjectivity reveals that all claims are limited to the sources of value contained within a language system, which is to say which are bound up with a way of life.

Taylor's work, the *Sources of the Self*, is dedicated to revealing the way in which strong evaluations have been based upon evolving and sometimes competing views of selfhood. Taylor argues that in the west, three main ethical projects have guided our strong evaluations: that of autonomous self-reflection, that of romantic self-creation, and that of religious love for all people. Taylor argues such broad ethical self-understandings are the sources of our normative judgments. Thus those issues which proceduralists describe as moral, i.e. considerations of justice and rights, are not separable from evaluations of the good life.[230] Similarly Alasdair MacIntyre's *Whose Justice? Which Rationality?* seeks to trace a plurality of ethical traditions which have served as important bases of practical reason in Western cultures.[231] Though the traditions, identities, and

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[229] "Language and Society," 33.
[230] Taylor, *Sources of the Self* (Cambridge, Mass.: Harvard University Press, 1989).
[231] Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Indiana: University of Notre Dame Press, 1988).

community solidarities which western society might now draw on are plural, changing, and in need of interpretation, it nonetheless would be a mistake to think that we can now begin to reason free of all such bases. MacIntyre's and Taylor's projects suggest that morality cannot be uncoupled from standards of the good life, tradition, community and identity, in the way that proceduralists suggest. The discourse ethic, which draws on a conception of morality distinguished from all such backgrounds appears as a paradigm case of this error.

Georgia Warnke discusses surrogate motherhood in order to illustrate the difficulties of distinguishing morality and ethics in actual political argument. She notes that while on the face of it, the disputed morality of surrogate motherhood depends upon norms like liberty and equality, which would appear to general enough to be subjects of universal discourse, that the debate actually involves differences among what liberty and equality mean and that these differences depend upon evaluations of the good life and aesthetic and interpretive understandings as well as applications of moral principles. Those who support a right to engage in and enforce surrogacy agreements focus on the right to contract, while those who oppose such a right focus on the right of women to control their own reproduction. Here morality also depends upon the understanding of what makes a child belong to someone, whether it is genetic attachment, maternal gestation, or contractual intention. These judgments in turn are bound up with considerations of what makes a good family and what the importance of biological relationships and having children is. Warnke argues that the different evaluations and judgments involved in surrogacy reveal that a messy evaluative pluralism underlies

seemingly universal moral principles.[232] Seyla Benhabib argues that the false distinction between morality and ethics risks presenting many criticisms of particular forms of life which exhibit male domination -- e.g. standards of child care and housework -- as mere ethical concerns which are not appropriate to rational democratic politics.[233]

J.M. Bernstein argues that Habermas's distinction between morality and ethics accepts the alienated modern worldview and limited instrumental rationality promulgated by global capitalism. Bernstein argues that a procedural understanding of moral validity denigrates the sense of a moral judgment. A moral judgment, argues Bernstein, is one which is inherently binding on those who make it. Thus it has to be based on both the nature of the objects in and of themselves and upon a culturally based understanding of the significance of the object to the moral agent. Habermas's discourse ethic, argues Bernstein "legitimates the position of the individual who reflectively places himself as external to all existing social bonds."[234] Such a task is impossible and the attempt to fulfill it is characteristic of an alienating modern worldview, which prevents the realization of richer form of community connections. This relates to a derivative problem facing political universalism, their tendency to lack any intrinsic motivating force. Taylor notes that when the moral basis of political action is separated from conceptions of the good life, freedom becomes defined separately from self-realization. "They leave us with nothing to say to someone who asks why he should be moral or strive to the

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[232] Warnke, "Discourse Ethics and Feminist Dilemmas of Difference," Meehan, ed., *Feminists Read Habermas*, 247-261.
[233] Benhabib, "The Debate Over Women and Moral Theory Revisited," Meehan, 186-7.
[234] Bernstein, *Recovering Ethical Life*, 101.

"maturity" of a 'post-conventional' ethic," nor could one even provide any insight about why our moral code is of value.[235]

Communitarian critics also question whether discourse ethics is actually as free of substantive ethical grounding as it suggests. McIntyre argues that though liberalism presents itself as distinct from traditions, it itself can be viewed as a particular tradition of upholding particular values.[236] Taylor specifically argues that the discourse ethic is committed to certain conceptions of self-development and self-obligation. In particular it appears that discourse ethics is only compatible with forms of life which embrace the individual autonomy to take positions on issues and commitment to dialogue that makes political discourse possible. Thus, discourse ethics is not neutral with respect to forms of life. It is clearly incompatible with any form of life in which a metaphysical worldview or understanding of the good plays a central role in practical decision making. Taylor suggests that current moral theory is built upon the values of individual freedom and open universalism but takes these values to such an extreme that they deny their own dependence on such goods. Thus, political universalisms of the ilk of discourse ethics are "constitutionally incapable of coming clean about the deeper sources of their own thinking."[237]

Communitarian approaches, such as Taylor's and MacIntyre's, suggest that not all cultures would be committed to recognizing the validity of the discursive redemption of political claims. Taylor attempts to salvage a universalism by suggesting that the various cultural traditions in the world might find some overlapping agreements on core

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[235] *Sources of the Self,* 87.
[236] MacIntyre, 326-348.
[237] *Sources of the Self,* 88.

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values.[238] Thus, his is a universalism based on overlapping goods rather than right procedure. MacIntyre, on the other hand, endorses continuing respectful dialogue across traditions, thus expecting continuing mutual enrichment and tolerance without necessarily expecting any overarching agreement.[239]

Another dimension of the criticism of morality separated from ethics stems from a consideration of the politics of contemporary social movements, particularly from feminism and from race- and ethnicity-based movements. Many members of such groups frequently understand themselves as acting on the basis of group solidarity and the demands of their particular identities, responding to the oppression directed at people of those identities. The claim that politics ultimately should be conceived in terms of universal discussion contradicts the experience of these groups that the effective pursuit of justice has to be based in specific communities, on particular identities. Jane Braaten explicitly argues that universal dialogue is a mistaken view of what politics involves. "The test of the epistemic rationality of communicative thinking [a political ethic that Braaten recommends to replace Habermas's rational discourse] is not principally of the formal virtues of its structure ... but of the integrity of its ideals of solidarity and community."[240] For example, women's participation in the feminist movement is not guided by transcendental presuppositions but rather by solidarity with other women. Both epistemically and motivationally, solidarity appears to contribute more to an emancipatory political movement than do ideals of rationality and morality. In order to

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[238] Towards the end of *Sources of the Self*, Taylor suggests that his plurality of sources of the self, correctly explored and understood, lend support to a general principles of "benevolence," "global justice," and "declarations of human rights" (515-516).
[239] MacIntyre, 389-403.
[240] Jane Braaten, "From Communicative Rationality to Communicative Thinking," Meehan, 157.

counter the objection that solidarity leads to exclusion and political Balkanization, Braaten argues that solidarity is compatible with differences in identity. She notes that women of various racial groups and economic classes, for example, can and do act in solidarity. Even a whole city could come to act in solidarity,[241] thus bringing about a democratic politics.

Solidarity is also emphasized by Lucius Outlaw in his discussion of the relevance of race to political philosophy. Outlaw welcomes Habermas's basing of political rationality in the lifeworld of its members. However, he understands the lifeworld basis of communicative action to mean that identity inevitably does play, and should play, a role in political decision making. Outlaw's discussion focuses on African American identity as of normative consequence, suggesting that normative judgments need to take into account the identities of their subjects and that group membership can and should determine moral and political commitments.[242]

The centrality of community and cultural solidarity to politics finds expression in recent debates about multiculturalism and its significance for justice and democracy. In his influential contribution to this debate, Taylor argues that a "politics of difference" in which individuals demand recognition as people with particular identities tends to conflict with the liberal, universalistic "politics of equal dignity" in which people are accorded recognition *despite* their identities.[243] The demand for a multicultural expansion of school curricula, culturally based exceptions to policies regarding dress codes and holidays, and self-determination for American Indian tribes, are based, at least

[241] Braaten, 153.
[242] Lucius Outlaw, *On Race and Philosophy* (New York and London: Routledge, 1996).
[243] Charles Taylor, "The Politics of Recognition," in Amy Gutmann, ed., *Multiculturalism*, 25-73.

in part, upon a demand for the recognition of valuable cultural differences. It seems that

a universalism based on rational agreement is ill equipped to recognize the inherent

importance of preserving ones culture to members of ethnic groups. The latter proposals

require a conception of politics based upon a recognition of the importance of

membership in particular groups rather than what is shared across groups. Taylor

recommends a principle of equal respect for various cultures in which there would be a

presumption of equal values of different cultural traditions and a right to cultural

survival.[244] Similar thinking about the need to protect minority cultures has lead to

arguments for group rights to protect minority traditions and communities.[245]

For Outlaw and Braaten, it is group affiliation and identification which play a

determining role while for MacIntyre and Taylor it is largely traditions within which

human beings understand their actions. However both approaches suggest that aspects of

identity formation and self-realization are in fact sources of moral judgment and political

agency. Both strands of thought suggest that discourse ethics may lack the requisite

sources of moral substance and motivation. Furthermore both could agree that discourse

ethics presupposes certain ethical standards, which should be acknowledged, subjected to

criticism, and compared to and supplemented by alternatives. Thus an ethically neutral,

identity neutral procedure is inadequate as a political ethic. These critics suggest that a

political ethic should explicitly and wisely draw on sources of ethical understanding and

community solidarity rather than pretend to bracket them out. If this is true, than a

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[244] "The Politics of Recognition," 66.
[245] See Kymlicka's *Multicultural Citizenship* (Oxford: Clarendon Press, 1995) for a systematic argument for rights for cultural minorities. For a more general argument that vulnerable minority groups deserve group rights, see Iris Marion Young's "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in Ronald Beiner, ed., *Theorizing Citizenship*.

procedural universalisms, and the discourse ethic in particular, rely on a false distinction between morality and ethics.

Section 2. The Distinction Between Morality and Ethics

Though communitarian objections to universalism contain insights about the role of identity and ethos in politics and show limitations of a procedural universalism, they do not refute the distinction between morality and ethics or justify the rejection of a political ethic which draws upon this distinction.

First, discourse ethics, like communitarian, hermeneutic, and pragmatist traditions, acknowledges that it is not possible for people to step outside their own language and culture and criticize them objectively as wholes. A socio-linguistic lifeworld, shared with other language users, lies behind any claim that people make. We are always already in the world speaking a certain language. Language is for us "world disclosive" -- it structures the very way we are able to understand the world and who we are. This is to say that language is constitutive of reality. As normative understandings are linguistic, with meanings determined by social interaction, they are inevitably limited and shaped by a lifeworld in which are embedded the normative understandings of historically specific traditions.[246] Thus far, communitarians are correct.

However, despite our immersion in a world disclosive language, our speech acts are not simply products of the lifeworld such that their validity can be measured by the standards already given therein. Rather, these speech acts are part of the intersubjective process of continuing language use in which the appropriate use of words and the validity

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[246] See Habermas, "A Reply," 215-222.

of claims are simultaneously and continually tested and reworked. Intersubjective linguistic activity individualizes persons who use and hear language in distinct manners and senses. In particular, language is sometimes used in a problem solving or critical fashion in which different possible standards of validity become thematized. In such cases language use, though arising from a socially shared lifeworld, leads to a criticism of aspects of that lifeworld. In fact, because various speakers tend to presuppose that they are correctly employing normative categories, there is a push to attempt to resolve disputes over correct norms. Some such disputes can be resolved by referring to tradition but, once the meaning of a tradition or its validity is called into question, disputes cannot be resolved by referring to tradition alone. Deliberative discussion about norms results in the inability for any standards to be presumed to be fixed or to have absolute priority; rather the force of argument within discussion begins to take precedence over any particular standards. This priority of argument is not merely an abstract presupposition of language, but plays itself out in actual normative discussion. Traditions which rely on transmission through language are susceptible to criticism as they are interpreted in changing circumstances or as they encounter other traditions.

In relation to the issue of morality and ethics, this argument serves to show that a linguistically based approach to human identity and reason need not take existing language structures and the validity forms expressed in them as final. Though each individual's understanding of the validity of a universalist conception of justice and of particular moral issues, as Habermas puts it, "*starts* within the horizon of one's own conception of the good" it remains true that "the mutual critique of different ways of selectively construing 'justice' is still premised on the underlying assumption that

discursive contest can bring out the universalistic content of the intuitive concept in a way that is, *in principle*, context-independent."[247] A political ethic based on this context-independent agreement on certain moral principles, then, does draw on ethical understandings. However, any of these understandings can be called into question, such that the moral point of view can and must be procedurally distinguished from any of them.

To claim, with Taylor and MacIntyre, that shared ethical understandings must be the basis of moral understandings and thus of political discussions of justice, is refuted by actual political tendencies and entails normatively undesirable consequences. First, it appears that understandings of justice are attained which are not based upon substantially shared ethical positions. The classic example is the emerging agreement on the norm of religious toleration. Members of a given religion are committed to thinking that adherents of competing religions are wrong. Thus ethical traditions justified attempts to force others to live by one's own religion. Yet it appears that that individuals were able to recognize that their own internal standard of the correctly lived life could not be expected to be normative for all others. The recognition of the validity of mutual tolerance was not dictated by the internal standards of the particular religions. Nor is it solely explainable by a pragmatic need for compromise, for toleration has come to be recognized as intrinsically right. Rather, religious groups recognized new moral principles as a result of the burdens of justifying themselves to and take into account the claims of others. In other cases, such as whites coming to see segregation as wrong, it

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[247] Habermas, "Reply to Symposium Participants, Benjmain N. Cardozo School of Law," in *Habermas on Law and Democracy*, ed. Michael Rosenfield and Andrew Arato (Berkeley: University of California Press, 1997), 401.

appears that learning along the lines of justice, or morality, in turn leads to a revaluing of ethical traditions. Both agreements on mutual toleration of ethical traditions and recognition of the immorality of a given tradition suggest the political applicability of the distinction between morality and ethics. Habermas's distinction both validates and makes sense of important political phenomena which cannot be easily addressed by communitarianism.

To argue that politics ought to be based on ethical understandings of a community appears to have intolerant and conservative effects. First, if and when there is a plurality of worldviews, as in the case of religion, ethical traditions do not provide the grounds required for reaching an agreement which is workable and fair. One can search for an overlap between one's own ethos and that of others, as Taylor recommends. However, it may not be possible or most desirable to resolve disputes on the basis of such an overlap. Other possibilities include one side coming to recognize that the other's claims are right or both sides mutually coming to new normative insights which differ from their initial views. Communitarianism does not adequately explain the possibility and validity of such solutions to conflicts arising from incompatible ethical worldviews.

Furthermore, a political ethic guided by tradition is insufficiently critical of immoral or repressive aspects of traditions. Communitarians like Taylor and MacIntyre hope that the norms which will be found to represent the authentic voice of communities will include ones such as autonomy and beneficence, such that justice and rights would be given political priority. However, it cannot be counted on that an internal exploration of every community traditions would settle upon such norms. Traditions have included norms such as male dominance, free market exchange, and class hierarchy, which

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conflict with rights and justice. If morality and politics are viewed as inseparable from ethics there is no clear standard by which to criticize traditions which are inconsistent with universal respect for humanity. A moral point of view, such as the standard of consensual discourse, provides a standpoint which consistently criticizes the subordination of anyone's claims to social standards. Human rights and justice can only be given the consistent privilege that many communitarians appear to want through a politics which distinguishes the moral from the ethical. The discourse ethic provides a standard which requires a universal consideration of interests and claims, thereby protecting minorities and the powerless from subordination to majority ideologies.

The morality and ethics distinction also helps to explain that a discursive political ethic neither implies an attempt to reach agreement about every standard of life nor denigrates ethical matters as unimportant or irrational. While, moral considerations trump ethical ones within politics, this leaves room for both some ethical influence on politics as well as leaving non-political considerations to be regulated principally by ethics. Habermas says at one point that the ethical is the most important sphere of life for most of life is guided by standards of the good life residing in communities with particular histories and traditions.[248] Furthermore, the fact that such issues are not susceptible of universal agreement does not mean that they are to be decided irrationally. Rather, communicative reason is required to reach and defend ethical viewpoints as well as moral ones.

A political ethic based on moral discourse tends to lead to toleration for other forms of life. Tolerance is a reasonable solution to issues about which agreement cannot

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[248] *Justification and Application.*

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be expected. Yet, within a framework of agreement about human rights, people may maintain a serious belief in and commitment to their particular ethical traditions and ways of life. For example, Habermas suggests that Catholics can and do hold that abortion is wrong ethically and also believe, from a procedural moral and political standpoint, that it must be allowed.[249] Thus, one can privately oppose those things which public reason recognizes as permissible. This holds out the possibility of peacefully reaching agreements about what is right that respect everyone and allow for a private flourishing of those ethical traditions which have been sources of individual value and social solidarity.

Critics might question the long-term feasibility of such a dualism in normative standpoints, i.e. between the public and universal and the private and culturally relative. On the one hand, though the distinction permits ethical commitments, it appears to foretell their inevitable weakening. If Catholics whose religion opposes abortion are nonetheless forced by public reason to accept the practice, this is likely to undermine their ethical worldview. If in public disputes, ethical worldviews are always trumped by secular morality, this appears likely to weaken the strength of religious and cultural traditions. It is difficult for traditions backpeddling in the face of secular reason to retain the same commitment from their members. The tradition is likely to be abandoned altogether as a source of normative values. Thus, procedural universalism will have the effect of undermining sources of individual value and social solidarity. Clearly these theoretical considerations could be supported by empirical descriptions regarding the declining role of religion and tradition in guiding people's lives.

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[249] "Reply to Symposium Participants," 393.

In response to this, discourse ethics has to first assert that the alternative to placing morality before ethics -- forcing individuals to live according to traditions which they oppose -- is worse than a weakening of tradition. It could be argued that traditions which cannot survive without norms which unjustifiably restrict or harm others, are not a great loss. At the same time, there are also many religious and other ethical traditions which do manage to coexist with tolerance for differences while nonetheless providing shared values and foundational standards for conceiving of a well lived life. Finally, while communitarians frequently blame secular moral universalism for the weakening of ethical traditions, it could be argued that other modern forces -- namely modern science, the free market and consumerism -- are the principle culprits in undermining tradition.

If the political privileging of moral considerations as opposed to ethical standards does not problematically undermine traditions, it could be argued that it does undercut the effectiveness of political morality itself. Universal toleration may be unstable or lack authentic backing if it coexists with ethical beliefs which strongly oppose the things they tolerate. Thus, it might be argued that a procedurally-based tolerance of abortion and homosexuality, if coupled with widespread ethical repugnance does not offer the legal-political protection which individuals deserve. Such considerations made Bernstein worry that Habermas's proceduralism severs morality from genuine social bonds in a way that furthers social alienation and fails to do justice the objective importance of moral recognition.

First, discourse ethics has to take into account any such claims that the attitudes which individuals have are incompatible with genuine moral recognition. Harmful manifestations of such attitudes can be criticized and may lead to norms which reject

expressions of intolerance. Second, it is far more viable for a political ethic to encourage agreement about the validity of norms for action than to attempt to achieve agreements about how each type of action should be evaluated. Third, in cases in which it is impossible to condemn actions without in fact disrespecting individuals who undertake those actions, as is arguably the case with homosexuality, then an ethical view itself, and not just the attempt to force others to live by it, can be criticized as immoral. Furthermore, ethical traditions can themselves be questioned in terms of their ethical standards. A defense of tradition as a separate domain from morality does not imply that it is uncriticizable. A reinterpretation of tradition in light of changing circumstances and internal conflicts is common and tends to be supported by open discourse. However, discourse ethics suggests that politics cannot be based upon an expectation of agreement about such matters, as it can regarding moral issues.

I have defended the distinction between morality and ethics and given reasons that in politics morality should take precedence. However, it is inevitable that politics also has an ethical dimension. Habermas notes that the law has to take into account various considerations besides morality: "Valid legal norms indeed harmonize with moral norms, but they are "legitimate" in the sense that they additionally express an authentic self-understanding of the legal community, the fair consideration of the values and interests distributed in it, and the purposive-rational choice of means in the pursuit of policies."[250] The letter of law and the structure of institutions cannot be neutral with respect to forms of life, occurring as they do within the media of particular forms of life and based upon discourses between members of a community with important non-moral considerations.

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[250] *Between Facts and Norms*, 156.

