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Olga Ramírez Calle

DISCOURSE ETHICS AND PRACTICAL KNOWLEDGE
STABLE STRUCTURES FOR PRACTICAL REASONING

Abstract: The present paper[1] departs from the discussion on the foundation of morality in Discourse Ethics (DE) and the criticism raised against it, coming to reconstruct in a somewhat different way the foundational process. A first section is dedicated to analysing the difficulties of Habermas distinction between morality and ethics and the criticism raised against it, questioning a) the possibility to set the difference in the distinction between norms and values and b) the presumed neutrality of DE regarding ethical evaluations. A second section revisits the foundational proposal of DE. First of all, it provides an interpretation of the Kantian proposal that makes the universalization of norms subservient to the idea of human beings as ends in themselves. It then considers a) the subsistence of Kantian moral reasoning in its architectonic and b) suggests a formal structure in practical thinking that integrates in hierarchical modus Kantian, discursive and contextually determined evaluative conceptions.

Keywords: Discourse Ethics, Ethics and Morality, Critique of Forms of Life, Foundations of Morality

ÉTICA DEL DISCURSO Y CONOCIMIENTO PRÁCTICO
ESTRUCTURAS ESTABLES PARA EL RAZONAMIENTO PRÁCTICO.

Resumen: El presente trabajo parte de la discusión sobre la fundamentación de la moral en La Ética del Discurso (DE) y las críticas a las que ha dado lugar, llegando a reconstruir de forma un tanto distinta el problema fundacio-

1 This paper is an expanded and translated version of a previous paper of mine pu blished in the journal *Laguna* (edit. Universidad de La Laguna, San Cristóbal de la Laguna, Santa Cruz de Tenerife) Nº 50 (2022, Julio), pp.117-142.

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nal. Una primera sección se dedica a analizar las dificultades de la distinción Habermasiana entre la moral y la ética y las críticas a ésta, cuestionando: a) la posibilidad de basar la diferencia en la distinción entre normas y valores y b) la pretendida neutralidad de la DE con respecto a las evaluaciones éticas. Una segunda sección considera la propuesta fundacional de la DE. En primer lugar, se aporta una interpretación de la propuesta kantiana que supedita la universalización de normas a la idea del ser humano como fin en sí mismo. En segundo lugar, se plantea a) la subsistencia de esta propuesta moral kantiana en la arquitectura fundacional de la DE y b) se propone una estructura formal del pensamiento práctico que integra de forma jerarquizada las aportaciones kantianas, discursivas y las concepciones evaluativas determinadas contextualmente.

Palabras clave: Ética del Discurso, Ética y Moral, Crítica de las Formas de Vida, Fundamentación de la Moral.

1. The plan for this essay.

The historical, evolving and sometimes contextually determined status of human knowledge, the renewed revisions it appears to require throughout time, have made some sceptical about the prospects of presuming any universality and time-stable character for our moral norms. The attempt, on the other hand, by foundational proposals like Discourse Ethics (DE), to achieve some such stability tying its leeway to the distinction between morality and ethics - universal the first and contextually dependent and changing the latter - has given rise to equal criticism. The extent to which the proposed procedure (both in the transcendental and quasi-transcendental forms) manages to deliver, of itself, a moral foundation, are also discussed topics. The question is, thus, still in need of some thought, on how best to defend some necessary structure for our moral thinking consonant with our finite and historical nature and whether the proposals at hand fit the bill.

My plan is to embrace this problem by going from the difficulties of the distinction between morality and ethics to the attempt to define what marks our statements' moral character and universal legitimacy. From here, I revisit the foundational question and how it is characterised by DE, making some suggestions regarding how a formally stable moral foundation might be

achieved and finally trying to see how to integrate this formal structure within historically determined contexts.

2. Introductory remarks.

The distinction between morality and ethics[2] is one of the most controversial topics of Habermas proposal in his DE, from the criticisms of Communitarians (neo-Aristotelians and neo-Hegelians) from the 1970s to the 1990s (Taylor, C. Sandel, M., MacIntyre, A.)[3] , to the metaethical arguments of post-Wittgensteinian neo-Aristotelians (Putnam, H., Williams, B., McDowell, J.)[4] in recent decades, to more recent challenges from the neo-Hegelian wings of the new Critical Theory' (Jaeggi, R.).[5] In this last case disputing not only its formalist character but also its critical neutrality regarding the various forms of life and the alleged historical impartiality of the discursive project.