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It is not unreasonable for a community to politically further some ethical commitments, such as by supporting types of education and self-development which most citizens think good or choosing holidays and dress codes which are consistent with the ethical standards of most members. However, the ethos behind political institutions is always open to moral challenge as placing an unfair burden on minority groups with differing ethics. If holidays, dress codes, etc. prevent others from inclusion in social and political life, then these codes can be criticized and either rescinded or made to permit exceptions.[251]

Section 3. Morality and Ethics in Practice.

I have argued that the distinction between morality and ethics is plausible and of political value. However, this still leaves the objection that the two are indistinguishable in practice, or should not be distinguished much of the time, as Braaten's example of surrogate motherhood suggests. First, as I have distinguished the two types of claims there is no way of telling a priori or with certainty in advance of normative discussion which claims are moral and which are ethical. The question arises, though, what to make of cases in which it appears that the two forms of claims are bound up with one another, as in surrogate motherhood or when an issue that is treated as ethical may have moral dimensions, as in, for example, the gender division of labor in the family. In his work on discourse ethics William Rehg argues that the distinction between morality and ethics is grammatical.[252] However, it is not clear in what sense it could be said to be grammatical,

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[251] Kymlicka argues that laws requiring that police wear helmets and that soldiers not wear anything on their heads should permit exceptions for Sikhs who would wear turbans and Jews who would wear the yarmulka during service. He points out that official dress codes have tended to be designed in ways which do not conflict with Christian practices, such as the wearing of wedding bands. Exemptions from policies designed to accommodate Christians allow for social and political equity for cultural minorities. (*Multicultural Citizenship*, 114-5).

[252] Rehg, *Insight and Solidarity*, 94-95.

for "It is wrong to kill" and "It is wrong to wear bright colors at a funeral" or "It is wrong to be idle" are not obviously different. In each case, a general claim about right or wrong is made. However, despite this similarity in appearance, it might be that in the latter cases, speakers might admit upon questioning that their claims are relative to a certain set of cultural values, while in the former they might assert its universality. Thus speakers themselves make distinctions about what kind of agreement they expect. Of course, speakers may disagree and be mistaken about whether an issue is moral or ethical. Yet this does not show that in the course of dialogue agreement can not emerge about which issue is of which type. Ultimately, it is only the course of dialogue that can reveal which issues are moral and which are not. Nonetheless, the distinction is useful both for speakers to categorize the way they currently view different claims and to distinguish between levels of validity that one expects to find through the course of democratic discussion.

The apparent overlap between claims which seem to be moral and those which are ethical, as in surrogate motherhood is not surprising. Since individuals enter discussions with different traditions in tow. These traditions entail claims about what constitutes freedom, what constitutes a harm, what makes someone a person -- that is, about the meaning of moral principles (or at least an interpretation to which moral principles apply). In fact, moral discussions require such ideas of the good in order to provide the content for particular claims which are raised. Procedural morality does not replace conceptions of autonomy, harms, etc. with its own set of substantive principles, but rather provides a framework within which standards can be subjected to testing. Thus, not all ethical standards will hold up equally under such moral consideration. Some are

susceptible of political agreement, while some cannot be agreed upon and remain merely ethical, and some can actually be criticized as immoral.

Issues such as surrogate motherhood appear difficult for a discourse ethic because they involve moral claims such as respect for autonomy and dignity and yet the possibility of consensus is thwarted by conflicting value orientations regarding things such as the meaning of parenthood and whether autonomy means freedom to contract or freedom to rear ones offspring. First, the conflict emerges in part as one of how best to apply previously agreed upon moral norms, thus the ethical standards affect how to contextually apply moral principles. Furthermore, de facto disagreement about surrogacy, does not demonstrate that moral-political agreement will not be possible through further justification and application discourses. Though disputants raise understandings of the meaning of autonomy and human dignity based upon their ethical worldviews, the course of debating such claims can nonetheless lead to a moral agreement. If disagreement were taken to demonstrate the ethical relativity, and thus non-moral nature of a debate, then all political issues would initially be labeled non-moral, and reflective discussion might be prematurely called off. Even if agreement is not possible, some moral learning may be possible along with a political compromise in such situations.

An analysis of discourse ethics does not tell precisely which issues are moral and admit of universal agreement. Yet, this indeterminacy of the moral and ethical with regard to practical issues does not undermine discourse ethics, which solely requires the distinction in principle to ground a procedural political testing of norms which are claimed to have a moral dimension. The provisional nature of the distinctions and

subsequent procedural testing provide the answer to feminist concerns that women's issues will be labeled merely ethical as opposed to universal ones. If it is inadequate to say that women's disproportionate share of burdens of childcare merely reflects the traditional ethical values, then this is because there is a wrong which is not merely culturally relative. The distinction between morality and ethics precisely gives sense to what is being said when such issues are raised politically. They are being claimed to admit of universalizable potential and not be the mere ethical standards of feminists. The discourse ethic makes sense of our expectation that some issues do warrant agreement while others do not. Since it appears fairly certain that agreement cannot be expected on some matters, where it is relatively more plausible to expect it on others, it makes sense to speak about provisional distinctions between types of normative issues.

Section 4. Discourse-Ethical Universalism and Identity Politics.

The defense of political universalism against an ethic based on procedural understandings raises the question of discourse ethical position regarding identity politics. Identity politics, or justifying political action by reference to the identity of the agent, is clearly a widespread phenomenon. Numerous social movements, including those which resist oppression and pursue justice and democracy, e.g. feminism, minority rights, gay and lesbian rights, elderly, and handicapper emphasize identity. The importance of identity to such movements implies that normative justification is identity specific or directly derivative of identity, such that political commitments ought to be determined by ones identity. Thus, arguments in support of economic, social, and political separatism by women and minorities frequently refer to the priority of acting as

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an individual with that particular identity. The issue of the legitimacy and desirability of majority-minority voting districts also is sometimes discussed in terms of the importance of identity to politics.[253] Arguments for distinct school curricula or separate schools for African Americans and Latinos also refer to the orienting quality of identity in dictating what one ought to study.[254] It appears that if such political measures are valid, their validity derives from the central importance of identity to political commitments.

Identity is also frequently the *instrument* of political action, as active the injustices in typical ways of conceiving identities are revealed, and an attempt is made to reinterpret or rework identities. Thus some political movements attempt to change social understandings of gender and race by attempting to actively recreate identity, either blurring identities (through cross-dressing, etc.) or celebrating and emphasizing identities. Finally, identity politics generally involves solidarity with others who have the same or similar identities. Thus, identity politics suggests that one ought to act in solidarity with others of one's identity, supporting their stances and acting jointly to pursue the interests of the group.

As Braaten and Outlaw's objections to Habermas reveal, discourse ethics's procedural universalism rejects the notion that political commitments could be derived from understandings of who people are, at least insofar as this conflicts with universalist considerations. The discourse ethic implies that any political stance needs to be justified to all those affected by it and thus cannot be validated by the identity of the agent. Likewise the manipulation of identities and action in solidarity needs to be subjected to

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[253] See, for example, Anthony Appiah and Amy Gutmann, *Color Conscious* (Princeton: Princeton University Press, 1996).

[254] See, for example, Kevin Brown, "African-American Schools: Paradoxes of Race and Public Education," in Richard Delgado, ed., *Critical Race Theory* (Philadelphia: Temple University Press, 1995), 382.

discursive criticism and validation. It is this subordination of identity politics to universal justification which Braaten and Outlaw see as restricting progressive commitments on the part of feminist and minority communities.

A central claim raised by Braaten and Outlaw in support of a politics based on group solidarity is the simple fact that political commitments do tend to arise on the basis of identity and action occurs in solidarity with others who share that identity. In fact, it would be unrealistic to think that one could bracket out one's identity related claims when one entered political discussion. Rather, we inevitably enter political discussion as gendered, raced, etc. beings, whose claims and possibilities for engaging in dialogue are shaped by social positions.

However, identity cannot be viewed as a consistent normative political foundation which could replace or precede an orientation to universal argumentation. It is neither plausible to speak of politics as based strictly on identity nor desirable to attempt to derive political commitments in this way.

First, it can be argued that identity is itself a product of social construction rather than a pregiven fact.[255] Both gender and racial identities have been argued to be largely objections of social construction rather than biological necessities. Though such construction works with what might be called objective realities of difference in skin tones or sexual organs, such physical reality vastly underdetermines the social identities involving race and gender. Of course, this is not to say that individuals fully get to choose their identities. We largely find ourselves with socially given racial and gender

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[255] See for example, Alison Jaggar, *Feminist Politics and Human Nature* on the construction of gender; and Micheal Omi and Howard Winant, *Racial Formation in the United States* (New York: Routledge, 1994), Appiah and Gutmann, and Michael Banton, *Racial Theories* (Cambridge: Cambridge University Press, 1987) on the construction of race.

identities. However, group identified members, of oppressed groups as well as groups with power, do actively contribute to the construction of their own identities, as identity politics generally presupposes. The feminist and civil rights movements did not simply discover and defend the identities of women and blacks, but rather actively constructed them. These movements formed new cultures, with their own forms of dress, speech, music, social relationship, etc. which sometimes emphasized pre-existing cultural forms used by women and African Americans and sometimes created new forms.

Not only are identities actively constructed, but they are also plural. A participant in the civil rights movement is not merely black or white, but also has a gender, a sexuality, an age, a set of family and friendship solidarities, a job and corresponding economic class, etc.. Yet, when this individual participates in the civil rights movement, his or her racial identity serves as the guiding normative commitment and other aspects are relatively bracketed out. Though the various aspects of identity may effect the ways in which a person engages in civil rights politics, it is not possible for an individual to politically thematize all aspects of his or her identity at once. Consequently, political activity is a selective response to individual identity. The fact that identity politics involve selective and creative use of identity implies that there is some choice over the politicization of identity. This suggests that between identity and political action there is mediation by other considerations. Such considerations may and, I will argue below, should and often do, involve morally taking into account the claims of those with differing identities.

It appears that historically people have gone against their identity based commitments for what appear to be reasons which include according greater weight to

the political claims which conflict with those of that identity. For example, whites who had supported segregation came to view it as wrong, men have criticized the sexism of masculinity, and nationalistic policies are sometimes criticized by those who accept the identity asserted but view it as necessarily subordinate in importance to human rights. Of course it is possible to argue that such apparently humanistic expressions are either insincere or constitute veiled wills to power. If direct expressions of white supremacy, natural male dominance, or nationalism tend to be ineffective, then it makes strategic sense for groups to employ the rhetoric of universalism in order to disguise aims, gain sympathy, and lull others into false complacency.

Though clearly the rhetoric of universalism is frequently used in a strategic fashion which obscures the underlying commitment to a particular identity which it furthers, it is not plausible to think that all moral rhetoric is guided by such commitments. Given the widespread phenomena which appear to exhibit respect for moral learning over identity, the burden of proof is on those who would show that such forms of learning are consistently forms of deception. Secondly, it is unlikely that strategic claims to recognize rights could be effective unless such claims were sometimes sincere. Their effectiveness rests upon its being believed by those who would be dominated, and if all such postures were insincere they could not have gained persuasive value.

The arguments above demonstrate that political commitments need not and cannot be strictly identity based. It also should be clear that politics should not strive to be primarily identity-based. Deriving political commitments from ones identity implies ignoring claims raised by other members of society. While identity politics on the part of women, blacks, gays, and the handicapped may not sound pernicious, identity politics by

whites, men, heterosexuals, and the abled clearly have been pernicious as they have lead to an inability to recognize the claims of others. I take it that supporters of identity politics such as Outlaw and Braaten would not favor identity based political solidarity on the part of these dominant groups. Yet within the claim that identity and solidarity is the basis of politics, there is no room for rejecting such activity. Evidently, the normative acceptability of the politicization of identity is contingent upon other factors.

It might be tempting to say that identity politics is justified insofar as the identity in question is a historically or predominantly subordinate identity. Such an ethical claim, while backing off the sweeping claims of communitarians who would base all politics on group membership, would still involve a rejection of universalism, including discourse ethics, as a general political ethic. However, even this more limited identity politics by the oppressed, is not an adequate alternative to a discourse ethic. First, to be coherent such a politics would have to define oppression in advance of its identity based claims. The definition of oppression would have to be based on some normative standard outside expressions of identity, so as to justify its selective usage. This prior ethics, presumably, would be some form of universalism, stipulating some standard of treatment required for all people, regardless of identity, such that groups denied it, would be justified in political action. However, if such a universal basis underlies the initial selection of those identities which need political commitment, it is difficult to see why the same universal standards should not also limit the form which this action on behalf of these identities takes. Identity politics would only be justified within the limits of universalism which acknowledged the concerns of others.

In practice, identity politics, even by oppressed groups can be unjust. First, it can involve a rejection of the claims of other people, including other historically disadvantaged and disrespected groups. Anti-Semetic statements by the Nation of Islam, while arguably helping to consolidate group identity against an identifiable enemy, fails to respect Jews, may contribute to violence, and helps to thwart a dialogue across race about not only the disagreements between but also possible agreements between Blacks and Jews. Second, any political programs which give advantages to one group, whether in the form of affirmative action, welfare benefits, maternal benefits, etc. affects other groups as well. If each group lobbies for its own privileges this cuts against a process by which competing claims might be weighed and overlapping areas of interest explored. While this does not mean that it is impossible to criticize and correct for inequality along identity lines, it again shows that some normative perspective not derivative of any particular identity commitments is required if this process is not to lead to unjust consequences.

In some cases, a group's campaign against injustice will address an issue of potential concern to a broader group of people. For example challenges to police brutality against African Americans have at times gained support for those who question police brutality more generally. Furthermore, the analysis of the causes of even an identity-based injustice, such as racist police brutality, will frequently itself involve considerations besides racism. For example, police brutality may be conditioned upon the brutal conditions in which the police themselves live and work. If this is so, then an adequate political approach to fighting brutality, needs to expand its considerations beyond the logic of defending a particular identity.

A final problem with identity politics is that the demand to act on the basis of a single identity, while not guided by a rational moral process, leads to authoritarianism within groups, as an effort is made to clarify the normative demands of identities which are multiple, overlapping, historical, and subject to various interpretations. Nationalism has lead to internal processes of purification as well as external hostility, Nazi Germany serving as the model of both processes. Within the black power movement, anti-feminist and anti-gay rhetoric was common, as their claims were seen as weakening the claims of the movement. Though the contemporary feminist movement has consistently endorsed the need to criticize various forms of oppression, there has been a tension between the motivation to describe a common oppression faced by all women and one which recognizes that differently situated and identified women have different concerns. In this regard Maria Lugones has spoken of a tendency for identity-based groups to have "thick" members and "transparent" members, transparent members being those who are seen as typical and unproblematic members of the group and others who do not fit this typical definition.[256] The logic of politicizing identity does not appropriately call for inclusiveness within or without identity-based groups. Braaten's attempt to correct for the provincial tendency of identity politics with an expansive and open notion of solidarity is also inadequate. It leaves unanswered the question of who one should act in solidarity with and to what ends. There are cases in which we feel solidarity with people who perhaps we ought not to support and there are other cases in which solidarity is not felt but in which we nonetheless have moral obligations. Certainly it is fortunate when ethical action is supported by a bond of solidarity within a community. However, it

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[256] Maria Lugones, "Purity, Impurity, and Separation," *Signs: a Journal of Women in Culture and Society*, 19:21.

would be unfortunate if the mutual effort to politically engage one another depended upon such a feeling of solidarity. To consistently make clear why we need to consider claims that people have regardless of whether we share an identity or whether we have a particular bond of solidarity with them, a universalism is required.

The discourse ethic avoids identity politics tendency to narrowness and immoral nationalism by requiring in principle the consideration of all claims. Some question still remains whether discourse ethics does not attempt to bracket out identities to an extent which is unrealistic and would exclude those contributions of identity to politics which are relevant and consistent with universal respect most broadly and diversely understood. However, it can be seen that discourse ethics does acknowledge the relevance of identity to politics. First, it acknowledges that claims need to be considered by all those identities which might be differently affected, which is to say that they need to be universalizable. The basis of discourse ethics in the lifeworld does suggest that claims will be raised hermeneutically from within given perspectives. Only through dialogue with others can those perspectives be tested for whether they raise claims with which others can be expected to agree.

Discourse ethics also acknowledges that group solidarity around identity is an important basis for political action. It is difficult for individuals to formulate or recognize injustices as isolated individuals considering only the experiences of each. Rather, dialogue with others who are similarly situated is necessary to bring consciousness of injustice into a discursive claim. Furthermore, in entering into political action in order to realize one's claim, identity politics supported by solidarity among those of a particular identity can help to make injustice clear. Concerted action by

members of a particular group help to make it clear that social norms have been discriminatory. Social movements are central to the functioning of an active public sphere, for they are a primary way in citizens can generate normative criticism. Though identity need not be central to such movements, much of their concerns will be based upon issues related to the construction of identities and the ways in which social norms affect those with different identities in different forms. Most politics has been identity politics in this sense. Even class politics, which is frequently contrasted with identity politics, is based on the self-recognition by a social group which is politicized in order to respond to the injustices associated with that identity and to transform social identities.

Finally, the question arises how discourse ethics answers the question raised by Taylor, namely whether the politics of recognition, prevalent in debates about multiculturalism conflicts with a political ethic based on universal respect. Does society need to balance efforts to respect and preserve cultural identities with an effort to maintain respect for all individuals? Discourse ethics suggests that this opposition is false. It treats universal respect for individuals as a formal equality imposed paternalistically from above and insensitive to the cultures of its members. Yet, a universalism which treats citizens as the authors of social norms and not just clients of the government, acknowledges that cultural backgrounds themselves need to be taken into account.[257] I noted above that Habermas accepts that community ethics do justifiably enter into political norms, allowing a community to foster, preserve and celebrate their identities at the same time that they respect each individual. In discursive

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[257] In his reply to Taylor's "Politics of Recognition," Habermas argues that Taylor's dichotomy of a politics of equal rights and a politics of recognition of differences does not take into account the active status of citizens in politically determining what count as equal rights. See Habermas, "Struggles for Recognition in the Democratic Constitutional State," *Multiculturalism*, 107-148.

universalism, culturally based exceptions to social norms can be supported as they allow everyone to equally pursue their own culture. However, universalism does limit the relationship politics can have to culture; it cannot guarantee their preservation, for this would require severely curtailing the freedom of individuals to leave or reshape their cultural tradition. A culture only can and should survive if its members freely choose to do so. Exactly what constitutes an undue restriction on individuals has to be decided in debate. For example the agreement reached in Quebec that all signs be required to have French on them but that English still be allowed to be placed on signs constitutes an effort to support threatened cultural aspects of the community without ignoring the claims of others.[258] A political ethic cannot demand that every culture be "esteemed," as Taylor suggests that multiculturalism requires. Rather, as critics comment, multicultural inclusion in diversification or exceptions to social norms, in schooling or other policies, does not require that each culture be recognized as of particular value but only that respect for individuals means allowing the inclusion of that which is important to them. Thus, discourse ethics recommends a multiculturalism which avoids the reification of differences and which is consistent with individual freedom.[259]

In summary, discourse ethics incorporates a continuous process in which insights

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[258] In *Reasonable Democracy* (Ithaca and London: Cornell University Press, 1996) Simone Chambers makes the case that this agreement was a case of discursive democracy, of a more or less Habermassian variety, at work (212-227).

[259] In arguing that multiculturalism ought to be derivative of equal respect for all people, discourse ethics resembles the framework outlined by Will Kymlicka in *Multicultural Citizenship*. However, it differs in that Kymlicka derives a right to cultural expression from an interpretation of the conditions of individual autonomy, and on the status of cultural groups as having or not having national cultures which are conditions for autonomy. A discourse approach does not require that individual autonomy per se is strictly linked to culture; such a link is questionable as it appears that the colonial destruction of a culture might leave intact autonomous individuals, who simply have a new culture. The wrongs of cultural imperialism have to be assessed by the intersubjective significance of culture historically and politically. Thus, cultures need not be the monolithic national identities that Kymlicka portrays in order to be of importance.

are generated from within identities, relate to identities, and serve to transform identities. However, it also correctly insists that such identity related claims be tested within a framework which includes the claims of everyone, and thus asks people to reason in ways which question their identity-based commitments.

Section 5. Discourse Ethics and Political Motivation

I have argued that an adequate political ethic cannot be based directly on ethical understandings or group identity but also requires an underlying commitment to universalism. At the same time, discursive universalism preserves an important role for the understanding of ethical traditions and identities within the political process. The argument for universalism has been based largely on the moral imperative to respond to the claims of everyone. However, one argument that I have not addressed is whether such a political ethic can generate sufficient motivation for actual political agents who would be subject to its demands and responsible for carrying them out. Whereas political ethics based either on evaluative standards of self-realization or on solidarity in group action make right action rewarding in and of itself, discourse ethics lacks such intrinsic motivation, recommending as it does that one give precedence to universal discussion over personal commitments and attachments. In light of this the question arises whether the ethic could be incorporated into individual political activity or be the normative basis for political life.

Discourse ethics gives a twofold response. First, it suggests that one should not expect a political ethic with a moral component, that is with a component which attempts to establish the limits of right action towards others, to entail motivating force such that

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politically just action will also grant self-realization. Any stipulation of rational

obligations towards others will sometimes conflict with people's self-interpretations of

what is involved in living well. The argument that fulfilling obligations to others always

also enhances self-realization presupposes that there is a singular source of the good life,

which would be recognized if people only saw more clearly. We saw above that an

ethical political basis is insufficiently critical of domination and cannot resolve conflicts

between ethical worldviews. The epistemological difficulty of demonstrating the

rightness of a way of life as well as the fact of pluralism among ethics makes this

alternative implausible. In such cases, there would be no rational reason to convince

someone to start reasoning morally.

Though we can reason about what is moral and recognize some things as morally

correct, reason alone cannot answer the question of why we should be moral or be

expected to move those who lack motivation towards moral action.[260] Thus the inability

of discourse ethics to yield a moral point of view which is intrinsically generative of

compliant action is not objectionable in itself, but is rather reflects the limitations of

reason to perfect the human condition. As Habermas puts it,

> On the premises of postmetaphysical thought, there is no reason why
> theories should have the binding power to *motivate* people to act in accordance
> with their insights when what is morally required conflicts wit their interests.
> The disposition to act responsibly is contingent on processes of socialization and
> the degree of success in identity formation. But an identity cannot be produced
> by arguments. ... It [moral theory] can only show the participants the procedure
> they must follow if they want to solve moral problems and must leave all
> *concrete* decisions up to them. To think that one has the right answer is to know
> that one does not have good reason to act *otherwise*.[261]

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[260] For a discussion which takes the question "Why should I be moral?" 'seriously' but ultimately concludes that there is no compelling answer see Kai Nielsen, "Why Should I Be Moral? Revisited" in *American Philosophical Quarterly* 21 (January 1984): 81-92.

A morally based political ethic can only show what it means for something to be a legitimate social obligation but it cannot supply the willingness to act according to its dictates. The latter depends upon accompanying personality structures.

However, moral theory and a morally based political ethic should not be so abstract in its account of normative reasoning that it is implausible that the form of reason could be implemented. Even if, as I have argued, it asks too much of political theory to answer fully the question of why one ought to be motivated to pursue that which is right, one might think there was something right about Hegel's criticism of Kantian liberalism's failure to account for how moral thinking could be embodied in a form of life, such that it is not merely an abstract demand. Habermas has argued that moral theory is dependent upon a form of life which meets it halfway; this is particularly true of a political ethic which is dependent upon institutions through which political will formation can occur.

How, then, does discourse ethics fit with a form of life which meets it halfway? Habermas has argued that a general form of social solidarity is the other side of the justice orientation in discourse ethics. The argument is that a shared commitment to common goals and concern for the distinct needs each person mutually require each other, such that discourse ethics implies the importance of motivational forces and lends some support to them. Habermas makes this link by drawing on Mead's concepts of the intersubjective nature of identity and reflection and, specifically, the process of individualization through socialization. Becoming an individual involves coming to understand a set of social validity and also understand oneself as responding as a unique "I" even as one understands and agrees with the claims of others. Without some degree of social solidarity communicative action would not be possible, for the ability to make

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[261] *Justification and Application*, 75, italics in original.

sense of our linguistic claims presuppose the agreement of others. Our self-concepts are bound up with the recognition of others. And our bonds with others are ones which we enter as individuals whose role has to be negotiated according to norms of inclusion. Thus, a social life which is postconventional has some inherent tendency for issues of justice and democratic participation to be raised. Habermas calls this universal social solidarity entailed by discourse ethics a "constitutional patriotism."[262] The commitment to arrive at political arrangements through argumentation entails a vision of an order based on certain general interests which are good for all -- such as a set of universal rights -- as well as a democratic ethic in which exchange with others is seen as valuable.[263]

Section 6. The Discourse Ethic's Conception of the Good

The above defense of discourse ethics as coeval with a form of social solidarity based on a search for a common good, raises the question of whether discourse ethics does not therefore itself presuppose a form the good, conceding the rightness of communitarianism after all. It would seem that discourse ethics requires that people value rational discourse. The ethic requires a capacity and willingness to take "yes" and "no" positions on normative matters, thus an ability to question social norms. Thus, it appears to depend upon something along the lines of the liberal value of autonomy. Does discourse ethics not violate its own supposed ethical neutrality by its dependency upon

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[262] *Inclusion of the Other*, 225-226.
[263] For Habermas's initial statement of the interrelationship between solidarity and the democratic pursuit of justice see *Moral Consciousness and Communicative Action*, 20-208. For a functional argument for the role of democratic action in solidarity see *Between Facts and Norms*, 318-321. See also Chambers, 176-192, and Rehg, 167-172.

particular ethical values?

In answer to this it can be argued that while the discourse ethic is conditioned upon certain forms of life, first, that these forms of life are the only adequate ways of resolving many human problems, and, second, that the requirements are minimal and general and thus allow freedom in the choice of forms of life.

First, though discourse ethics depends on autonomous discursive agency, it can be argued that these forms of good are obviously indicated normative solutions to modern social and psychological conditions. Human beings need to interact with others in society in order to develop as reflective beings much less pursue the projects which depend on cooperation. In society, and in modern societies in particular, conflicts arise between various purposes and expectations. An obvious way to resolve such conflicts is to attempt to reach agreement about what an adequate norm is. Thus an orientation to search for common interests appears to be rational from a functional standpoint and the development of this capacity tends to become central to socialization processes.

Of course, there are other ways of resolving conflicts, for example by force, by appeals to mutual self-interest or by reference to overarching group values or a tradition. However, as William Rehg argues, all such solutions lack the stability and general acceptability of a discourse ethic.[264] Any such solution is likely to be made unstable by continuing problems which introduce a plurality of different social perspectives and forms of life. Force clearly only is satisfactory for the victor and even then may be costly. The pursuit of self-interest without concern for more general intersubjective validity can lead to some satisfactory agreements but is itself unstable when the self-

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[264]Rehg defends this "No alternatives thesis" in *Insight and Solidarity*, 140-167.

interest of different parties conflicts. Self-interest itself lacks a way to predictably and consistently resolve conflicts. Traditions provide a more consistent basis of social coordination. Yet, under modern conditions, there has to be cooperation across traditions, and an encounter with non-traditional ways of life means that traditions are called into question. Once this happens, traditions themselves are inadequate to resolving the problems. The very assertion that culture ought to be respected as the basis for normative action, itself presupposes that grounds of legitimacy outside culture are valid. Even fundamentalist defenses of tradition enter into rational debate, defending the importance of tradition and need for toleration. All of these solutions suggest that social life requires the development of some orientation to concern for others claims as such and a willingness to assert the validity of ones own claims. The goods presupposed by discourse ethics -- valuing social processes of justification and taking reflective positions -- are forms of life which are almost unavoidable and appear to be the only rational solutions to problems which arise in the modern world.

It also should be stipulated that this good is at such a general level that it still does not itself constitute a substantive ethic which would deductively imply moral correctness. Actual moral principles need to be worked out according to the procedure of the discourse ethic; communicative solidarity merely serves as condition for the pursuit of and recognition of the burdens of the discursive process. Much less does this form of solidarity provide a substantive blueprint for forms of life. Many different ethics are compatible with the processes of discursive justification. However, forms of life which attempt to suppress freedom of thought and inclusive social participation would be incompatible with this political ethic. Thus a discourse ethic rules out any

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fundamentalism which would place religion or other goals as the final arbiter of all normative issues, as well as other forms of authoritarianism or intolerance.[265]

Section 7: Conclusion

I have sought to demonstrate on the one hand that the discourse ethic does not for good reason provide an internal motivation for moral action, and on the other hand, that discourse ethics does imply a social solidarity oriented toward intersubjective validation which reinforces the deliberative democratic procedure. We have seen throughout this chapter that a political ethic cannot be based directly upon an ethical conception of the good life. Rather it needs to be consistently based on a demand to include the claims of people coming from a plurality of cultures and social situations, as does the discourse ethic. At the same time, I have argued that discursive universalism does leave significant room for ethical considerations in the debate over moral norms, in providing some extra-moral political considerations, and in providing the conditions required for successfully instantiating a democratic processes. Thus Hegel's critique of Kant's ethics as overly abstract from culture is right insofar as a political ethic needs to be grounded in culture and admit of claims stemming from culture. However, Hegel was mistaken to think a substantial description of a form of ethical life was viable or necessary to replace a universalism based on continual public reflection.

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[265] Of course the determination of rightness in the course of political will formation also goes on to rule out other aspects of forms of life, namely those which have consequences and side effects which cannot be accepted by those affected.

CHAPTER VIII. THE APPLICABILITY OF DISCOURSE ETHICS FOR SOCIAL CRITICISM

I have argued that discourse ethics has the potential to serve as an emancipatory political ethic which avoids the problems of abstractness and dogmatism to which many expressions of normative universalism are susceptible. I have argued that it does not problematically abstract away from differences in perspective and social position, forms of embodied political action, contexts of norm application, or community standards of the good life. I have argued for this, in part, by noting that these factors all to some extent can be expected to enter into political discussion and that the discourse ethic does not prejudge the outcome of discussions but rather serves as a procedure in which rational claims are separated from the non-rational, and generalizable norms are separated from the non-generalizable. The discourse ethic's open proceduralism and counterfactual ideal have thus far proved valuable in sustaining Habermas's version of enlightenment universalism. This universalism avoids the limitations of Kantian moral universalism which asserts a universalism of formal principles. It also avoids Marxist and Hegellian tendencies to treat specific historical agents and institutions as embodiments of reason or universal interests. The latter approaches overstate the capacity of the theorist, overestimate the potential of historical agents, and ignore many conflicts of interests between various groups. Because the discourse ethic does not project specific political principles, institutions, or agents, but rather leaves these to the political process, it avoids these mistakes. Habermas's reduction in the scope of political theory and his avoidance of specific institutional recommendations lends plausibility to this ethic as a universal political outlook.

However, some argue that the discourse ethic's lack of specificity is its principle weakness as a political ethic. On the one hand, since the ethic is based on a counterfactual ideal, it is not clear how such an ideal would be applied to actual political situations, where the only options are non-ideal processes and solutions. In fact, since discourse ethics argues that normative matters ought to be determined by the political process, it might appear that it has nothing to say about concrete situations. Thus, it appears to recapitulate yet another abstraction of which Hegel accused Kant, namely asserting an ideal which is empty of content for actual practice. In fact, since it is expressed in counterfactual terms discourse ethics appears to have fewer consequences than Kantianism. At the same time, uncertainties about application seem to leave discourse ethics between the twin problems which faced Marx and Hegel. Like Marxism, discourse ethics appears to hold out a utopian ideal of a democratic society consistently guided by the pursuit of the common good. Though appealing, it is not clear how such an ideal can be embodied in actual social practice. In fact, the utopian ideal of a completely democratic society risks the chaos which Hegel saw in the idea of a general will. On the other hand, as a theory which locates political rationality in the capacities of everyday communication, discourse ethics locates reason in existing institutions and agency. Thus, it lends itself to be used in a Hegellian fashion to rationalize existing norms. It is not clear that the discourse ethic is sufficiently critical of injustice, particularly when it is supported through discussion. Thus many critics object that discourse ethics ultimately ends up ideologically ratifying current political processes, abandoning hope of a sweeping critique of systems of injustice and their replacement with a truly just and democratic order. If both utopianism and ratification of the existing are problematic,

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there is a need to steer a middle course and it is not clear that discourse ethics provides the tools to make rational judgments about such a course.

Though the focus of his work has been at a highly abstract theoretical level, Habermas has tried to show ways in which a communications approach implies how society might be criticized, helping to point out where injustices lie and wherein there is a possibility for more freedom giving alternatives. As we saw in chapter three,[266] he offers a critique of the colonization of the lifeworld by systems, a theory of democracy as lying in a public sphere within civil society, and a derivation of human rights on the basis of conditions for political discourse. However, this framework for application of the discourse ethic has been challenged as on the one hand, relying on dubious distinctions and category mistakes, and on the other, obtaining political substance at the expense of accepting current injustice and failing to address aspects of domination.

I begin by discussing criticisms that discourse ethics is empty of content and cannot be usefully applied as a critical test of social institutions, norms, and principles (section 1).[267] I reply that projections of the directions of dialogue, as well as inferences of the conditions for democratic discourse, provide a critical framework for thinking about social justice (section 2). I also defend Habermas's derivation of forms of rights from the discourse ethic, addressing questions and criticisms regarding this position (section 3). I then take up the question of whether a material political ethic, involving a substantive account of human rights or explicit principles of justice, arguing that the

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[266] 80-82.

[267] Note that the issue of application to be discussed in this chapter differs from that in chapter 6. There the issue was whether universalistic *norms* could be applied *in a context sensitive way*. Here the issue is whether the *discourse ethic*, with its principles of universalizability, *can in fact be used to infer correct norms or the correct procedure for discovering them at all*.

discourse ethic is ultimately more practical, critical, and democratic (section 4). Then, as the application of the discourse ethic depends upon a theory of distorted communication, I explain a discourse theory of political domination, responding to objections to Habermas's systems and lifeworld framework as an inadequate theory of power (section 5). I end by addressing how judgments about distorted communication themselves can rationally be made given the discourse theory of rationality (section 6).

1. The Objection that Discourse Ethics Lacks Determinate Content

A successful political ethic should provide normative content which furthers the criticism of social norms as unjust. Thus, the discourse ethic ought to indicate what relatively just norms are and be usable for the criticism of domination. However, it appears that Habermas's ethic provides little normative guidance for social criticism. In asserting that those norms are valid which would be accepted under the ideal conditions of inclusive, reflexive, and non-coercive dialogue, the ethic can only be applied counterfactually. The critic would have to speculate on how such political discourse would go when it in fact will never actually occur. Even if one agreed in principle with the discourse ethic's conception of political validity, one would still be at a loss to use it to make determinate judgments. In fact, discourse ethics is even worse off than Kantianism on this score, for at least the categorical imperative could rule some maxims out as non-generalizable. Though discourse ethic admits an infinitely broad range of considerations into the process of validating social norms, it seems it can never be used to make definitive political judgments.

Stephen Lukes argues that it would be impossible to try to apply the counterfactual discourse ethic to make political judgments without drawing on other normative presuppositions. He argues that there are three ways in which one might try to apply the discourse ethic, itself a problem of ambiguity, but that none of the three ways leads to coherent political judgments without further problematic assumptions. First, one might speculate about what existing people would agree to in an ideal situation. However, this process in inadequately abstracted from current circumstances, for it would accept all of the existing prejudices and assumptions about how society should work. A dialogue undertaken by existing subjects, even in changed circumstances would hardly be just. Sincerity, lack of coercion, and willingness to debate could nonetheless result in unjust decisions. For example discussions of affirmative action might not justly incorporate the claims of minorities. It would be easy for prejudices, including those accepted by the oppressed themselves, as well as lack of willingness to surrender any privileges given by the status quo, to decisively determine the result of deliberation which went by a fair process.

A second approach would be to think about what certain representative groups would agree to under ideal conditions, such that a rational agreement between them about generalizable interests could be identified with justice. However, this requires assumptions about who the relevant groups are such that their agreement would constitute a just order, as well as what the interests and perspectives of the groups are. In deciding what is relevant and how these could be reconciled the theorist again begs the question about what is normatively right.

Finally, we might think of what people would agree to in a society generally characterized by moral maturity and open discourse. This would require still more loaded assumptions, as forecasting the results of such a dialogue would require that one know the true nature of human needs, wants and reasoning processes.[268]

In each case, the application of a discourse ethic requires that assumptions be made about wherein lie generalizable interests, assumptions whose content would have to be filled by considerations other than the discourse ethic. In fact, Lukes argues that discourse ethics leads to a kind of decisionism in which the content expected is filled by arbitrary judgment.[269] This is an ironic result given that the critique of decisionism has been a major theme in Habermas's work.[270]

This uncertainty with regard to how to apply discourse ethics is also argued to be a key way in which the ethic fails to be sufficiently critical and lends itself to conservative use. Many of the objections in preceding chapters about the exclusionary tendencies of discourse ethic, though failing to yield a principled refutation of Habermas's position, become problematic when a social critic attempts to apply the discourse ethic. For example the tendency of expressions of universalism to suppress differences and social inequality as well as biases toward ethical traditions or styles of speaking arise in social scientific application of the concept of suppressed generalizable interests. Social theorists and citizens who project the results of a democratic process will make assumptions about what qualify as generalizable interests. Such assumptions

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[268] Steven Lukes, "Of Gods and Demons: Habermas and Practical Reason," in John B. Thompson and David Held, eds., *Habermas: Critical Debates* (Cambridge, Massachusetts: The MIT Press, 1982), 139-140.

[269] Lukes, 145.

[270] For example, Habermas, "Dogmatism, Reason, and Decision: On Theory and Praxis in our Scientific Civilization," in his *Theory and Practice* (Boston: Beacon Press, 1973), 253-282.

are likely to be guided by dominant prejudices, including prejudices about gender roles, about the appropriateness of a racial caste system, and about the superior role of the market in organizing production and distribution. Habermas's communications theory appears to lack the specific theories of power present in Marxist, feminist and other progressive political theory. Thus Lorenzo Simpson argues that the indeterminacy of the discourse ethic's implications makes it susceptible to gender and racially biased use.[271]

For his part, Lukes sees these difficulties of applying a procedural universalism as supporting skepticism about moral reason.[272] Others may agree with Hegel that a univeralism which is not applicable to existing people and institutions is dangerously utopian. It seems that such an ethic might alternatively justify progressive ends, pursuit of the status quo, or a terrorist radicalism or dogmatic, paternalistic vanguardism. Thus the open proceduralism of the discourse ethic appears to render it an inadequate normative guide for social criticism, hence making it inadequate as a political ethic.

2. Applying the Discourse Ethic to Social Criticism

One response to the charge of emptiness is to acknowledge that the fallibilistic, postmetaphysical thinking proper to discourse ethics entails that there are only participants in the making of normative judgments and not observers. This implies that political theory does not allow for the theoretical derivation of norms or allow the theorist special insight into precisely how institutions should work. For example, Marx's belief

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[271] Lorenzo Simpson, "On Habermas and Particularity: Is There Room for Race and Gender on the Glassy Plains of Ideal Discourse?" *Praxis International* 6 (1986): 335-338.
[272] Lukes argues that Habermas fails to disprove Weber's value pluralism, in which competing Gods and Demons must be decided between without any decision process having a firmer rational basis than any other, 148.

that work life would be organized differently in a democratic society prejudges the hypothetical outcomes of democratic dialogue. The discursive idea of politics suggests that the social critic cannot distinguish true and false needs without testing his or her own claims in a wider dialogic process. The critic herself or himself is thus always a participant in the dialogue and may not stand outside of it. When Habermas makes a statement about a political issue such as German unification or the wars in the Persian Gulf or Yugoslavia, he acts, not as an expert who applies the discourse ethic, but rather as one political participant in a democratic debate. Habermas notes that since everyone is a political participant it is neither necessary nor possible to distinguish between currently perceived needs and those which would be recognized under ideal conditions, as Lukes does.[273] Presumably, individuals will make arguments based on what they perceive to be people's real needs and deserts. The discourse ethic suggests that these claims need to be tested in dialogue with others. Thus, the discourse ethic recommends a process for testing validity of claims rather than for generating them *ex nihilo*. Perhaps discourse ethics as a metaethical principle only implies that subjects ought to enter into political discourse, but does not allow any conclusions to be drawn.

Yet, if this argument holds, then it appears that normative social theory is undermined since it is not capable of criticizing as false those needs and values reflected in currently accepted norms. While one might question social norms, there would seem to be little objective ground which anyone could use to determine who was right in such a dispute; that is, it is not clear how the outcome of democratic deliberation could be projected. Such a view would involve endorsing democracy in principle at the expense of relinquishing the project of "stepping back" and rationally assessing the justice of

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[273] See Habermas's reply to Lukes, "A Reply to My Critics," Thompson and Held, 250-258.

social institutions as opposed to alternatives. We look for a political ethic to tell us not simply what we should do in order to procedurally test our beliefs, but also in hope of finding a way to evaluate, from the outside, the validity of norms which are agreed to or the relative validity of various claims which are disputed. The task of the social critic has traditionally been to provide an analysis of society which is objective and which is combined with normative judgment so as to provide political guidance from outside for those within the process. If one thinks that theory has sometimes effectively played a role in clarifying the nature and existence of injustice and oppression, then discourse ethics appears to come up short as a political ethic.