This distinction tends to reflect the contrast between a *quasi-fundamentalist* approach, which aspires to defend stable structures and universal validity, and the concrete historical-cultural evolution of our changing and plural forms of life (where, at most, we are rational instruments and mediators of change but without any guarantee of objectivity or permanence for our judgements). That is, it seems that the crossroads between Kant and Hegel whose compatibility still requires much thinking, revolves around it.

This quick way of ordering distinctions and perspectives is, though, only momentarily satisfactory and illustrative. However, a slightly deeper look shows that things do not fit together as neatly as we would like, and not only because the distinction between morality and ethics is blurred, as pointed out

2 See, for example, Habermas, J. "Vom pragmatischen, ethischen und moralis chen Gebrauch der praktischen Vernunft" in *Erläuterungen zur Diskursethik,* Frankfurt/M., Suhrkamp Taschenbuch, 1991, pp. 100-119

3 Cf. Taylor, Ch., "Atomism" in *Philosophical Papers I. II*, Cambridge University Press, 1985, MacIntyre, A., After virtue, University of Notre Dame Press, Indiana, 2007, Sandel, M., *Liberalism and the Limits of Justice*, Cambridge, NY, Cambridge University Press, 1982, or "The Procedural Republic and the Unencumbered Self", *Political Theory*, Nº 12, 1, (1984), pp. 81-96.

4 Cf. Putnam, H., "Werte und Normen" in Wingert, L. & Günther, K. (Eds.) *Die Öffentlichkeit der Vernunft und die Vernunft der Öffentlichkeit, Festschrift für Jürgen Habermas*, Frankfurt/M, Suhrkamp, 2001, Williams, B., *Ethics and the Limits of Philosophy*, London, Fontana, 1985, McDowell, J., "Non-Cognitivism and Rule Following" in Steven Holtzman and Christopher Leich (Eds.), Wittgenstein: T*o Follow a Rule*. London, Routledge and Kegan Paul, pp. 141-165.

5 Cf. Jaeggi, R. *Crítica de las Formas de Vida*, Berlin, Suhrkamp, 2014.

from these same fronts. The interplay between the stable and the changing, the fixed poles of rationality and the world and the linguistic-phenomenological development of information over time requires cautious consideration.

My aim is to do just this. The current analysis of the Habermasian differentiation between ethics and morality will be the guiding thread for the discussion of what we can aspire to achieve in terms of cognitive objectivity in the practical sphere.

1. Morals and ethics

Let us consider the features of the Habermasian distinction between morality and ethics and its role in the Discourse Ethics architectonic that has made it susceptible to criticism. This distinction is motivated by the desire to differentiate between moral norms that can reach the discursive agreement of all human beings, independent of cultures and historical epochs and other evaluations that might depend on context, socio-cultural pre-understandings, the evolution of knowledge, the susceptibility of interpretation or simply the admission of different perfectly satisfactory answers. One characteristic of the Discourse Ethics (DE) proposal, though, that differentiates it from the traditional Kantian one is that, even if the procedural terms of the question are similarly stable, there would be room for cognitive revision and reconstruction of what they amount to in light of the growing and increasingly complete information acquired over time.

This last aspect and the avowedly post-metaphysical nature of Habermas' philosophy makes perfectly clear that, despite the defence of universal *quasi-transcendental* or pragmatic conditions of argumentation and the necessity attributed to the moral standpoint derived from them, their very reconstruction would be subject to revision and clarification over time. In this sense – and as Habermas emphasised – it would not be true to say that the procedure, even in its most abstract formulation, is completely detached from our historical condition. On the contrary, by departing from this historical situation, we can recognise stable structures – structures which we try to reconstruct again and again to the extent that the clarity of linguistically mediated reflection allows. In particular, the subsequent determination of norms which, from this moral point of view, would be correct would require renewed scrutiny through historically circumscribed practical discourses.