However, this conclusion is overhasty. While it is true that ultimately the validity of normative conclusions is determined by a process of dialogue, it is both necessary and possible that speculations can be made about validity before the conclusion of political dialogue. There are two ways in which one could apply discourse ethics to the normative criticism of social practices. First, it is possible to project provisionally what norms are the result of relatively consensual reasoning processes and in what direction uncoerced discussion would lie, as I will discuss in the rest of this section. Second, the discourse framework implies certain forms of basic human rights, as I take up in the next section.

First, Lukes's argument that one cannot coherently apply discourse ethics to draw conclusions about the justice of norms -- e.g. principles, laws, and institutions -- is overstated. It is possible to recognize widely shared norms which appear to be candidates for political consensus. It would be a mistake to assume that widespread agreement constituted validity, for the conditions under which dialogue has occurred may not have been ideal. However, it is further possible to speculate whether a discussion which more

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closely resembled the conditions of (U) would not lead to a revision of views in a case of existing agreement, or a shift towards consensus in a case of disagreement. The guiding process for doing this would be to look for ways in which some claims have been suppressed or ignored through current ways of making political decisions. An observer would extrapolate possible positions based both on current dialogue and on the conditions of (U) which suggests ways in which generalizable interests have been suppressed. There are rational predictive bases for making judgments about not only what individuals might want under different circumstances, but also the ways in which changed circumstances might change the views and perspectives with which persons currently approach political issues, on the basis of sociological tendencies. As Lukes and Simpson note, such judgments would be highly fallible and admit of the observer bias about what it is rational for people to agree to. Yet, these are matters that can be debated by challenging the observer's interpretation or by actually attempting to test the results through changing circumstances and observing the results of further deliberations. It is impossible for an observer to reconstruct an entire set of social norms and institutions without assuming anything about how people can or should act. However, it is possible to make piecemeal criticisms of what plausible alternatives might be adopted under more ideal conditions of discussion.

Simone Chambers, borrowing terminology from Rawls, argues that the application of discourse ethics can be thought of along the lines of a "reflective equilibrium."[274] To make judgments about valid norms one would take into account current claims, the type of dialogue which has lead to those claims, as well as the

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[274] Chambers, *Reasonable Democracy*, 168-9.

idealization of speech conditions represented by (U). Under such conditions, one can make a rational, though fallible judgment about wherein generalizable interests lie. As Chambers notes, "unlike Rawls's notion of reflective equilibrium, in which we check our thought experiments against our considered judgments, the discourse version calls for checking our thought experiments against the considered judgments of others as well."[275] These fallible projections can be challenged by others or may be reassessed after additional experience. Ultimately the validity of social criticism rises and falls with its own ability to be discursively legitimated through further political processes. This does not prevent provisional judgments from being made rationally.

Simpson's objection, that the discourse ethic will tend to be applied in ways that take for granted hegemonic conceptions of general interests and thereby legitimate existing power relationships, assumes that there are no rational process for criticizing political discourse. Yet, the speculation about generalizable interests can and should draw on a theory of ways in which some kinds of claims are suppressed, in Habermas's words, a theory of "distorted communication." A theorist using the discourse ethic as a normative tool could imagine how current arrangements exclude some groups or types of issues from political discussion. The processes which exclude from or dominate political discourse could be said to distort communication, preventing the rational agreement that might stem from inclusive, non-coerced, reflexive normative discussion. Habermas has argued that in contemporary societies, and liberal capitalist welfare states in particular, there is a tendency for discussion to be dominated by the functional reasoning proper to markets and bureaucracies.[276] I discuss the use of Habermas's social theory to provide a

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[275] Chambers, 169.
[276] *Theory of Communicative Action*, Vol. 2, 332-373.

theory of power that would compliment the discourse ethic below (section 5). For now, I point out that if patterns of distorted communication can be identified, then the discourse ethic can be applied in a critical fashion. If it is not possible to say anything general about wherein communication has been distorted, then it is not clear what ethic would be appropriate. The feminist and anti-racist alternatives to which Simpson is sympathetic, themselves presuppose that it is possible to rationally judge existing patterns of political language as distorted in some way. The main alternative to a discourse approach would seem to be a political ethic which incorporated a more explicit or material theory of justice. I discuss problems with such an alternative below (section 4). But first, I turn to another way in which discourse ethics can be used to make political judgments.

3. The Inference of Rights from the Discourse Ethic

In addition to the use of the discourse ethic to project more just norms, Habermas has recently used the discourse ethic to derive some types of rights. In *Between Facts and Norms* he argues that there is a mutual relationship between private autonomy, the freedom of an agent to pursue his or her own ends protected by a sphere of rights, and public autonomy, the freedom of an agent to contribute to legislation of those rights which determine the nature and extent of private autonomy. The communicative freedom of public autonomy is impossible without the support of a private autonomy in which individuals are able to develop various interests and perspectives, through choice of life plan, freedom of movement, association, and public expression. Thus a sphere of actionable rights allows individuals to participate in democratic discourse. At the same time, Habermas argues, the claim that these rights equally preserve private freedom is not

defensible unless individuals are publicly autonomous, such that they themselves articulate the terms under which private autonomy can be said to equally protect the freedom of everyone.

Habermas goes on to argue that if the discourse ethical principle is applied to the form of the rule of law, it allows for "a logical genesis of rights."[277] Habermas argues specifically for five types of rights moving from most abstract to most concrete. First, he argues that a discursive view of the legal form implies the "right to the greatest possible measure of equal liberties that are mutually compatible,"[278] a set of negative freedoms which could be agreed upon by everyone as in their mutual interest. Second, given the existence of distinct state orders in which rights are realized, some rights would guarantee the status of a member in a political community, with the rights and duties which go along with membership. Third, the concept of providing legally actionable rights implies that individuals should also be given legal protections regarding the way the law is enforced, implying for example the ability to bring suits and have a fair trial. Fourth, rights are required which give "equal opportunities to participate in processes of opinion and will formation in which citizens exercise their political autonomy and through which they generate legitimate law."[279] These are rights of political participation, clearly implied by the application of the discourse ethic to the "form of law." Finally, Habermas argues that the discourse ethic implies "[b]asic rights to the provision of living conditions that are socially, technologically, and ecologically safeguarded, insofar as the current circumstances make this necessary if citizens are to have equal opportunities to utilize the

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[277] *Between Facts and Norms*, 121.
[278] *Between Facts and Norms*, 123.
[279] *Between Facts and Norms*, 123.

civil rights listed in (1) through (4)."[280] These positive social rights are implied by the

discourse ethic's demand for reflection upon the conditions under which rights are made

use of; any social conditions undermining the equality of ability to make use of civil or

political rights can themselves be criticized and can allow for the generation of new,

social rights which allow for equity in private autonomy. Habermas notes that the rights

implied by the discourse ethic do not entail precise norms or institutional arrangements.

"They must be *interpreted* and *given concrete shape* by a political legislature in response

to changing circumstances. The legal code cannot be established *in abstracto* but only in

such a way that citizens who want to legitimately regulate their living together by means

of positive law grant one another *specific* rights."[281] Thus the discourse ethic implies that

certain types of constitutional rights should exist in societies which are regulated by law,

but not precisely specify the content of those rights; it does not in of itself conceptually

generate a bill of rights.

This derivation of rights from the discourse ethic is not above dispute. Ricardo

Blaug criticizes what he sees as growing tendency for democratic theorists to try to "say

it with rights" and argues that the principles of argumentation do not imply a set of rights.

Blaug argues that the derivation of rights from the discourse ethic rests on the assumption

that speech claims mean that *individuals* need to be entitled to enter political discussion

in an uncoerced manner, when in fact the pragmatic rules of speech "might be better

interpreted in terms of equal opportunities to use speech-acts."[282] Blaug concludes that

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[280] *Between Facts and Norms*, 123.
[281] *Between Facts and Norms*, 125.
[282] Ricardo Blaug, *Democracy Real and Ideal: Discourse Ethics and Radical Politics* (Albany: State University of New York Press, 1999), 46.

political theorists should focus on the conditions of opportunities to speak rather than on entitlements.

Blaug notes that Habermas himself points out that the principle (D) underdetermines any actual institutional arrangements. Rights are relative to particular social institutions, cultures, and histories and cannot be deduced a priori from the argumentative presuppositions of Habermas's (D).[283] Thus, by deriving rights Habermas appears, by his own admission, to overextend the use of discourse theory.

Particular objections have been raised to the coherence of Habermas's attempt to use the discourse ethic to derive social rights. Kevin Olson argues that the social conditions for effective equal use of civil and political liberties are especially contingent upon historical conditions. Social rights depend upon a complex empirical assessment of the way in which social institutions, such as the market, family, communication, transportation, etc. affect people's ability to act equally and autonomously. The difficulty of establishing whether there is a right to health care and what should be included in it provides an example of the difficulty of interpreting the content of social rights. Positive rights are also limited by a society's ability to provide them. Also, as critics of welfare are fond of claiming, the paternalistic administration of individuals' needs can negatively impact the recipients. The ongoing debate about welfare rights and welfare reform further highlights disagreement and confusion about whether individuals should be entitled to any positive rights and how these can be articulated in a functional and helpful manner. Olson notes that the discourse ethic implies little about what kind of social rights are defensible. Furthermore, since the formulation of the rights is a condition for

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[283] Blaug, 45.

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citizens actually making full use of political participation, the rights are likely to be formulated in an undemocratic manner. Thus, they are particularly likely to either inadequately preserve equal opportunity or preserve it a paternalistic manner.[284]

Yet, even if rights do not deductively follow from speech act theory, the inference of rights from the discourse ethic remains plausible. First, if the discourse ethic implies that claims need to be included in discussion, then one could argue that claims are unlikely to be included if individuals are excluded. It is possible to imagine cases in which claims could be taken into account better by formally excluding people from discussion, such as in a benevolent dictatorship, particularly in cases when populism is likely to lead to the deprivation of rights to minorities or general lawlessness. Yet, the burden of proof, as Blaug himself acknowledges, would be on anyone to justify certain forms of exclusion on discourse ethical grounds. A theory of rights can be supported as generally supporting the kind of participation which would generate the discussion on which normative validity depends.

Secondly, it should be emphasized that the discourse ethic does not imply the specific content of the rights of a society, but rather leaves this to be established within an ongoing, participatory political process, responsive to changing circumstances. The discourse ethic simply implies forms of rights which should be institutionalized in some way, thus provides a guide for framing valid constitutions and for continuing struggles to realize the conditions for freedom. This applies equally to the specification of social rights. While the process is clearly difficult, it is not thereby irrational. The conditions for the equal value of rights can be addressed in a historically specific, participatory

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[284] Kevin Olson, "Democratic Inequalities: The Problem of Equal Citizenship in Habermas's Democratic Theory," *Constellations* 5:2 (1998), 215-233.

fashion, which is sensitive to the ambivalent results for clients. Once again, the realization of the social conditions necessary for equality of participation also requires input from those who are affected. Without linking social rights to democracy, it would be difficult to argue that social rights actually protect the rights of all equally. It is sensible to speak of material conditions as being requisite for being able to participate equally in political discussion. Thus while discourse ethics provides an outline of a theory of rights, the actualization of rights in a manner which does justice to everyone depends upon the quality of political participation which leads to the content of those rights. The adequacy of the discourse theory then depends upon its ability to criticize the quality of political process through which norms are legitimated, which I discuss in section 5, and to what extent the democratic pursuit of justice is viable under conditions which are unjust, as I discuss in chapter 9. First, one final question raised by the criticism of a discourse theory of rights should be addressed: whether the concept of rights and of social norms does not require a basis which is not merely formal, and dependent upon contingent processes of interpretation, but rather contains definite fixed content. I address the comparative adequacy of the discourse ethic and a material ethic in the next section.

4. Discursive Procedure Versus a Material Ethic as Normative Foundation

The discourse ethic appears inadequate to many critics when it says that human rights have their basis in the properties of discourse. Many argue that this is an overly contingent notion of rights, which rather should be based upon a material ethic with a substantial account of human nature, or at least some firm principles of justice. First, it

appears to some critics that Habermas believes that rights are limited to those which permit deliberative participation. Thus, Kevin Olson states that "Habermas subordinates social rights to the functional requirements of democracy, providing them with a highly contingent foundation."[285] However, this is a misreading of Habermas's project. To say that a system of rights protecting individuals as free and equal is coeval with the democratic principle, is not to say that rights are only justified insofar as they are instrumental for democracy. The content of rights is not exhausted by the conditions for entering into democratic discussion. If it were, this would result in the circular consequence that democratic deliberation would be solely charged with specifying the rights which allow for more democratic deliberation. Rather, human rights and other social norms could be supported for non-instrumental, "intrinsic" reasons as well. Rights spell out the implications of universal mutual respect as decided upon through recognition of claims. Thus even if rights to life, liberty, non-exploitation, did not themselves contribute to the process of democracy, they could be supported within that process as morally based political demands. The discourse ethic does not present such rights as "instrumental"; it merely insists that the terms of the rights have to be filled out in the course of political process in which the claims of various parties are taken into account. The content of the basic rights as "the greatest possible measure of equal individual liberties" and of social rights as the conditions for "equal opportunities to utilize the[ir] civil rights" are not instrumental conditions for democratic participation. While Habermas argues that the private autonomy protected by rights furthers democracy, he is also clear that the conception of human rights follows from the

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[285] Olson, 230.

discourse ethic's conception of a community of beings who attempt to spell out the conditions for social life which is mutually acceptable to all.

Though the discourse theory does not present rights as justified merely as conditions for democratic participation, the ethic still might be argued to fail to properly accord significance to the nature of rights. It could be argued that a right is, by definition, a norm that warrants recognition regardless of the course of political discussion. The traditional understanding of human rights is that they are inherently possessed by beings in virtue of their humanity and are not contingent upon what anyone claims. By treating rights as contingent on the results of dialogue, discourse ethics presents rights as contingent, thus appears mistaken in principle and a weak practical foundation for the pursuit of justice. Such criticisms imply that instead of a discursive political ethic, a material ethic is needed. Such an ethic would either specify the rights which human beings deserve -- as in natural law -- or, minimally, present principles of justice which would allow for the derivation of rights under specific historical and social circumstances, as in Kantianism. For example in his criticism of a discursive proceduralism as a liberatory ethic, Enrique Dussel argues that emancipation must be based on a material ethic which explains the responsibility of each person for the well being of others. For example when confronting hungry people, we should be able to recognize them as victims, recognize ourselves as responsible for this condition, and act so as to transform the conditions of hunger.[286]

However, a substantive political ethic, as an alternative to procedural universalism, has epistemological and political difficulties. First, a material ethic which

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[286] Enrique Dussel, "Globalization and the Victims of Exclusion: From a Liberation Ethics Perspective," in *The Modern Schoolman*, LXXV, January 1998, 148-9.

would yield human rights and social norms requires a metaphysical view about human nature and the cosmos. For example, something like natural law or teleological biology would need be used to explain why some circumstances conflict with the rights and duties absolutely accorded humanity. However, amidst current skepticism about the possibility of theoretically defending metaphysical views, defenses of natural law are not plausible. There is no reason why such a view would be convincing to any who questioned the metaphysics involved. Politically, no material ethic can regulate politics in a world characterized by a pluralism of metaphysical worldviews. The implication is that a non-metaphysical grounding is necessary.

An ahistorical material ethic is also inadequate in light of the inevitably culturally and materially diverse conditions in which political decisions are made. A system of substantive principles asserts the validity of principles without consulting all of those who are affected by them and assumes that such principles will be applicable timelessly and in all particular cases. I will not rehash all of the objections to the principles of utilitarianism or Kantianism here, but take it that no such substantive ethic can be usefully and directly be employed to adequately solve difficult contemporary issues a priori. It is unlikely that any specific set of normative principles has content required to deal with changing political circumstances across cultures.

Furthermore, the use of such an ethic to determine concrete social rights would itself require a politically significant process of interpretation. An interpretation of what is in the general good by the few typically fails to take into account the interests of all, and leads at best to parternalistic application. So far as these interpretive processes

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themselves can more and less justly include the claims of a range of groups and perspectives, they would have to presuppose something like the discourse principle.

The difficulty of supporting any material ethic and the tendency for non-procedural ethics to be employed paternalistically lends further support to a procedural, discursive democratic ethic. Discourse ethics has the advantage of recognizing rights as having a meaning which points beyond the particular positive rights accorded by a given legal system or even implied by the constitutional and ethical traditions of a society. Any principles endorsed by society are provisional and require further testing. The counterfactual ideal of the discourse ethic postulates a system of rights which recognizes everyone as free and equal, providing a principle from which particular rights can be defended while also allowing continuing reinterpretation in light of historical conditions and experiences.

5. Distorted Communication and Social Criticism

I have defended the discourse ethical position that social norms, including human rights, require validation through inclusive political discourse. I stipulated that the viability of the ethic -- including its ability to avoid empty decisionism, hegemonic interpretation, or dogmatic endorsement of existing political processes -- depends on a theory of distorted communication. The discourse ethic needs supplementation by an account of how social domination leads to norms which are not justified by the discourse ethic. If the discourse ethic is to serve as a viable political ethic, we need an account of the relationship between power and communication. As I discussed in Chapter three,[287]

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[287] 80-82.

Habermas's theory of distorted communication involves the idea of the colonization of the lifeworld by functional systems.

Unfortunately, critics charge that Habermas's theory of distorted communication, complimented by the discourse ethic, is itself incoherent and insufficiently critical. Critics argue both that the distinction between system and lifeworld is fallacious and that what Habermas refers to as systems colonization should not be equated with social injustice or political domination. In particular some critics argue that the distortion of communication through systems colonization does not well account for the nature of sexist and racist domination.

Several writers question making any sharp distinction between functional system, governed by the logic of instrumental calculation, and lifeworld, governed by the logic of shared understandings. In any actual institution or relationship between human beings, both would have to come into play simultaneously. Even the paradigmatic systems, the market and bureaucracy, are maintained through shared understandings of what constitutes things such as work, fair contracts, sellable goods, etc.. Systems would not be able to function were there not substantially shared understandings among those who carry them out.[288] Likewise, when Habermas identifies the lifeworld with the familial institutions outside work and government, he seems to ignore that the family is itself a site of labor, governed by instrumental calculation as well as shared understandings.[289]

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[288] For a critique of such distinctions, see Anthony Gidden's critique of Habermas's initial distinction between labor and interaction, which foregrounds the distinction between system and lifeworld, "Labour and Interaction," in Thompson and Held, *Critical Debates*, 156-161. On the relationship of systems and lifeworld, see Hans Joas, "The Unhappy Marriage of Hermeneutics and Functionalism," Honneth and Joas, *Communicative Action*, 114-118, and David Ingram, *Habermas and the Dialectic of Reason* (New Haven: Yale University Press, 1987), 115-116, 166-170.

[289] Nancy Fraser argues that such intersections refute the notion that there is an absolute distinction between system and lifeworld, in "What's Critical About Critical Theory? The Case of Habermas and Gender," Meehan, *Feminists Read Habermas*, 26-28.

Thus, a framework built on the distinction between system and lifeworld appears to be mistaken.

It is true that the distinction between system and lifeworld has not always been explained clearly and consistently, and that it has sometimes itself contributed to the reification of distinctions between aspects of society which in fact overlap. However, the distinction is useful and an account of something like systems colonization is an important contribution to social theory. One confusion in the systems and lifeworld discussion is the use of the same terms to describe both methodological approaches to social science and actual aspects of social reality. From a methodological standpoint, one might try to interpret social phenomena in terms of observable regularities, in which case one would end up describing things which could be viewed as functional systems of self-maintaining patterns of behavior. Social science can also interpret behavior from the standpoint of social actors; Habermas, following phenomenologists calls this approach an attempt to lay bear the lifeworld, that is the tacitly given background presuppositions of agency. Thus, the latter approach assesses the social world from the standpoint of agents within that world, while the systems approach observes them from the outside. Habermas argues that in fact social science must attempt to try to combine these two approaches of participant and observer. From this methodological standpoint, system and lifeworld are simply two ways in which the world might be analyzed. They are not therefore described as rigidly distinct metaphysical or social spheres of action.

However, Habermas also argues that within the modern world realities have developed which can be described as systems. The modern world is itself characterized by increasing forms of reflexivity within types of knowledge, e.g. science, technology,

business, law, morality and art. Initially these spheres remained closely linked to each other and to the understandings governed by the social lifeworld. However, in the course of modernization, the activity and knowledge driven by instrumental reason developed relatively distinctly from other forms of reflexive knowledge and from the social lifeworld. The capitalist market, and corresponding developments in science and technology began to function as autonomous systems of action, governed by instrumental calculation of the most efficient means to a given end. In the system of economic production and exchange, normative considerations arising from the lifeworld become increasingly irrelevant. Thus, whereas feudal economic relationships had been tacitly based on understandings of normatively correct principles of production and distribution, the new mercantile system was characterized by disenchanted strategic activity. Governmental administration, as a system which operates in the environment of the market, is systematically employed to further the ends of social stability, maintaining the operation of the social system. This means that it becomes difficult to use normative understandings of behavior to criticize the separated specialized forms of knowledge, by thematizing aspects of the lifeworld. However, though the systems work in a manner somewhat detached form ordinary assessments of validity, they nonetheless begin to affect all forms of life. As a worker, one treats one's own capacities as saleable commodities. Even during leisure, non-working time, individuals conceive of their needs and interests as bundles of desires which can be satisfied by commodities. Thus, the market becomes operative in all spheres of decision making, such that it is difficult not to think in its terms.[290]

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[290] *Theory of Communicative Action*, Vol. 2, 332-373.

So long as policies have to be publicly understood and defended as legitimate, it remains possible to criticize the operation of the market. Things such as environmental damage, child labor, lengthening workdays, industrial flight can be protested as failures of the market to secure justice and social utility. Economic or environmental crises might lead to the reconsideration of the predominant role of instrumental rationality in political decision making. However, it has been argued that the combination of market productivity and administrative controls which moderate its most egregious assaults on the lifeworld (e.g. child labor, extreme exploitation and unsafe work conditions, environmental catastrophes, monopolies), social systems may be able to automatically counterbalance any disfunctions which arise. To the extent that systems maintain social functioning and defend themselves by reference to the complex technical calculations required to balance such a system, normative criticism becomes difficult. Thus the market and bureaucracy play a large structuring role in individual life but remain outside of critical discussion by those affected by them.[291]

Habermas argues that this systematic domination of socially relevant decision making by the functional demands of the state and market constitutes a distortion of political communication. The assertion of the needs of systems is used to justify norms which those affected might not agree to were they subjected to normative debate. Exploitation, alienated work life, the insecurity produced by the flow of money into and out of communities, and commercial damage to the environment whose burdens are born

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[291] For Habermas's early statement of the way in which technocratic legitimation thwarts immanent critique, see "Technology and Science as Ideology," Steven Seidman, ed., *Jurgen Habermas on Society and Politics* (Boston: Beacon Press, 1989), 237-265. For his discussion of the way in which systems theory presents society as a self-maintaining system in which potential crises are absorbed, see *Theory of Communicative Action*, Vol. 2, 235-283.

by others than the beneficiaries are all examples of domination which might are furthered through the distortion of communication by market-driven decision making. The administrative use of power is also a form of domination to the extent that it is used to preserve the interests of some over those of others, when such forms could not be justified through political deliberation. Here Habermas suggests that much of current government intervention into people's lives, in the state institutions which administer entitlements, as well as in prisons and schools, can be criticized as to the extent that they are guided by a functional requirement to maintain efficient social stability, which requires a normalization of individuals.[292] When such programs do not actively engage the particular needs of the clients involved, they constitute a form of domination. The colonization thesis appears to describe important ways in which contemporary society functions and ways in which potential for deliberation about norms is circumvented or distorted.[293]

On this analysis, it is important to note that one need not, and indeed should not, suggest that system and lifeworld are ontologically distinct entities, such that an individual always finds himself or herself within one or the other. Rather, they describe different characteristics of social reality, which in fact overlap with one another. One can never leave the lifeworld behind, as even systems presuppose a lifeworld of some kind. Since systems are not separate from the lifeworld, it seems mistaken to describe them as "colonizing" it. Nonetheless it appears that there are things like systems that do structure much of our ways of conceiving of possible forms of action and which tend to transfer

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[292] *Theory of Communicative Action*, Vol. 2, 383-396.
[293] Habermas specifies that his criticism is not of instrumental reason, the choice of efficient means to given ends, but rather a functional reason which treats the means of the market and administration as if they were ends in themselves, "A Reply," 257-258.

discussions of norms into questions of functional maintenance. Regardless of whether the lifeworld can ever exist free of systems, the latter can play relatively more and relatively less role in structuring the lifeworld. Perhaps it would be better simply to note that the systematic functional organization of the world affects the lifeworld in ways which determine tacit understandings of legitimacy and limit opportunities for reflexive criticism.

Nancy Fraser raises another objection to Habermas's systems-colonization from a feminist standpoint. She notes that though Habermas and others sometimes treat things such as families, schools, etc. as if they belonged to the lifeworld and are regulated by mutual understanding instead of instrumental calculation, this view is mistaken. On the one hand, all spheres of life involve some instrumental calculation so systems are only those regions in which instrumental calculation is so dominant as to become relatively functionally closed off to normative reflection.[294]

Jean Cohen responds to Fraser by arguing that practices such as child rearing and education should be viewed as belonging to the lifeworld instead of systems which are composed of corporations and government agencies.[295] But this is mistaken. From an analytic standpoint, the lifeworld is nowhere in particular, but is only tacit background knowledge. While the way in which families operate say something about a shared lifeworld, they cannot be said to *be* that lifeworld. Insofar as families operate with understandings which are less within the framework of systems -- e.g. of the market and bureaucracy -- they have a different relationship to the lifeworld than activity in work,

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[294] "What's Critical about Critical Theory?" 30-37.
[295] Jean Cohen, "Critical Social Theory and Feminist Critiques: the Debate with Jurgen Habermas," Meehan, 66-68.

etc. However, systems do enter into considerations of the working of family life, schools, etc. Furthermore, the entering of systems into things such as child raising and education is not necessarily a problematic form of colonization. Neither day care nor public education, as the state administration or private purchase of education and socialization, are inherently problematic, so long as they are subjected to the test of satisfying general interests better than possible alternatives.

This is not to say that one might not object to ways in which the market and bureaucracy, governed in a systematic fashion, have a determinate impact on family life. What is problematic is that when economic reasoning is assumed to be the only relevant consideration and market solutions are by default defined as the only rational options. Discourse ethics does imply that freedom requires that culture not be completely dictated by the market without reflexive intervention. In particular, there are things such as love and friendship which cannot be bought and others such as education and art whose form cannot be determined completely by the money or power. Yet again, this does not mean that the market should have nothing to do with these spheres of life, but rather that the way in which it impacts them should be a subject of political debate. The effects of the market and bureaucracy on personal life have to be criticized specifically rather than rejected a priori, just as with their effects in the workplace. While, again, the systems lifeworld distinction has caused confusion in its application, if used correctly it can useful for understanding modern processes and talking about what features are problematic.

Even if the systems-lifeworld framework is a coherent way to apply discourse ethics to locate distorted communication, objections still arise that this account is inadequate as a theory of power and actually tends to reify some forms of power. Fraser

argues that the critique of colonization by functional systems is politically ambivalent from a feminist standpoint. First, it is true that Habermas's theory well explains some phenomena which are involved in patriarchal domination -- including the way in which the bureaucratic management of the welfare state intrudes into the lives of its clients as well the general domination of the market in social decisions. Fraser argues that the reification of instrumental systems is neither a necessary nor a sufficient component of domination. First, system-colonization is not always a mechanism of domination but sometimes has furthered freedom for women. The growing application of market logic to all spheres of life, including that of the family, has meant that some traditional women's work -- e.g. child care, cleaning, cooking, teaching -- is now paid and women are able to pursue other careers, a condition of freedom in modern societies.[296]

Furthermore, domination also is not limited to system colonization, but rather works through what would have to be called the logic of lifeworld understandings as well as more straightforward exploitation and physical domination. The sexual division of labor both in the family and in the labor market results from lifeworld understandings of gender codes and not simple calculations of efficiency. Assumptions about men's and women's natures affect opportunities by coding behaviors and determining social expectations, which in turn impact self-esteem.[297] Similar criticisms could be made regarding racism. As with the feminization of poverty, it is true that racial inequality is exacerbated by the market economy. At the same time racism is exercised through lifeworld understandings of the meaning of race. Though class-based accounts which

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[296] "What's Critical About Critical Theory?" 40-47.
[297] Fraser ("What's Critical about Critical Theory?" 46-47) and Cohen ("Critical Social Theory and Feminist Critiques," 68-74) agree that the gender coding of positions within the system and lifeworld requires explicit criticism which Habermas's early work fails to undertake.

describe racism and sexism as a function of the demands of capital exist, there are strong arguments that these do not sufficiently explain the scope of racism and sexism.

Some critics, such as Marie Fleming see such difficulties with the systems and lifeworld framework as a fatal flaw in discourse ethic.[298] For her part, Fraser argues that if it is kept in mind that system and lifeworld are not absolutely distinct but only relative areas of emphasis, and if it is realized that domination is not reducible to system colonization and its distorting reification, then the communication framework remains useful.[299] I defend a similar position, describing how the system and lifeworld analysis fits into an overall communicative theory of gender and racial, as well as class, domination.

First, there is truth in the Marxist analysis of race and gender domination as greatly perpetuated through economic means and thus the critique of systems colonization is relevant to the criticism of these forms of oppression. Both race and gender domination have been in large part carried out in the form of a division of labor. Slavery is a particularly extreme form of exploited labor, and the racial division of labor served to fragment the working class. Furthermore, systematic racist theories of human capabilities began at the same time as chattel slavery and were used to justify the slave trade. This system was immensely profitable for the southern agricultural system and for the United States as a developing world economic power.[300] An economic analysis can also contribute to the explanation and criticism of the exploitation of women's labor within the family and the division of labor between genders.

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[298] Marie Fleming, *Emancipation and Illusion: Rationality and Gender in Habermas's Theory of Modernity* (University Park, Pennsylvania: The Pennsylvania State University Press).
[299] "What's Critical about Critical Theory?"
[300] See, for example, Omi and Winant, *Racial Formation in the United States*.

Furthermore, gender and racial inequality are perpetuated by the continuing work of a market unregulated by normative considerations. First, to the extent that minorities and women have previously been excluded from the market, they enter the market with less capital on average than white males and are thereby disadvantaged. Continuing discriminatory hiring based upon racist or sexist views about capabilities and the allocation of positions by acquaintances also perpetuate and exacerbate racial and gender inequality. Women and minorities are present disproportionately among wage laborers and the unemployed, and thus would benefit from a rethinking of the allocation of positions, the division of labor, and the link between income and jobs.

The administrative use of power also can be argued to affect women and minorities much more than it does their male and white counterparts. Debates about the morals of welfare mothers and the need for strict regulation, and issues about what approach would best serve low income women, demonstrate that women and minorities are disproportionately clients of a system in whose norms they have little say. A prison system which holds a significant portion of young black males can also be argued to perpetuate racial inequality, with its basis in a system of law enforcement whose function is largely disconnected from social review.

However, injustice and domination are not caused solely by media-guided systems. Though Marxists have argued that race and gender inequality are actually conditioned upon capitalism's class inequality, this argument is incomplete. First, patriarchal domination preceded capitalism and, on Habermas's own reading of anthropology, preceded any class division of labor.[301] In fact, it seems that the logic of

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[301] "Toward a Reconstruction of Historical Materialism," in *Communication and the Evolution of Society*, 130-177.

the market has been influential in precisely undermining traditional division of labor. Specifically within the context of modern society, it is not plausible to interpret continuing inequality in housework, unequal pay by sexes, under-representation of women in positions of influence and reward, violence against women, etc. as consequences of a market demands.

Nor can economic, or "systems," analysis completely explain racism. Economic analysis does not explain why specifically racist discrimination is used to fragment the working class. It also does not fully explain why it is effective with the working class who do not actually benefit from their fragmentation. The fact that racism was in the interest of the economic elite does not itself explain how it became part of the discourse of whites more generally. Furthermore, though the market continues to perpetuate racial inequality, capitalism cannot explain norms against miscegenation, racist harassment, police brutality against blacks. Even discrimination in hiring cannot be explained by the market, but must instead refer to some other psychological and social processes in combination with market practices. Even if the development and evolution of race and gender are influenced by economic factors, these forms of relationship have developed logics of their own which operate relatively independently form reification of market or administrative logic. Therefore the explanation and criticism of racism, like that of sexism, cannot be exhausted by the colonization of system by lifeworld.

However, a discourse theory of power, a theory which would compliment the normative discourse ethic, need not be limited to systems colonization. To my knowledge Habermas has not indicated that this system was meant to exhaust the analysis

and critique of domination.[302] Rather, any systemic pattern of distorted communication

which coincided with norms of action would constitute power from the discourse ethics

perspective. These include gendered and racialized forms of recognition. These

systematic social practices rationalize forms of domination and prevent the political

discourse that could call race and gender norms into question. Because racist and sexist

recognition leads to social norms which shortcircuits inclusive consideration of normative

claims, they can be described as forms of distorted communication.

Though Habermas at times speaks as if the main force of such movements was the

protection of the lifeworld from the incursion of systems,[303] much of the feminist and

anti-racist discourse actually aims to rethink cultural understandings rather than preserve

them intact from market and administrative forces. Habermas's recent endorsement of

the democratic force of social movements including feminism in particular, shows that he

has come to understand the criticism of forms of power embedded within cultural

understandings as in need of criticism. As noted above, *Between Facts and Norms*

suggests that democratic politics is largely directed at pointing out how formally equal

laws do not fail to promote general interests.[304] When a group is disadvantaged by social

norms, claims can be raised in political discussion. When racism and sexism keep

women and minorities from participating in political discussion, this itself can be

criticized as exclusion from or distortion of communication. To a large extent, racism

and sexism can be described as denials of recognition to minorities and women. This

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[302] Perhaps some confusion has been created by Habermas's use of the term 'power' to refer specifically to the medium of administrative control exercised by the state. This technical use of the word does not imply that this is the only form of domination, nor that administrative "power" is necessarily a form of domination.
[303] *Theory of Communicative Action*, Vol. 2, 393-394.
[304] *Between Facts and Norms*, 409-427.

amounts to a failure to consider the claims of members of certain groups. To the extent that racism and sexism are not completely exhausted by this communicative definition, it remains true that politically claims regarding racist and sexist practices can and should be tested in discourse. Therefore the framework of the suppression of generalizable interests through distorted communication is promising for the analysis of social domination. It appears that the discourse ethic does lend itself to useful social criticism and is sufficiently specific in its content that it ought not to be employed in a way which promotes hegemonic views, which furthers paternalistic administrative domination, or which results in chaos.

6. Rationality of Judgments of Healthy Social Communication

I have argued that the discourse ethic can be used for the criticism of institutions and decision making processes wherein normative discussion is systematically distorted. Such social analysis lends content to use of the discourse ethic to criticize injustice. However, this application of the discourse ethic faces one last major objection which has been raised by several of Habermas's critics. They charge that the discourse ethic in fact can provide no rational ground for making judgments of distortion and therefore the ethic fails to inform the desired normative judgments.

Though one can observe situations in which there is relatively less open communication about norms, critics charge that it is illegitimate to infer that any particular exclusion or instrumental calculation constitutes inappropriate "distortion." For the discourse ethic merely holds that norms are valid when they counterfactually could be agreed upon. It does not specify that the greatest possible amount of

communication should always occur. In fact, it presumably could be used to legitimate

efficient, non-discursive decision making at times. The social critic would be left to

make a judgment about to what extent levels of communication are sufficiently open and

inclusive and to what extent they hold distorting exclusions.

David Ingram asks what kind of validity claim, on Habermas's interpretation, this

judgment would be.[305] It is difficult to see how it could be about truth, correctness, or

truthfulness. If the judgments are to be made about assertions about states of affairs

involved in political decision making, we are left with either an uncritical positivism

which charts the way in which decisions are made; at best, one could examine whether

decision making functionally maintains itself and avoids crises, yet Habermas would like

to get beyond functionalism as well. If the overall judgment is to be left to the sphere of

normative correctness, then it seems that we are left without a sound foundation for ever

breaking off the dialogue and making a judgment about rightness. If the judgment of the

quality of political dialogue is itself a moral one, then it too would have to be decided in

an open discussion and the social critic is left in an infinite regress. Putting

communicative action as primary would put Habermas back into a Kantian,

transcendentalist position, in which morality is the overarching presupposition of action,

but in which actual action inevitably violates it. Habermas himself has used the term

'health' to describe judgments about political culture, thus suggesting that they have an

aesthetic dimension.[306] But this also seems inappropriate given Habermas's stress on the

importance of avoiding precisely the aestheticization of morality and politics and rather

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[305] David Ingram, "The Subject of Justice in Postmodern Discourse: Aesthetic Judgment and Political Rationality," Passerin d'Entreves and Benhabib, eds., *Habermas and the Unfinished Project of Modernity*, esp. 275-282.
[306] Ingram, "The Subject of Justice," 282.

base it on maximally reflexive procedures. It appears unclear just on what basis one could say that dialogue is a condition of validity and in what situations it can be argued that systems imperatives or expressive concerns mean that dialogue would be inappropriate. In essence the judgment of healthy versus distorted communication involves the proper unification of the various forms of validity, an assessment whose validity Habermas's framework leaves without rational basis.

These questions about the indeterminacy of any judgments about the application of the discourse ethic also raise the question of the basis of the discourse ethic's own claim to validity. The validity of transcendental argumentation has been widely questioned, with Habermas himself referring to his argumentation as only quasi-transcendental, further supported by reconstructive sciences. However, as Asher Horowitz argues, the basis of the argument in reconstructive science means that discourse ethics has an objective foundation.[307] To the extent in which the discourse ethic is validated by the fact that it corresponds to historical tendencies, it tends to merely legitimate existing normative structures. On the other hand, Habermas attempts to balance this weakness with a moment of transcendental argument that we inevitably presuppose the general defensibility of the normative claims we make. Horowitz finds that Habermas's defense of discourse ethics appears to waffle between a Hegellian teleological reading of history and a Kantian transcendentalism, neither of which is defensible. It seems that Habermas's attempt to bridge the gap between facticity and normativity is fallacious. From this problem one might infer either a postmodern

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[307] Asher Horowitz, "'Like a Tangled Mobile': Reason and reification in the quasi-dialectical theory of Jurgen Habermas," *Philosophy and Social Criticism* 24: 1-23.

skepticism regarding normative bases for social criticism or the need for a Hegellian

substantive theory of ethical life.[308]

In one sense, the question of what type of validity claim is made by the social

critic is not as problematic as Ingram and Horowitz intimate. In ordinary language

various claims are raised at the same time and all speech acts are relevant in all of these

dimensions. So, it is not the case that one would have to choose between them in making

judgments. The reflection about how best to apply the communicative framework need

not be viewed on a higher level than other discourse. As Habermas argues, "There are no

metadiscourses whatsoever; every discourse is, so to speak, equally close to God."[309]

One can recognize when communication is relatively constrained, that there are relatively

few opportunities to switch over from one mode to another. For example, if an

economist is assigned the task of calculating how best to reduce inflation or if a general is

to decide how best to get an enemy to surrender, such forms of judgment stifle ability to

switch into aesthetic and normative discourse. To decide whether this is undesirable, one

would have to speculate about whether a wider political discourse, emphasizing moral

and ethical considerations, would be likely to reject the normative and aesthetic

consequences of the application of instrumental and strategic reasoning. When one sees a

reduction in ability to reflect which is in conjoined with reason to believe that greater

discourse would lead to a different result, then one can speak of distorted communication.

There is a certain circularity here as distorted communication was to help locate

wherein generalizable interests had been suppressed and now it turns out that at the same

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[308] Horowitz seems to lean in latter direction. Ingram appears to reject the hope for such a philosophical foundation and opt in favor of a postmodern pragmatism.
[309] Habermas, "A Reply," 226.

time one has to take into account generalizable interests to figure out where communication is distorted. However, the circle is not an absolutely vicious one, for lessons about suppressed interests, when mixed with a theory of distorted communication can lead to new insights about suppressed interests, and vice versa. The whole process is one which is subject to competing theories and is itself challengeable in discourse. It depends largely upon a mix of extrapolative judgments based on empirical insights and a implementation of the rules of argumentation. Such judgments admit of reasons and can be justifiably asserted as true.