However, many critics have tried to find false impartiality in the proposal and reduce it to the particular conception of morality of one form of life among others. With the publication of *Critique of Forms of Life*, Jaeggi reopens this issue from neo-Hegelian files. On the one hand, Jaeggi questions the fundamentalist approach and its claim for universal stability, arguing that we, as instruments of our time, cannot aspire to more than immanent critique, the character of which can ultimately be only coherentist or, in Jaeggi's case, of pragmatic coherentism. On the other hand, she denounces that the alleged critical neutrality that the Habermasian position exhibits with respect to the plurality of forms of life would amount to a form of immunisation against critiques. Jaeggi misses by DE the critical intervention in practical questions or in the institutions of the different forms of life to improve them.

> The two manifestations of this position are here of course, on the one hand, political liberalism and its pragmatic foundation of a necessary neutrality towards forms of life, and, on the other hand, the claim defended, among others, by Jürgen Habermas of a categorical difference between ethics and morality. In the following, I would like to take a brief look at both positions and, on the basis of their shortcomings, to argue for the need to return to the question of the rational evaluation and critique of forms of life.[6]

In my opinion, there are good reasons to consider this critique or to at least make explicit what the position of DE is (or should be) in this respect. Thus, first of all, I will reconsider the position of DE vis-à-vis ethical evaluations and the difficulties it presents independently of neo-Hegelian approaches.

1.1 Habermasian conceptions of ethics and its difficulties

There are two main aspects I want to focus in, first, whether the distinction is plausible and is in the terms Habermas has proposed and, second, whether it justifies, as critics complain, the recommended neutral attitude (from a moral point of view) towards the social practices, interpersonal relations, and institutions of the different forms of life. Both aspects are, indeed, to some extent, interrelated but need not go together.

Habermas's treatment of ethical evaluations certainly seems to give them away to mere individual or community preferences in accordance with the

6 Cf. Jaeggi, R. *Critique of Forms...,* cit. p. 28.

ideals of the good life in the different forms of life.[7] Multiculturalism and the existence of plural value conceptions about how to understand and regulate different areas of human life require a tolerant attitude towards differences. These differences would only be limited by agreement based on common moral standards for mutual respect and conflict prevention.

This way of conceiving the realm of ethics is unclear and unsatisfactory for several reasons, regardless of whether or not one wants to defend a communitarian position. Some such reasons are discussed presently:

1. *The distinction between the just/right and the ethical/evaluative is more apparent than real.*

This criticism is usually wielded against Habermas to defend the universality of many 'ethical' values. However, I believe that there is also a constitutive reason to question the distinction. It would be especially misguided regarding the evaluation of types of behaviour or persons. The evaluative ethical judgements that we encounter in the various forms of life not only have claims to validity but could also be expressed in normative terms. Moreover, the normative expression could be said to be more original than the evaluative one. Value attributions – not only prudential or pragmatic ones, as I will argue later – are mostly evaluative with respect to an often implicit (and unconscious) end. They are relative to an objective or function, by reference to whose satisfaction this or that behaviour, person, event, is or is not said to be beneficial or good. The objective determines *in what sense* it is so: whether[8] it is so for me, to win a championship, to defeat the enemy, in view of the interests of a certain group, the avoidance of an epidemic, taxes, or in view of neighbourly, communal ...or universal coexistence.

This is also the case with so-called thick ethical concepts, the deconstruction of which reverts them to simple evaluative statements[9]. To the extent

7 Cf. Habermas, J. *Erläuterungen zur Diskursethik* II, Frankfurt/M, Suhrkamp, 1992, pp.100-118.

8 Cf. Habermas, *Erlauterung zur Diskursethik* ... cit., pp. 100-118, acknowledges this, in part, in his explanation of pragmatic statements and personal or communal preferences.

9 I cannot develop this point here due to the length it would require; thus, I refer to the more elaborate version of my argument on the subject in Ramírez, "Entre el Realismo y el Cognitivismo en la Ética. A Tripartite Model", *Prolegomena*, Croatia, N°10, (2011), 1, pp. 101-112.

that an evaluation applies to *types* of behaviour, we are told that 'to behave in this way *in general terms* is right' or, in other words, that it should be 'the norm' (for that purpose). This means that here, too, we establish norms of behaviour that we consider valid (in a certain respect), exactly as in the evaluation of moral norms Habermas is referring to. In fact, moral norms, as imperative statements, admit cognitivist treatment only insofar as the *ought-to-be* that they express refers to a goal from whose fulfilment the evaluation is derived. In their case, the attribution of validity claims also requires the normative statement to be turned into an *evaluative* one, which only then can be valid or correct. Clearly, failure to do so has led to confusion in the interpretation of the Habermasian proposal regarding the correctness of norms.[10] Therefore, it is worth spending some time on it. Consider the following statements

(i) N is *with respect to a moral objective* correct (good).