CHAPTER IX. DEMOCRACY AND THE PUBLIC SPHERE

I have assessed the potential and limits of using the discourse ethic to criticize injustice and domination. I have argued that the ethic can inform judgments about where political discourse has been distorted and help to infer in what direction more just norms lie. However, we have seen that such judgments require a hypothesis on the part of the social theorist about what norms might be decided in the course of more dialogue. The discourse ethic, unlike other normative theory, does not allow the theorist to derive social norms but rather leaves this up to participants. The question arises whether the ethic has anything useful to say *to participants* about how justice can be democratically obtained. If the discourse ethic merely says that whatever will be decided upon in political discourse is thereby valid, then it is useless except for serving to conservatively legitimate prevailing political beliefs and institutions. Whereas Marxist universalism laid out a plan whereby class politics would lead to emancipatory action and a just social order, discourse ethics appears to have little to say about political direction.

Habermas, as we saw in chapter 3, uses the idea of the public sphere to describe the potential efficaciousness of communicative rationality. The public sphere is the informal normative discussion and debate through which public opinion is generally determined. Such discussions occur in a manner which is consistent with the conditions of validity stipulated by the discourse principle (D) which states that "only those norms can claim validity that could meet with the agreement of all concerned in their capacity as participants in a practical discourse."[310] With regard to political validity, (D) would be further operationalized by a principle similar to that which Habermas provides for moral

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[310] Habermas, "On the Cognitive Content of Morality," Aristotelian Society Proceedings, (London: The Aristotelian Society, 1996), 347.

discourse, (U) which states that "a norm is valid when the foreseeable consequences and side effects of its general observance for the interests and value-orientations of each individual could be freely accepted jointly by all."[311] As he describes it, this principle specifies the ideal conditions of argumentation. In particular,

> (a) nobody who could make a relevant contribution be excluded, (b) that all participants are afforded an equal opportunity to make contributions, (c) that the participants must mean what they say … and (d) that communication must be freed from external and internal compulsion so that the 'yes'/'no' stances that participants adopt on criticizable validity claims are motivated solely by the rational force of the better reasons.[312]

A principle of political validity must stipulate only those norms which are applicable to the regulation of public life and recognize the validity of norms as based on those discursive procedures which could possibly be undertaken in political institutions. Habermas has not offered a precisely formulated principle of political validity, though in *Between Facts and Norms* he refers to a democratic principle which would play this role with regard to legal validity. He states that "…the principle of democracy should estabilsh a procedure of legitimate lawmaking. Specifically, the democratic principle states that only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted." Thus, while political validity cannot depend upon universal agreement under ideal conditions, it does refer to a discursive process.[313]

The conception of legitimacy as arising from democratic participation was already present in nascent form in Habermas's early work on the public sphere. There he argued

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[311] "On the Cognitive Content of Morality," 354.
[312] "On the Cognitive Content of Morality," 356.
[313] *Between Facts and Norms*, 110.

that a new ideal of putting social norms to the test of inclusive, rational discussion developed in modern politics.[314] The discourse ethic gives more precise formulation to the underlying norm beneath such democratic politics. Though much of Habermas's work on the discourse ethic was at too high a level of abstraction to address institutional implications, his recent work on the law makes it clear that he still views the public sphere as a site in which political action can be informed by the norms of ideal discourse. It can be argued that in modern political debate participants assume that dialogue is free from intimidation, distortion, ignorance, time pressure, etc. so that rational argument is given a chance to prevail. Though these assumptions are not fully realized in actual political debates, they are partially so on one hand, and they serve as a continuing device for criticizing existing political procedures on the other.

Habermas's attempt to link the discourse ethic to the practical realization of democratic politics through the public sphere is unsatisfying to many critics. Some argue that existing politics is too divergent from the ideals of inclusive discourse to speak of a public sphere. Given the divergence of both the discourse ethic and the ideal of the public sphere from actual politics, to critics these terms seem inapplicable at best. To the extent that Habermas suggests that they are politically applicable, he may ideologically legitimize undemocratic processes and the resulting norms.

This chapter addresses whether the discourse ethic can be used in a theory of a public sphere which usefully and critically contributes to the understanding of democratic politics. I first discuss objections that the public sphere is an insufficiently critical in arguing for the possibility of democracy amidst social inequality and domination (section 1). Second, I take up criticisms that the public sphere presupposes a gender-biased

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[314] Habermas, *Structural Transformation of the Public Sphere.*

separation of public and private domains, and that as a political ethic the discourse ethic perpetuates patriarchal domination (section 2). In response to these first two criticisms I argue that the discourse ethic is capable of critical application, such that while both criticisms refer to actual problems for democratic discourse, the democratic public sphere is capable of responding to these problems, and, ultimately is the only political mechanism for doing so. A third criticism of the public sphere concept is that its independence from the formal decision procedures of the state and economy render it unable to greatly affect social institutions. I respond by noting ways in which the public sphere involves an efficacious generation of communicative power and by arguing that the discourse ethic implies democratization within the economy and state (section 3). Finally, I take up objections that a discourse ethic has nothing to say about how actual discussion in the public sphere ought to go (section 4). I respond to these objections by noting positive implications of the communications theoretic approach for social movements and public discourse (section 5).

1. Material and Symbolic Inequality and the Public Sphere

Marx argued that Kantian and Hegellian universalism was ideological, in suggesting that amidst social inequality and domination by capital, rational politics could effectively pursue general interests. Similarly, Habermas's critics wonder whether a theory of political validity based on an ideal of rational inclusion is not rendered ideological or inapplicable by existing inequality. Iris Young argues that material and symbolic inequality undermine the ability of oppressed groups to participate in politics. Material inequality affects the opportunity that people have to access political discussion.

Much political discussion, of course occurs through mass media which are owned by wealthy corporations and on which advertising time is expensive. Wealth and social status also affect people's ability to get to the voting booth or public forum to debate issues as well as to access other goods -- such as education, health care, and the "social bases of self-respect" -- which are conditions for effective political action. Those lacking material wealth are far less able to represent their interests in the public forum despite its formal inclusiveness.[315]

Young argues that participatory inequality has symbolic, or social, as well as material causes. She uses "symbolic inequality" to refer to cases in which people are not seen or heard as the kind of individuals who can speak to universal concerns. For example women or members of minority groups may not be taken seriously in a political discussion, or may be unwelcome or treated as people who only represent particular interests. Young concludes that such de facto material and social inequality in access to the political discourse means that there are not genuinely equal opportunities to contribute. In this case, the ideal of the public sphere regulated by the discourse ethic appears inapplicable to actual politics. Furthermore, since actual political discussion tends to exclude the criticisms, perspectives, and interests of the disadvantaged, theories which suggests that democratic ideals are embodied in current practices appear insuffiently critical. Young worries that such a theory of ideally rational participation ideologically justifies existing political inequality.[316]

Nancy Fraser articulates a similar criticism in her discussion of Habermas's model of the public sphere. She argues that he mistakenly presumes that equality of debate can

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[315] Young, *Intersecting Voices*, 66.
[316] *Intersecting Voices*, 66.

occur before substantive social equality is achieved. To endorse apparent consensus arising from debate in a public sphere in a society with unequal material and symbolic access to that debate is to collaborate with domination.[317] "A necessary condition for participatory parity," argues Fraser, "is that social inequalities be eliminated."[318] As Habermas endorses rational discussion in a public sphere arising from civil society, without stipulating necessary background conditions, he appears to be guilty of endorsing a false universalism.

In fact, the existence of current inequality points out a circularity in Habermas's own grounding of norms, to which Olson calls attention in his discussion of the status of social rights in Habermas's philosophy of law.[319] On the one hand, Habermas argues that certain rights are required in order to promote equality of participation; on the other hand, the rights can only be said to preserve everyone's autonomy equally if the rights are formulated in conditions in which everyone has equal opportunity to raise claims. Thus, substantially equal rights are required for democratic dialogue but democratic dialogue is required for rights. In any society where both were deficient, arguably in all existing societies, there is no way to improve either one. Greater equity depends upon social criticism by those treated unequally, but such social criticism is prevented by the existing inequity. Habermas's procedural basis for attaining social justice appears circular, for the conditions of injustice which the procedure is supposed to correct undermine the correction process.

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[317] Nancy Fraser, "Rethinking the Public Sphere: A contribution to the Critique of Actually Existing Democracy," Calhoun, *Habermas and the Public Sphere*, 118-121.
[318] "Rethinking the Public Sphere," 121.
[319] Olson, "Democratic Inequalities."

These considerations offer further support for the view that a discourse ethic needs to be supplemented by another principle of justice such as a material principle, as considered in chapter 8.[320] Or perhaps, in the manner of Marxist praxis philosophy, the conditions of justice and democracy need to be realized of a piece through revolutionary action.

However, there is reason to believe that while social inequality undermines the democratic pursuit of justice through public discourse, it does not refute this concept as a political norm. Habermas's early discussion of the public sphere does emphasize the sense in which the conditions of universal rational participation were actually present at the end of the eighteenth and nineteenth centuries during the rise of liberalism in Europe and the United States. Yet, the viability of discourse ethics does not depend upon the claim that society was or can again work according the demands of pure inclusion, reflexivity, and lack of coercion. The public sphere is not meant to suggest a space in which the conditions of idealized political discourse are achieved in pure form, but rather simply a space in which the presuppositions are operative. This is to say that it is a space in which speakers speak *as if* their demands met the requirements, and that there is consequently some effort to explicitly meet the demands and a basis for criticism if they do not. Thus, while the salons and cafes in England and France excluded women and members of the working class, either de jure or de facto, these conversations were nevertheless meaningfully embodied an ideal of discursive democracy. In fact, it appears that the demand for inclusion of all claims led to the inclusion of the working class in political discussion from which their exclusion had been taken for granted. Thus the discourse ethic has been, first, partially instituted in the public sphere and, second,

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[320] 241-245.

remains a useful norm for continuing criticism of the way in which the sphere falls short of its ideals.

Since democracy and distributive justice are interdependent, it is possible for deficiencies in either area to lead to stagnation or backsliding in the other. However, despite this possibility, the circle is not inherently vicious. In fact, it is the only plausible way to view the democratic pursuit of justice. Though in fact the public sphere is characterized by the material and symbolic exclusion and coercion that Young and Fraser describe, participants in public debate are forced -- by modern standards of political validity -- to present their claims as if they satisfy the conditions of (D). Thus, there is a tension between the fact of unequal participation and the suggestion of political participants that they are prepared to defend their claims against the contributions of anyone involved. This tension can lead to internal self-criticism and thus an expansion of the public sphere. Most commonly the tension is one that has to be forcibly brought out into the open by those whose claims are ignored. This requires the initial condition that those who are excluded have the material and symbolic conditions to raise claims about the justice of the social order in an arena in which they can be heard and which reach the realms of the public sphere in which the injustice is defended. When the claims of the disadvantaged are considered, others are forced to justify any social inequality, including that which affects ability to enter into political debate. Thus, the public sphere will tend to undermine poverty and lack of education, transportation, health care, and other features which keep individuals from effectively making use of their citizenship.

The discourse ethic indicates how it is possible, even against a background of social inequality, for those with less material or social power to effectively win

arguments. Once political issues are debated in the public sphere, with the criteria convincing normative argument, the advantages of money, influence, time, training, are minimized. When power cannot trump in normative debate, participants are likely to agree upon that which is in the general interest. For, assuming that the disadvantaged or those representing them do manage to present claims in public debate, the very presuppositions of such debate compels others to take these into account and respond to them. Thus, if there is a public outcry that there is an injustice, such as the current charges that police engage in racist actions, in profiling and physically abusing African American citizens, it is difficult for those who defend the status quo to ignore these claims. This is particularly true when those who defend policies or are responsible for their implementation are questioned about the policies in public. Others must either agree that norms are unjust or attempt to justify them publicly. While the influence of money and social power on politics, as well as failures of reasoning, may triumph, such forces cannot consistently serve as trumps in public debate.

The concept of the public sphere is meant to demonstrate how it is possible to mobilize communicative power in order to democratically pursue justice, even amidst a background of social domination. The public sphere provides a context of discursive political reform. Justice is reached through a dialectic in which democratic participation leads to more just norms and *vice versa*. This procedure is highly fallible and should not be viewed as a teleological prediction of an inevitable ascension to justice. Rather, existing power can prevent new claims from being generated, from being given necessary uptake, or for winning out in debate despite their rationality. The argument above merely shows that it is coherent to think that injustice can be democratically overturned,

according to the procedure suggested by discursive pursuit of justice, despite a context of social inequality. In fact, it seems that this is the way that progress *must* be envisioned if it is to start from current conditions. Fraser's suggestion that a democratic ethic should presuppose that social inequality had already been eliminated, is unhelpful for thinking about the process by which such inequalities ought to be eliminated. Discourse ethics helps to make sense of democratic initiatives under existing nonideal conditions. It describes the tools and space within which such conditions can be criticized, including those conditions which undermine the ability to fully participate in such criticism. Though it does not guarantee successful criticism and change, no plausible ethic could do this.

2. Feminist Concerns with the Concept of the Public Sphere

I have just argued that while social inequality is a barrier within the democratic pursuit of justice, it does not constitute a reason to reject democratic discourse as a political norm. The public sphere is not hopelessly undermined by, or supportive of, class inequality. However, some critics argue that the notion of the public sphere is inherently male biased and insufficiently critical of gender domination. In particular several critics charge that Habermas's endorsement of democratization through a public sphere ignores the extent to which the distinction between a political public sphere and a non-political private sphere has lead to women's exclusion from politics and the failure to recognize women's subordination as properly political. The universalisms of Kant, Hegel, and Rousseau explicitly relegated women to a private sphere against which the civic public was defined. Though Habermas does not explicitly endorse gender exclusion

in politics, his conception of politics significantly draws on conceptions of citizenship which gained their principle support through patriarchal conception of politics and citizenship. Habermas's democratic univeralism depends upon a public sphere that has been male dominated both in conception and in actual practice.

Joan Landes and Marie Fleming both argue that the public sphere is *constitutively* gender biased. Landes notes that the rise of the idea of public participation by men was coeval with a new call for women to remain within a private sphere of home economics and family life and stay out of politics. Women actually lost political influence which they had had in the aristocracy, as the new politics of public debate separated it from the family.[321] Landes argues that traditional sexism may partially explain the gender bias of the republican notions of politics. However, she argues tradition cannot fully explain why rights of political participation, which were being newly extended to bourgeois and working class males -- in the name of universal political inclusion, were not extended to women. Landes argues that as the public sphere was being defined as an area of disinterested, rational debate women were at the same time being increasingly portrayed as emotional, biased, and generally irrational. A new ideal of "republican womanhood," prominently articulated by Rousseau, was influential in the French Revolution.[322] Women were conceived as the guardians of virtue, purity of emotion and personal intimacy, embodied in the mother-child relationship. Rousseau held that the recovery of a nurturing role by women was necessary for the recovery of healthy development of individuals. However, women's emotional, irrational nature was not appropriate for

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[321] Landes, "The Public and Private Sphere: A Feminist Reconsideration," Meehan, 98.
[322] Landes, *Women and the Public Sphere in the Age of the French Revolution* (Ithaca, New York: Cornell University Press, 1988), 129.

actual participation in the realm of public activity.[323] Thus, the exclusion of women from politics in the enlightenment was influenced by traditional conceptions of gender roles but also in some ways was based on an entirely new codification of different roles for men and women. These roles restricted public activity to males while women were primarily responsible for holding together the private sphere which was necessary for the functioning of the public.

Marie Fleming has also recently defended the view that Habermas's notion of the public sphere is constitutively, and not accidentally, gender biased. She argues that Habermas's analysis of society in terms of system and lifeworld prefigures the exclusion of women from the public sphere. Thus Habermas's theory of communicative action is based upon patriarchal relationships. Fleming notes that in his "reconstruction of historical materialism" Habermas suggests that social norms began with a sexual division of labor, thus making patriarchy a historical condition for moral progress. This connection becomes reinforced in modernity when, Habermas argues, the development of the public sphere was built upon a new double privacy which allowed the citizen to develop a concept of himself as a subject with distinct interests and perspectives. This privacy was composed of economic self interest and a conception of intimacy, based upon romantic, patriarchal gender relations. In his study of the public sphere Habermas stresses the formative role of the intimate personal sphere in developing in individuals a sense of themselves as distinct subjects with perspectives and interests separate from political life which might be defended therein. As the public developed in distinction

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[323] "The Public and Private Sphere: a Feminist Reconsideration," 98.

from this private realm, the private sphere of interpersonal relationships and familial life was increasingly viewed as prepolitical.[324]

The distinction of the public sphere from the private has been said to affect what issues are viewed as properly political, that is what issues are matters of justice, rights, or otherwise concern general interests. For example, it may be no accident that date and marital rape were only recently recognized as crimes. The division of labor within the home and the conduct of intimate relations have typically not been topics of moral debate, political action, or public regulation.

In arguing that gendered notions of the private public spheres have influenced Habermas's interpretation of politics, Fleming cites his statement that the practice of widow burning in India should not necessarily be criticized as contrary to communicatively grounded norms, whereas slavery in the United States was appropriately criticized. Habermas suggests that only the latter contradicted publicly held norms. Fleming argues that Habermas's uncritical stance towards brutal patriarchal customs in this case results from his assumption that gender relationships are part of a pre-political private lifeworld.[325]

As Fleming notes, Habermas's response to feminist criticism of the concept of the public sphere has been ambiguous. In a recent reflection upon his work on the public sphere, he acknowledges that feminist thought shows us that women's exclusion from the public sphere has more to do with the constitution of that sphere than does social class. He writes that

> ... unlike the institutionalization of class conflict, the transformation of the relationship between the sexes affects not only the economic system but has an impact on the private

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[324] Marie Fleming, *Emancipation and Illusion*, 131-151.
[325] *Emancipation and Illusion*, 104-116.

core area of the conjugal family. This shows that the exclusion of women has been constitutive for the political public sphere not merely in that the latter has been dominated by men as a matter of contingency but also in that its structure and relation to the private sphere has been determined in a gender-specific fashion. Unlike the exclusion of underprivileged men, the exclusion of women had structuring significance.[326]

Yet, as Fleming notes,[327] Habermas proceeds to take this admission back by arguing then that the public sphere cannot be viewed a "Foucauldian discourse" which excludes its other by definition, for the realm of inclusive, rational discourse has the inherent "potential for self-transformation."[328] It is not clear to Fleming how the constitutive exclusion of women can be remedied by the very mechanism by which they are excluded.[329]

Since the public sphere has been conceived as a male domain, instituted under conditions in which men had greater access to politics, and contrasted with a private sphere of gender domination, the public sphere appears to be gender biased in concept and practice. If the discourse ethic can only find expression through a male dominated space, Habermas's political theory appears inadequate for addressing gender domination.

However, it remains possible to argue that although the public sphere has been male biased in both its contrast to a private domain and in its corresponding conception of who should participate, the public sphere nonetheless has a potential for self-criticism regarding gender as well as class politics. Fleming anticipates how a defensible reading might be given to Habermas's ambivalent statement about gender domination and the public sphere. While the public sphere is *historically* based on patriarchal exclusion and domination, these features are not *intrinsic* to the concept or the institution as it has

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[326] Habermas, "Further Reflections on the Public Sphere," in Calhoun, 428.
[327] Fleming, "Women and the 'Public Use of Reason'," in Meehan, 125.
[328] "Further Reflections on the Public Sphere," 429.
[329] "Women and the 'Public Use of Reason'," 127-134.

developed.[330] The fact that the origin of public deliberation was tied to a gendered private sphere does not entail that the conception and practice of publicity cannot be decoupled from this gendered structure. The idea of a universal debating public can and has been used to criticize the political exclusion of women and their domination in the private, furthering reforms in both areas. The tension between a democratic ideal and current imperfect implementations of the ideal is productive for the criticism of gender as well as class domination.

While the public sphere presupposes a private domain in which individuals develop perspectives and interests which they can bring to public debate, this private domain does not need to take the form of the traditional patriarchal heterosexual family. Furthermore, any ethically problematic feature of private life can be raised as a public issue. The distinction between public and private denotes the place where political discussion occurs rather than the topics of debate. Indeed, the issues discussed in public are likely to be issues which concern private life, whether economic or personal. Habermas's view that burning widows in India may have at one time been justifiable, or at least something which should not have been interfered with, while slavery in the U.S. South was not, stems from his judgment about what could have been justified in existing public spheres. It may be that Habermas is mistaken in his evaluation of the widow case and that this mistake results from an assumption that gender roles are a part of a private lifeworld beyond public criticism. However, this judgment is not mandated by the discourse framework. The public sphere and the discourse ethic imply that any aspect of the lifeworld about which criticism must be defended. Habermas acknowledges that while widow burning may have once been justifiable, no such practice could today be

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[330] "Women and the 'Public Use of Reason'," 126-7.