This is only an assertive utterance if the term 'correct' is understood as an evaluation, and only to that extent can a metalinguistic utterance consider the statement to be correct in the sense of being true.

(ii) (i) is correct (true).

An insufficient differentiation of this point by Habermas has given rise to criticisms to understand the first appearance of correctness in (i) in the metaethical sense of (ii)

Thus, if the relationship between norms and values is as we have described, one should be more careful about giving the distinction too much significance in this dispute. Rather, it is the universality *of the objective* that makes the difference in determining whether the evaluation can have claims to universal validity and be considered moral.

10 See Cristina Lafont's critique in this regard, which I will deal with later in this text, and the discussion of this problem in Cf. Habermas, J. *Wahrheit und Rechtfertigung*, Frankfurt/M, Suhrkamp, 1999, pp. 293-303. I have allowed myself to offer a different formulation of the differentiation between both senses of validity in statements (i) and (ii) to express what I consider to be the correct form of the statement according to my own reading that allows revealing its validity and eva luative character.

2. It cannot be generally asserted that among the so-called 'ethical values', there are not some with claims to universality.

I now refer to the problem under the aspect of universality. This has been one of Putnam's persistent points of criticism.[11] Putnam refuted Habermas's argument that if we cannot attribute universal validity claims to ethical evaluations, then the validity of the moral norms themselves – to which Habermas does want to attribute such universality – would be at risk. This is because the content of moral norms stems from our forms of life and includes implicit ethical evaluations hidden in its concepts. In this respect, while there are evaluative 'ethical' statements with claims to universal validity, Habermas also has good reasons for denying them cognitive validity, at least with the immediacy with which they presume it. The dispute especially revolves around the so-called thick ethical statements, whose concepts are seen to have both an evaluative and descriptive character and seem to have clear conditions of application. Apart from their verifiable plurality and factual diversity in the various forms of life, Habermas argues against the truth claims of such statements as follows:

> Can a social world, which we do not assume to be independently given, impose the same degree of constraints on our socio-moral cognition as the objective world of factual knowledge? How can the symbolically structured world of interpersonal relations, which we ourselves produce in a certain way, decide whether ethical judgements are valid or not?[12]

Instead of verifying our ethical statements, the 'objective spirit' of the social world would rather, for Habermas, *reflect* our socio-moral convictions. Consequently, what such 'culturalist' positions regard as moral knowledge is nothing other than the ascertainment of what corresponds to prevailing understandings and values. I consider this argument absolutely correct. In fact, Habermas, although he ultimately understands these statements as preferences, perhaps accepting to attribute truth to them by reference to particular cultural preferences, is right in his general diagnosis of the problem, for, certainly, the truth of these statements verifies what we have already established.

11 Cf. Putnam. H., *Werte und Normen* ..., cit., pp. 304-311

12 Cf. Habermas, J. *Wahrheit und Rechtfertigung*, Frankfurt, Suhrkamp. 1999, p. 281.

According to my own interpretation[13], thick ethical statements are only true to the extent that we can verify that a particular instance of 'artful' behaviour, to give an example, falls under the general prior rule that values behaviours of type x negatively. That is, that such types of behaviour are to be evaluated in such a way is predetermined in the concept prior to its application and is not verified in reality. Only if the evaluation, implicit in the concept, can be considered correct with respect to an accepted end, so can its application to a particular case be correct too. However, once the evaluations 'fossilised' in these concepts, as Hare describes them[14], are reconstructed in terms of simple value statements, we can ask ourselves relative to what objective the behaviours in question deserve the proposed value. Only then can we give cognitivist treatment to the statement and determine whether such goals are in everyone's interest and, to that extent, whether the evaluation can gain universal acceptance.