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justifiable because "there are no such traditional cultures left [which constitute the complete normative insights of a society] after three hundred years of capitalism." Thus, if Habermas is mistaken, it is in his belief that historically societies such as that in India were governed by a unified ethical worldview which admitted no options to burning widows. Perhaps the Indian lifeworld was less unified than Habermas thinks. In any case, this example only reveals a possible error in Habermas's application of the public sphere concept and, even then, only to conditions which he believes no longer pertain.[331]

Fleming argues that Habermas's theory is not inclusive, democratic, or, in short, "not universalistic enough."[332] However, she does not propose an alternative ethic which would be more democratic and inclusive. It is difficult to conceive how an emancipatory ethic could avoid the concepts of publicity, rationality and universality. If these concepts are tainted by their patriarchal history, then it is difficult to imagine what terminology would not be so tainted but without making politics highly provincial and balkanized. Perhaps some of the skepticism regarding the publicity model lies at a different level than the fundamentally gendered nature of the public sphere.

Fleming's concerns about domination in the private sphere, raise the question whether these matters can be fruitfully addressed by a political ethic modeled on agreement within a universal public sphere which is oriented at influencing law. A political ethic directed at equity in lawmaking, as Habermas's recent formulation of the discourse ethic appears to be, may be inadequate to combat forms of domination which

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[331] Habermas is also consistent in arguing that slavery too might be justified under some historical conditions. The justification of particular rights, even those of life and autonomy, depend on the lifeworld and material options available to people. See the passage from the interview cited by Fleming in Peter Dews, ed., *Autonomy and Solidarity: Interviews with Jurgen Habermas* (London: Verson, 1986), 203-5.
[332] *Emancipation and Illusion*, 225.

are not easily legislated against. Gender and racial domination often take place through subtle forms of discrimination in interpersonal relationships and are, thus, not easily countered through legislation. While the law is considered an appropriate forum for addressing some systematic violations of human dignity, e.g. segregation, harassment, hate speech, employment discrimination, it is ill conceived to regulate the various forms of speech acts which construct gender and race, and do so in a hierarchical fashion. While some normative aspects of personal relationships may appropriately be left out of politics, it seems undeniable that the personal can be political. In particular, overcoming sexism and racism requires new forms of human relationships and identity. The question becomes whether the public sphere and discourse ethics are adequate to the politics required in the domains of interpersonal relationships.

In fact, the moral and political dimensions of race and gender can be raised and discussed in the public sphere. Things such as the division of labor within the family, differential manners of addressing people according to race and gender, and sexist and racist assumptions about individuals' interests and abilities are frequent matters of public dispute. Debates over such matters are found not only in academic essays, but also in the media of television, music, and everyday conversation. Such informal debates may be less precise and rational than those directed at legislation. However, they also succeed in being relatively inclusive and retain a norm that claims must be defended with arguments. Thus one can speak of a public sphere in which normative matters are continually debated, sometimes leading to legislation and otherwise focused on reshaping of identities without legislation. Jean Cohen describes these as two different forms of politics implied by the public sphere: reformist politics directed at influencing institutions

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and cultural politics directed at influencing cultural identity.[333] In fact, these processes can be mutually supporting. Changes in cultural perceptions of identities such as those of gender and race frequently precede agreements upon new legislation. For example, the recognition of a right to abortion, the criminalization of sexual harassment and marital rape, and the demand for racial desegregation, followed changes in cultural perceptions about the nature of and relationships between women and men and blacks and whites. These considerations offer evidence that the public sphere in principle, and to some extent in practice, does not presuppose or fail to criticize a private sphere of gender domination.

3. Informal Communicative Power and/or Democratization of State and Economy

Others object to Habermas's separation of the public sphere of political discourse from the formal decision making procedures of social institutions. In particular, Habermas is careful to distinguish the public sphere from the institutions of the market and economy. The intent is to protect public discourse from the imperatives of the administrative and market systems while also preserving the efficiency of the latter. However, the autonomy of the public sphere as opposed to these other functional realms leaves ambiguity about whether and how it can effectively influence them. Nancy Fraser takes Habermas to task for locating democratic potential in civil society's "weak publics," whose "discourse does not eventuate in binding, sovereign decisions authorizing the use of state power," but rather simply generates "public opinion."[334] She concludes that the

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[333] Jean Cohen, "Critical Social Theory and Feminist Critiques: The Debate with Jurgen Habermas," in Meehan, 60.
[334] Fraser, "Rethinking the Public Sphere," 133.

public sphere has to be extended to and supported by strong publics to an extent not acknowledged by Habermas.

Though they are more than sympathetic to Habermas's idea of the public sphere, Jean Cohen and Andrew Arato also recognize this difficulty in explaining how the public sphere is to be politically efficacious. The public sphere is partly formulated so as to avoid locating justice in the workings of an overarching state, which would inevitably be guided by strategic calculations of how to maintain stability and result in authoritarian measures. Rather than having such a comprehensive normative project, communicative action has to mediate the workings of the systems of the market and bureaucracy. But it is not clear how communicative action can systematically regulate these dimensions of social action when they are treated as "autonomous." As Cohen and Arato say, "For the defensive model of the protection of the lifeworld by new types of self-limiting radical movements [the politics they see as stemming from Habermas's colonization thesis and analysis of social movements] to work, it must be coupled with an offensive strategy toward attaining political influence."[335] They argue that the emancipatory effectiveness through communicative action "is inconceivable without the establishment of democratic publics *within* the firm and the state."[336]

Though Habermas conceives of politics as directed at changes in law, the public sphere is in fact not itself a legislative body. This raises the question of how the rational content of the discussion generated within society is to affect politics. One might think that the public sphere merely calls for normative debate about how things ought to be,

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[335] Jean Cohen and Andrew Arato, "Politics and the Reconstruction of the Concept of Civil Society," Honneth, et. al. eds., *Cultural-Political Interventions in the Unfinished Project of Enlightenment* (Cambridge, Mass.: The MIT Press, 1992), 137.
[336] "Politics and the Reconstruction of the Concept of Civil Society," 137.

while government and economic organizations carry out their functional decision making unaffected. The worry then is that the public sphere, as described by Habermas, is effectively impotent.

Though Habermas does suggest that communicative action cannot replace law and the market as a means for coordinating action in complex societies, this does not mean that communicative action is unable to harness or be introduced into these institutions in a mediating form. First, debate in the public sphere includes issues regarding the effects and appropriate functioning of the state and market. Furthermore, the legislative process cannot separate itself rigidly from the contributions of the public sphere, for a functional analysis of political stability reveals that governments have to be viewed as and present themselves as legitimate in order to effectively maintain themselves. Thus, lawmaking is subjected to processes of publicity, inclusion of public testimony, and attempts to reflexively respond to public objections. Governments cannot function without securing some normative agreement among those who are subject to its laws. To simply enforce unpopular laws is generally viewed as morally unacceptable and would lead to social instability. The law requires that citizens observe it out respect for its validity, which in turn requires that they see it as representing their interests and perspectives.[337]

However, it would be fallacious to conclude from the dependency of the state on communicative power, that democratization within the state and economy are not needed. Though the state is charged with taking into account the claims of its citizens, it could be argued that this is best done through technocratic calculation rather than active

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[337] Habermas discusses the role of communicative power and public opinion in the formation of the law throughout *Between Facts and Norms*, for example, 169.

participation. Habermas's argument that democratic micromanagement of the state is mistaken appears plausible. However, there are alternatives besides radical democracy and rigidly mechanical bureaucracy. In discourse ethical terms, the government could be structured to a greater extent to ensure that those who are affected by social norms have an opportunity to contribute to their formulation. For example, government exploration into the causes of and solutions to poverty, crime, drug use, and other social problems ought to involve the consultation of those who are affected by them in the role of clients. In fact, in *Between Facts and Norms*, Habermas himself endorses mechanisms of community review of and participation in such policy making.[338] Furthermore the legislative process can be structured so as to allow for an inclusion of a plurality of voices. In the electoral process, this might imply a multiparty as opposed to a two party system and representation schemes designed so as to allow electors a likely chance of electing representatives who represent their major concerns, such as multi-vote/multi-representative schemes or minority majority district drawing.[339]

The market does not lend itself as directly to democratization as does government legislation and administration, for private corporations lack an intrinsic claim to legitimately represent general interests. Thus, a discourse ethic which accepts the market as an essential aspect of complex societies, appears to give up the socialist hope for democratization of the economy. It therefore appears to deny the public the ability to participate directly in decisions about working conditions, employment policies, pay scales, and the quality of goods and services which affect the social and environmental

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[338] *Between Facts and Norms*, Chapter 8.
[339] See for example, Lani Guinier, "The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success," *Michigan Law Review* 89, no. 5 (1991).

conditions in which people live. Most democratic theorists argue that, given the primary role of economics in social life, democracy requires worker and community control of and participation in business decisions.[340] In fact, the discourse ethic's own opposition to functionalism requires that it permit the regulation of the market by communicative action. Certainly, it encourages restrictions on market activity from concerns raised within various corners of civil society. Legislation about fair trade practices, environmental protection laws, employment discrimination, the minimum wage, etc. can be viewed as attempts to keep the market from having results which are not in the general interest. Thus, the relative autonomy of the market and the public sphere in no way implies that the former would not be a subject of criticism in the latter.

While the idea of the public sphere clearly encourages challenges to and restrictions on the functioning of the market, it is quite a different thing to use discourse ethics to argue for a socialist structure of the market in general. In their work on civil society, Cohen and Arato emphasize the ways in which state socialism not only was inefficient in its top-heavy regulation but also worked against the generation of a public sphere in which citizens could actively generate normative criticism. A centrally planned socialist society appears to involve a top down process which works against discursive democracy. Cohen and Arato conclude that an adequate understanding of the public sphere as the basis of democratic action requires the rejection of socialism.[341]

However, the criticism of the anti-democratic tendencies of centrally planned economies does not imply that all democratization of businesses or socialism should be

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[340] See for example Philip Green, *Retrieving Democracy* (Totowa, New Jersey: Rowman & Allanheld, 1985) and Joshua Cohen and Joel Rogers, *On Democracy* (New York: Penguin Books, 1983).
[341] Cohen and Arato, *Civil Society and Political Theory*, esp. 421-491.

rejected. In fact, a strong case can be made that discourse ethics implies something like market socialism, the key features of which would be worker ownership, democracy within the workplace, and social control over investment all operating within the framework of market exchange. Such a system would promote participation by workers and local residents in those economic decisions which affect them, and thus from discourse ethical standpoint would be preferable to both capitalism and state socialism. As David Schweickart notes in his recent extensive argument for a form of market socialism, such a system could be brought about by passing laws abolishing wage labor, requiring democratic participation in the workplace, and making all banks public.[342] In fact, in response to an interview question about his stance on socialism, Habermas appears to endorse such a market socialist scheme. He argues that democratically subjecting the economy to criticisms arising from the lifeworld probably would require "a gradual abolition of the capitalist labor market."[343]

However, the fact that such a system allows for relatively more democracy does not directly mean that it is implied by discourse ethics. For the latter holds that such proposals ultimately have to be tested by actual deliberation and not the analysis of social philosophers. The discourse ethic might counterfactually legitimate systems which are non-democratic, assuming that something might be lost as well as gained through greater democracy. Furthermore, the discourse ethic implies that some legitimacy is conferred upon non-democratic, including capitalist economic systems, to the extent that they are not challenged publicly within a political processes which permit such a challenge. There are debates about the economic efficiency of a democratic system and to what extent

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[342] David Schweickart, *Against Capitalism* (Boulder, Colorado: Westview Press, 1996).
[343] *Autonomy and Solidarity*, 183.

people actually want to have greater democratic participation. Clearly at this time, in most industrialized countries, and the United States in particular, there is not a great popular interest in any form of socialism, despite its potential to benefit the large majority of the population. Thus one can project that a discourse ethic implies the socialization of the market, both as furthering generalizable interests and the discursive process generally; yet, in the end, this implication needs to be ratified by society itself.

This discussion of market socialism is meant to show that the discourse ethic is not bound by social systems as they exist and can recommend radical changes in existing social relationships. However, it also shows again that discourse ethics does not provide a blueprint for the course of change. In particular it does not dictate that society must choose either the most democratic path or that which the theorist thinks would be agreed to in undistorted, democratic conditions. A discourse ethicist has to wait for the ratification of new social norms within the political public sphere beginning from current levels of social organization, and public discourse. For this reason, discourse ethics must be evaluated by its ability to contribute as a guide to the way in which this political process is carried out in the public sphere rather than on its ability to construct utopias. The relationship of discourse ethics to the actual political process is the subject of our final discussion.

4. Objections to the Application of the Discourse Ethic to Political Action

To this point I have defended the discourse ethical claim that democratic politics involves a willingness to include and reflexively respond to others and is centrally located in the public sphere of communication within civil society. Yet, even if it is

defensible in principle to speak of a public sphere as the site of democracy, it is not clear to what extent a discourse ethic provides any guidance for activity in the public sphere. The coherence of using the discourse ethic to orient political action has been challenged on the grounds that the theory underdetermines any institutional patterns and is subject to conflicting interpretations.

On the one hand, the discourse ethic appears to lead to an immediate paradox for political participants. There is a kind of paradox in recognizing the validity of one's claims to be based on its acceptability to others in the process of dialogue. It would seem that this leaves no basis for individuals to actually argue for claims, since the test of validity is that which would be agreed to and not other reasons that one can give. William Rehg has called this the "reversibility paradox" of intersubjective theories of validity: the validity for each rests on capability of convincing the other, seemingly leaving all with no solid ground for rational judgment.[344] Participants would have to await the results of dialogue before they could rationally begin it.

In a recent work on the application of discourse ethics, Ricardo Blaug argues that appropriations of discourse ethics for democratic theory frequently assume that institutions can be evaluated insofar as they "approximate" the ideals of discourse, recognizing that these ideals are not fully attainable in practice. Blaug argues extensively that this "approximation principle" is flawed. Blaug notes that different institutional arrangements approximate the ideals of discourse ethics in different senses. For example, some institutions are worse in terms of fostering inclusion while others are better at this but are relatively coercive or minimally reflexive. In real politics, Blaug argues, there are

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[344] Rehg, 77-78.

tradeoffs between the various qualities of normatively rational discussion. Habermas's principle (U) gives no principles for prioritizing the various features of ideal discourse, such that there is no way to assess the tradeoffs between falling short of the ideal in different ways. Furthermore, tradeoffs must be made between democratic communication and efficiency in political decision making and action. Real discourses generally have to be concluded before all have contributed and before there is a rationally motivated consensus. It appears that there is no way according to discourse ethics to conceive of rationally deciding to stop dialogue at a certain point to make a decision. If such the decision whether to stop dialogue is itself to be decided by dialogue, then the same question arises with regard how long to continue *this* discussion, resulting in an infinite regress of incomplete dialogues.[345]

Though it is conceivable to speak of idealizations as guides to which reality might be approximated, as in idealized conceptions of geometric shapes, Blaug agrees with Albrecht Wellmer that the discourse ethical ideal is not applicable in this way.[346] For, while geometrical shapes have specific properties to which the real can emulate, the discourse ethic, with its vague and conflicting implications for institutionalization, does not. Blaug points out that Habermas himself has discussed the limits of the use of normative theory for designing institutions. First, it is a category mistake to derive any institutional recommendations from a principle of moral validity, expressed in terms of the counterfactual presuppositions of argumentation. Institutional procedures require ethical and instrumental considerations as well as moral ones, and therefore cannot be derived straightforwardly from moral theory. This is to say that any specifications about

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[345] Blaug, 104-5.
[346] Blaug, 50.

the nature of the economy, government, political parties, political movements, etc. would have to stem from an assessment of factual conditions and choose among those possibilities which fit with the self-understanding and traditions of particular communities. An application of the discourse principle (D) to a political validity, rather than the morality (U), would express of the need to partially realize ideals of participation, noncoercion, and reflexivity in actual political discourse. However, it is difficult, if not impossible, to give any precise formulation of such a principle, straddling as it does the factual and the normative.[347]

Habermas's avoidance of institutional prescription is also prefigured by his claim that an attempt to design institutions directly on the basis of theory leads to authoritarianism. The discourse ethic suggests that the very processes which constitute fairness should themselves be a subject of deliberation and not be pre-designed by experts on democratic processes. This results in yet another circularity in the discourse ethical position, as the nature of democratic procedure has to itself be determined through democratic procedure, there appears to be no basis for setting up the procedure. In fact, one might even question, with Peterson, whether the discourse ethic does not imply that the ethic itself, as a political norm, should not be the subject of discursive redemption instead of the assertion of the theorist.[348]

Blaug argues that the recent tendency of Habermas and other discourse ethicists to focus on justifying basic rights is a symptom of the ethic's lack of any political implications.[349] Blaug and other critics have also noted that applications of discourse

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[347] Blaug, 59-77.
[348] Peterson, *Democratic Philosophy and the Politics of Knowledge* (University Park, Pennsylvania: The Pennsylvania University Press, 1996), 308.
[349] Blaug, 45-46 and 120-122.

ethics, when they are not heavily theoretical, tend to be retrospective analyses of political movements which assume the discourse ethic. The ethic is rarely used in a prospective way to usefully orient political action. For this reason, it is also never subject to falsification.[350]

Some might take this difficulty of actually deriving a democratic ethic from a theory of normative rationality as meaning that hope should be given up on theorizing about politics. Perhaps politics is necessarily a pragmatic affair regardless of the idealizing presuppositions of language use. Blaug himself agrees with the discourse ethic's insight that discursive democracy is the basis of political validity, and that radical politics needs a discursive basis. However, he thinks that discourse ethics cannot go beyond its general basis in the principle (D), that valid norms are those which would be agreed to in practical discourse. The above objections show that the more ambitiously prescriptive (U) oversteps the possibilities of applying speech act theory to politics. Blaug thinks that a different strand of theory is required to show how the discursive ideal should be applied to institutions. He draws on Wittgenstein and Hannah Arrendt, to recommend a theory based on ideal-typical models rather than ideal principles. Participatory democracy would be informed by moments in which inclusive deliberation was in fact successfully embodied. Such a project would take movements such as the civil rights, feminist, and student protest movements -- or perhaps particularly successful groups within those movements -- as models for the way in which democratic discourse can be institutionalized. The lessons about democratic processes and the barriers to them

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[350] Blaug, 131-140.

can then be extended to present and future movements. Blaug argues democratic action has to be directly informed by such political models and not by discourse theory.[351]

5. Application of the Discourse Ethic to Political Movements and Institutions

Ultimately, criticisms that the discourse ethic is not of political relevance can only be answered by demonstrating its relevance. Thus, rather than responding directly to these objections raised by Blaug, I will outline how discourse ethics can contribute to understanding of political action in the public sphere. In the course of this discussion, I will demonstrate in what sense these considerations imply responses to criticisms of a discourse ethic.

Political agency can be analyzed in terms of the spaces and actors, the content of political discussion, and the forms which the discussion and action takes. First, political discourse can arise from various public spaces in which people meet in a relatively informal manner to discuss political issues, that is issues which relate to social norms supported by power. This includes associations, clubs, parties, and even less formal centers of discussion in cafes, parks, and taverns, or on the internet. It also includes the media of literary and artistic texts and the mass media. This delineation of the space suggests that people will be connected to each other through various networks. In fact the public sphere can be conceived of as a web of interconnected discursive networks, such that they involve relative separation but also opportunities for spilling over into one another.[352]

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[351] Blaug, 107-127.
[352] Peterson, "Towards a Democratic Multiculturalism," forthcoming in Alison Bailey and Paula Smitka, eds., *Community Difference and Diversity* (Rodopi, 1999).

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Though the content of political discourse is a matter which must ultimately be left to participants and cannot be generated philosophically, some general patterns and possibilities can be outlined. Political discourse will include evaluative claims about social practices and recommendations of possible directions for change. It will also involve a discussion of values and cultural understandings which are relevant to the form which society takes. This framework is itself too narrow to differentiate progressive contributions from the non-progressive. However, several tendencies appear in the intersubjective manner in which discursive dialogue occurs.

One level of political discourse is the clarification of the claims of individuals within a particular network. In associations, discourse generates recognition of overlapping interests and perspectives, clarifying the political claims of the members of the group. Such activity will include both consciousness raising and subsequent political planning. On a larger level, entire social movements can constitute centers of discussion in which perspectives, interests, and goals are debated and clarified.

Discursive networks also facilitate learning across various networks and the social movements embodied in them. For example, discussions within the feminist movement have lead to a consideration of the claims raised in other networks, such as that of women of color, working class women, and lesbians. Here networks expand by interaction and overlap with other networks. The universalism of the discourse ethic, with its recommendation to test claims with others, guides a process in which it is recognized that those claims generated within a discursive network may not be defensible to others.

There is also learning in the dimension of these networks to society as a whole, as their claims achieve public discussion in other networks including mass media. Here

claims can be employed in a manner which tests whether they are effective for everyone. This involves an attempt to persuade people of the extent to which social discourse, and the social norms it justifies, is in fact based upon the exclusion of some interests and perspectives. Obviously this requires gaining some hearing in majority discourses, a process which may require protest or civil disobedience in an effort to raise consciousness on the social level that norms should be reconsidered. However, the discourse ethic implies that disruptions aimed at gaining a hearing have to be accompanied by an appeal with moral argumentation in order to be effective. Such argumentation is directed simultaneously at influencing particular decisions and influencing culture and political opinion generally.[353]

Regarding the form of discussion, social movements have to take into account several factors. Among other things, participants will have to decide how to implement the various features suggested by (U). For example, universality suggests permitting participation by everyone within such groups; in fact it suggests encouraging and facilitating participation by those who may be less prepared to speak. As the discussion of discursive networks above prefigures, the ideal of inclusion recommends an expansion of networks of communication so that claims generated in one discursive network can include, be tested against, and be applied to other networks and their discursive claims. The demand of noncoercion, suggests that forms of threat should be lifted from participants so decisions can be made by rational argument rather than de facto power. This demand also importantly suggests that time not be allowed to pressure participation. Finally, the demand of reflexivity implies that an effort is made to discuss matters

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[353] Cohen, "Critical Social Theory and Feminist Critiques," in Meehan, 57-90.

sincerely as well as open-mindedly, giving reasons for ones position and responding to those of others.

Though the implementation of the features discussed here is not straightforward or simple to accomplish, the goals provide a meaningful political orientation. Political associations and movements can and do attempt to implement these norms. Smaller political groups are most readily able to attain participation, non-coercion, and reflexivity. Coalitions between networks, based on solidarity achieved through interaction and recognition of shared interests, also can be structured in such ways. With regard to the overall public sphere, constituted by everyday communication and linked by the mass media, discursive democracy needs to be interjected through political movements which make disputes and alternatives visible, thus stimulating more inclusive and reflexive discussion.

The discourse ethic also implies changes in the conditions of public discourse. Norms regarding media access and ownership, news coverage, funding of public information and debate, etc., are subject to revision. Increasing democratization of this variety requires changes not just in institutional policies but also in individual abilities and orientations. People would have to develop the skills necessary to enter into informed, civil, tolerant, reflective, and productive dialogue with others. While there is no easy solution to this problem, it can be argued that increasing democratic politics would serve as its own form of political education, giving increasing knowledge and interest in issues and ability to discuss this with others.

This discussion demonstrates that we can speak of deliberative ideals as being more and less embodied in communicative networks. However, Blaug's point that actual

discourses cannot be directly based on (U) is correct. Actual discourses will have to decide on tradeoffs between the different criteria discussed above -- for example between general inclusion, lack of time pressure, and depth of argument. And choices have to be made between having discussion at all and effectively acting. Reaching a decision and effectively influencing politics will at times be at odds with carrying out democratic discussion. Social movements must, to some extent, make choices between direct democracy within the movement, and effectively reaching decisions to act, networking with others, and influencing the wider public sphere. Imperfect procedures will have to be adopted. These might include things such as voting or simply ending discussion and acting on the basis of understandings reached to a certain point. Also, movements will have to decide how to divide up labor and whether and to what extent to entrust authority and representative status to certain individuals. The choice about which imperfect procedure to choose and how much loss of democracy is compensated for by the achievement of desired ends. Yet this seems to present a final moment of decisionistic judgment about which discourse ethics can say nothing.

However, discourse ethics can at least say that such shortcuts themselves should be subject to discursive agreement. That is members would be able to challenge the general use of shortcuts. The norm of sacrificing democracy for the pursuit of what limited democracy has revealed as the approximately right course, can itself be rationally discussed. Of course, the suggestion that problems of application can themselves be resolved by discursive means, results in a circular notion of discursive justification. There can be further dialogue about the current state of dialogue, and even dialogue about the value of this dialogue. No actual use of dialogue will formally conform to the

procedures of (U) and thus we will not be able to say with finality whether a particular decision to adopt a political procedure was correct. Yet, this is not an entirely vicious circularity. Discourse ethics offers a presumption in favor of dialogue, whenever dissent arises as to the norms guiding social practices. Furthermore it implies that the form of this dialogue should itself be tested in a manner as much as possible in accordance with (U); conflicts about how to apply (U) can themselves be resolved in a discursive manner. This does not guarantee that a base point will be arrived at which there is transparent agreement on foundational procedures from which rational consensus about everything can arise. Rather, the discourse framework offers a general political compass with which processes can be assessed.

Blaug's point that the discourse ethic is more commonly used retrospectively to reconstruct what has occurred is also correct. But this is largely the nature of theory, reconstructing a concept of rationality from actual processes. However, once constructed such a theory can make a contribution to distinguishing between the more and less rational and provide a guidelines along which the more rational than yet present might be projected. This is to say that the theory can result in prescriptions for future politics by helping to distinguish the relatively democratic from the undemocratic in the past. The discourse ethic helps to make these judgments in a consistent way in accordance with the presuppositions of normative discourse which recognizes all as equal social participants. Rather than judging politics according to whether it has been influential, by appreciation for its particular ends, or by aesthetic appeal of its process, discourse ethics provides a normative basis for assessing the extent to which political agency is inclusive and reflexive.

Above I discussed implications of the discourse ethic for workplace democracy and of public review of the social effects of business practices. I also want to say something about the implications for the discourse ethic for central political concerns of those who advocate democratic politics. Such issues include the nature of poverty relief (e.g. welfare vs. workfare), universal health care, affirmative action, non-racist and non-brutal policing, and quality education. As discussed in chapter 8, the discourse ethic, like other theories of justice, could be used theoretically to legitimate progressive intuitions on these issues.

However, the principle implications of a discursive political ethic regards the means by which such progressive measures should be pursued, specified, and instituted. First, it is necessary for social movements to develop surrounding the claims of those most affected by these issues. To groups including the unemployed, minorities targeted by police, groups which are candidates for affirmative action pursuing equal opportunity, etc. discuss and raise claims regarding how current practices are unjust in light of possible alternatives. Others outside these groups can raise claims about the justice of the way in which they are affected by social policies, but the discourse ethic implies that those whose needs are in question must be able to dialogically verify the fact and nature of such needs. This suggests the need for grass roots movements which are open to contributions and not immediately directed at achieving particular political goals.

Secondly, discursive networks which generate criticism of social norms can engage others affected by those norms, whose concerns are not necessarily immediately parallel but who may have important input or overlapping concerns or may be subject to persuasion. Thus movements for just policing, education, welfare, etc. can and should

exchange views with police, teachers, businesses, etc. which are directly affected by the social norms in question. This exchange of views and location of mutual interests leads to agreements which are candidates for being defensible as pursuing general interests. In many cases, these discussions can allow for connections between different issues to be thematized and addressed jointly. A discursive approach to affirmative action implies taking into account the concerns of loss of lack of affirmative action for disadvantaged white males, loss of jobs by those who have them, and the lack of attention to considerations of overall poverty. Coalitions agreeing on certain issues might be formed. For example, affirmative action might be extended to take into account various forms of disadvantage, including class as well race and gender, and might linked to proposals reforms in education, health care, child care, etc.

Finally, proposals arising from coalitions need to be tested in the public sphere. The discourse approach centrally implies that associations and movements must use communicative power to problematize prevailing political assumptions. For example political movements might question whether jobs are awarded on the basis of merit without affirmative action, whether a free market is required to maintain social efficiency, and to what extent policing and employment policies are effectively race-blind. This problematization may occur through formal political hearings, the mass media or protest and civil disobedience. Such activity has the potential to create a context which creates a need for normative debate, in addition to taking particular positions and offering arguments. Communicative power generated by social movements can both force and influence normative debate in the wider public sphere. Political actors are pressured to respond to normative claims made by networks influencing the public

sphere. Thus, the nature and importance of moral principles such as equal opportunity, freedom of choice, safety, etc. can become matters of public debate. Although such terms are frequently incorporated into political soundbytes, it is rare that their meanings and importance are debated publicly. It is a virtue of the discourse ethic and the concept of the public sphere that they call for public debate about precisely such issues. While there may be limits on the ability of dialogue to reach agreements on these matters, much of contemporary politics by eschewing the effort at ideological persuasion does not test the limits of public deliberation. The discourse ethic suggests that attempts to normatively persuade are required for a democratic resolution to contemporary political debates.

The discursive conception of politics, then, contrasts with various predominant views of political action. First, it contrasts with a "liberal" view on which individuals simply argue for their own interests, within a sphere of protected basic rights, with majority interests prevailing or occasional compromises to achieve overlapping interests.[354] The discourse ethic holds out that it is possible to convince people of the normative correctness of views which are not immediately in their interests. I suggest that this view is both plausible and necessary for an adequate policy on poverty relief, universal health care, affirmative action, ending racism, etc.

Secondly, the view also contrasts with a narrow, balkanized identity politics in which particular groups pursue their interests and perspectives. While I already criticized such a view in chapter 7,[355] the present discussion further supports the claim that a discourse ethic draws on the solidarity-generated insights of particular of groups, while

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[354] See Habermas's "Three Normative Models of Democracy," in *Inclusion of the Other*, 239-252.
[355] 207-217.

also theorizing the conditions for their effectively and justly convincing other groups of the validity of their claims.

Nor is a self-consciously pragmatic ethic an adequate alternative to discursive politics. While such a position recognizes the necessity of taking into account the possibilities of effectively responding to current political impasses, it does not consistently uphold the goal of universal inclusion or the framework of internally generated participation. Thus such a theory lends itself to accommodating actual political structures, whereas a discourse approach points in the direction of a radicalization of democracy.

Finally, Blaug's Arrendtian-Wittgenstinian normative politics based on model democratic movements is not, properly understood, an alternative to the discourse ethic. This approach presupposes that criteria exist for identifying democratic movements. His criteria for identifying them appear to be something like the discourse ethic, as he praises movements which encourage participation, reflexivity, and lack of pressure to make decisions. Also, the importation of models of political action from previous movements hardly appears to be more precise in its implications for a given movement than does the discourse ethic. Furthermore, in order to criticize aspects of a generally democratic movement as themselves undemocratic, as is sometimes necessary, one needs a general conception of democracy not based on any particular movement. The discourse ethic provides such a conception. While Blaug is right that contextual, imperfect judgments about the most democratic approach will have to be made, and that such judgments will draw on past examples, he is wrong to suggest that a theoretical conception of democratic politics is thereby made irrelevant. The norms of inclusion, reflexivity, and non-coercion

offer continual reference points for internal and external criticism of social movements

and the working of the public sphere.

CHAPTER X. CONCLUSION

This dissertation has addressed challenges to the concept of a democratic universalism. We saw that any political universalism must address serious objections of abstractness and uncritical dogmatism. In the attempt to express normative principles which apply to everyone, such universalism risks overgeneralizing and excluding relevant interests and perspectives. In particular, universalism can ideologically justify the exclusion of the disadvantaged and marginalized. In fact, the very process of asserting a general theory of freedom can work to covertly privilege those who are able to present themselves as rational agents, speaking for the general interest. Secondly, political theories appear to achieve universality at the cost of abstracting away from the contexts and conditions of political action, making them inapplicable to actual politics. To the extent that it is based upon formal principles of practical reason, universalism brackets out the ethical worldviews which lend meaning and motivation to much political debate. A procedural universalism also risks bracketing out all features of identities, including those which form important bases for solidarity and have political implications for the resistance of domination. Political universalism also tends to abstract from the rich contexts in which particular political judgments are made, resulting in inapplicability. For example, it may fail to do justice to the particular relationships which are central importance in determining many moral and political commitments. Finally, political universalism risks being so abstract as to not provide any determinate direction for particular social norms or forms of political action.

Such charges render problematic the universalistic politics envisioned by Kant, Hegel and Marx, and are relevant to differing degrees to any attempt to salvage the

enlightenment project. Similar objections have led many to call for an eschewal of any claim to or demand for universality in politics. This suggestion is present in postmodern, communitarian, pragmatic, and much feminist, anti-racist and other left wing political theory.

I have argued that it is not necessary to take the step of rejecting universalism. Instead I defend the discourse ethic of Jurgen Habermas as a universalistic political orientation which remains critical and practical. The discourse ethic avoids the problems of other universalisms by refusing to project of particular interests, perspectives, or institutions as universal, as it leaves political content to be worked out in discussion among all those affected by the issues in question. In the course of attempts to implement a discursive political ethic, exclusions and marginalizations can be expected to occur. However, the discourse ethic conceptually demands continuing reevaluation of the inclusiveness and reflexivity of political discussion and thus admits of self-criticism. Thus, the ethic is in principle opposed to exclusion and marginalization and offers a means for criticizing such phenomena. I have also shown that though the discourse ethic appears to require a rigid and exclusionary form of political participation, it is in fact open to various forms of rhetorical and aesthetic political assertion. Such communicative acts, like other political assertions, contribute to a process of mutual understanding, invite response, and can be tested in the course of debate. The discourse ethic also is not peculiar to the interests and activity of white, Western bourgeois males, but represents the most general forms of political action which individuals must take if they wish to pursue norms which are acceptable to all. The capacity to dialogue with others about the extent to which norms favor general interests is not group specific.

The most serious criticisms of the discourse ethic consist of charges that it purchases its undogmatic universality at the price of empty abstractness. However, I have argued that it is not as removed from concrete political judgment as its critics suggest and that the kind of abstraction it retains is justifiable. First, I argued that it though it calls for a justification procedure abstracted from particular contexts, these universal norms themselves admit of context sensitive application. Furthermore, although the discourse ethic abstracts from particular relationships, ethical worldviews, identities and solidarities which have been important bases of political commitments, it does so in a manner which is plausible, which draws on these sources as normative considerations, and which allows for their influence in everyday ethical life. Furthermore, the discourse ethic itself is mutually reinforced by minimal forms of ethical worldviews, social solidarity, and concern for others which characterize politics in which something like a discursive public sphere is operative.

Finally, with respect to application, I argued that the discourse ethic can be used practically in two complementary ways. First, it can be used in conjunction with an analysis of the way in which social power functions to distort communication, to criticize unjust social norms and processes of political will formation. Second, the ethic can be combined with a theory of the public sphere and social movement politics to recommend democratic forms of action, involving radical democratic consciousness raising within groups, searching for common ground across groups, and engaging in public criticism and debate regarding political issues.

I have attempted to show why such an ethic is not only plausible but also constitutes a preferable alternative to the political approaches suggested by its critics.

First, most rejections of discursive universalism fall into self-contradiction. When critics suggest that the discourse ethic is exclusionary or biased in favor of particular interests, they tacitly adopt the same critical standpoint of universally inclusive consideration which they mean to refute. Furthermore, while critics frequently express skepticism about the viability of any universal normative principles, they themselves make arguments in favor of norms of toleration and non-domination which appear to assert universal normative validity.

Beyond this argument from the contradictions which result from attempts to reject universal discourse, I have attempted to show that the discourse ethic is more adequate than its alternatives to the pursuit of the forms of freedom which its critics desire. First, other ethics which would allow for more fundamental role of individual caring bonds, ethical traditions, identity, aesthetics, pragmatic calculation, etc. in their political judgments, in eschewing universalism, fail to give proper grounding to human rights. Some argue that human rights do not need a theoretical foundation, that current and growing legal acceptance is sufficient. However, the nature and scope of human rights is frequently called into question. This is most clear in questions regarding what minimal rights might be internationally enforced. The difficult political considerations involved in deciding such questions require moral and political principles if they are not to be left merely to skeptical withdrawal, instrumental pursuit of self-interest, or an overemphasis on the cultural differences between regions.

The basis of human rights is also relevant to discussions within the United States and other advanced capitalist states. First, though negative, civil, and political liberties are generally well grounded here, there is a great disagreement about the existence and

scope of social rights. Contemporary discussions about health care, welfare, housing, etc. show uncertainty about the status of human rights. Such questions again benefit from a universalist theory which explains a basis for human rights. Such a theory is also required if one is to defend possible limitations on negative liberties (e.g. the rights to free speech and freedom to bear arms). A discursive universalism provides a foundation for thinking about such rights and a terminology to discuss their rational scope which is lacking in non-universalist alternatives.

Second, the discourse ethic's conception of universal freedom allows individuals to democratically stipulate the conditions for their own freedom, avoiding the problems of paternalistic imperialism. The lesson of much failed international intervention in the pursuit of human rights appears to be that political solutions have to be appropriate to the conditions and perspectives of those for whom they are proposed if they are to further freedom. Theories which call for an understanding of rights and norms based on caring for those in need or on a material ethic derived from natural law or specific principles of justice, prejudge the politically relevant needs and interests. They treat people as clients to be beneficently administered to by experts. The form and content of such administration may limit the freedom of its recipients as much as it furthers it. The need to address the specific demands of those affected in a way not easily foretold by experts is also relevant to issues such as the nature of welfare benefits and the quality of work life, e.g. safety, job security, meaningful labor, and fair wages. Norms regarding such issues will be just to the extent that they take into account the specific perspectives and needs of those most affected by them. A discourse ethic recognizes that disadvantages facing individuals may keep them from fully advocating for themselves, and certainly

permits advocacy on their behalf. But it also has the advantage of consistently calling for the participation of those affected in normative debate rather than settling for the substitution of the judgment of others.

Third, though the discourse ethic appears utopian and impractical at first glance, it actually offers greater practical potential for resolving divisive social issues than do prevalent alternatives. The ethic requires dialogue across interest groups, perspectives, and identities in order to find mutually acceptable solutions to political questions. The pursuit of such an ideal is a condition for the effective resolution of many gridlocked contemporary political debates. For example, a resolution to affirmative action is unlikely without an attempt by all participants to engage concerns of the other side in an attempt to reach an agreement about mutually acceptable principles of justice. One might argue that this is no different from pragmatic politics, which entails willingness to compromise. However, it is not clear that a political ethic not based on discursive agreement can even effectively pursue such compromises. After all, in many cases effective compromise is circumvented by majoritarian politics which need not engage the specific concerns of minorities. While the discourse ethic does not offer simple principles or procedures for resolving normative disputes, it offers the necessary condition of dialogue and debate across differences. It suggests, furthermore, that such dialogue and debate has the potential to lead to direct agreements or to lead to revisions and reconstructions of interests and identities in ways which make agreement more feasible.

A discursive political ethic can also be argued to be more pragmatic than competing alternatives on a second account. By locating the democratic impulse in a

public sphere rather than calling for the immediate democratization of all social institutions, Habermas's position articulates means by which democratic self-criticism can be articulated from within existing, partially democratic, liberal advanced capitalist societies. It does not require a utopian casting off of existing institutions or a rejection in principle of the use of non-democratic institutions, such as the market and bureaucracies, which may be necessary to maintain the conditions for a public sphere. The discourse ethic presents a conception of deliberative democracy which implies radical criticisms of current social and political practices, but does so in a way which is practical, recommending incremental and experimental change.

Finally, the discourse ethic is linked to a theory of power in a way which furthers social criticism. Power can be identified in institutional decision making processes in which those affected are not allowed to enter discussion or to raise normative questions of certain types. When such distortion of communication is used to further the interests and perspectives of some groups over those of others, it can be criticized as domination from a communications perspective. A theory of distorted communication and communicative power can be used in tandem with the normative discourse ethic to criticize problematic political processes and resulting unjust norms. It can also be employed to further judgments about how the public sphere could be made more democratic.

As an abstract, general, procedural and theoretical political ethic, the discourse ethic does not immediately present solutions to difficult contemporary political questions. It requires supplementation by empirical descriptions of systematic distortions in communication as well as specific normative argumentation and political action in the

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democratic pursuit of justice. The discourse ethic cannot mechanically generate social criticism and political debate, but presents general conditions of normative validity which orients the critique of power and political action. I have argued that the discourse ethic is not only defensible but also particularly fruitful as a general political framework.

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