As Putnam argues – and as Habermas acknowledges – thick evaluations expressed in concepts such as 'cruel', 'sadistic', 'liar', or 'traitor' would express universal negative evaluations. These are not only accepted in all cultures but are equivalent to norms to which we would attribute moral character – for example, 'Do not do intense harm to a person unnecessarily or for personal enjoyment'. We want to expect everyone to accept these norms.

In conclusion, there are value statements which, despite being part of our form of life to the point of taking a conceptual form, are, in fact, *moral*. However, in contrast to Putnam, this is not always the case. Hence, the merely attributive use of such statements and the identification of the conditions for applying the corresponding concepts with their truth is misleading. They produce a mirage of confirmation in reality that prevents us from reconsidering their validity[15]. Although Habermas does not raise the possibility of rethinking ethical statements in cognitivist terms, contrary to Jaeggi's suggestion, at least, he does not fall into this trap.

13 Cf. Ramírez, O. A Three-Fold ..., cit., pp. 8-12.
14 Cf. Hare, R., The Language of Morals, Oxford, Oxford Univ. Press, 1961.
15 Cf. Ramírez, O. A Three-Fold ..., cit. and Ramírez, O. "Beyond Witches, Angels and Unicorns", *E-Logos* (University of Prague), Nº 25, 1, (2018), pp.4-15

3. Some 'ethical values' are, in fact, cases of the application of moral norms under the specific conditions of a given society.

Some behaviours that seem to be preferences for the good life of specific societies are, in reality, cases of the application of shared moral norms by reference to specific environmental, health or economic conditions that are more or less conscious. They may be ways of organising marital relations or public health, which, under such conditions, would admit a cognitivist consideration of their validity. In fact, they should be considered in the Habermasian scheme as norms suitable for discursive consideration in discourses of application.

4. Others are Type 2 and 3 evaluations but would be obsolete.

Many conceptually and non-conceptually presupposed values in different cultures are obsolete, even if they were initially (in type 2) conceived with pretensions of universality. These would be especially difficult to detect when conceptually fossilised and ratified as true in every application judgement. Returning them to the form of active statements, as we said, would allow us to rethink their universal validity. Something which would not only not go against DE but would rather respond to the idea of raising principles of actions whose validity becomes problematic and asking about their universal acceptability. Type 3 would be precisely those evaluations that are maintained even though the conditioning factors that gave rise to them no longer exist (and, thus, their origin has long since been forgotten). Hence these types of values appear to be mere preferences.

However, for that very reason, it would be advisable, at least, to reconstruct these evaluations' origins and review their current validity claims. If they do not present major drawbacks – for example, not eating certain types of meat when there is no famine – there is no significant reason not to maintain them as mere cultural curiosities. Otherwise, a discourse of application might show that they betray exactly the principles they were intended to serve. Certainly, as Jaeggi has pointed out, relegating them to the realm of preference would seem to immunise them from criticism. But as soon as maintaining them would infringe on the basic rights of citizens – to their survival, for example – it would infringe on universal norms (if we agree to their validity), and, to that extent, they would be open to criticism from a moral perspective.

Even when they do not violate basic moral norms, there is nothing to prevent us from examining their validity relative to their contexts of application for their intended purposes. Again, the discursive mechanisms would serve this purpose unless, as suggested from a Hegelian perspective, the claim to moral impartiality were to be questioned.

5. Regarding personal or community identity preferences and ideals

The cultural traditions of different communities are loaded with a multitude of practices, rites and institutions that are the result of 'value preferences' whose original meaning we have forgotten. Many religious practices that we preserve are of this kind, and they, too, are valuational. Some become semi-secularised festive rituals, transmuting their original purpose into one of social cohesion and community identity. Unfortunately, in some cultures, many obsolete value conceptions are elevated to the status of identity practices as immunisation strategies. In fact, many of these supposed 'identity preferences' violate universal moral norms (if we agree to them). Considering them merely as part of a distinct form of life cannot be the answer in such cases. Here, again, I fully agree with Jaeggi.[16] However, in an opposite sense, I think the problem is precisely that they contradict the principles of justice that we have accepted (if it should be the case), and it is based on these principles that they are open to criticism. The neutrality that is adopted in practice in these cases is a pragmatic neutrality that should not be confused with a theoretical neutrality, nor should it be defended as such. Moreover, it is possible that Habermas sometimes overlooks as theorical reasons those that are, in fact, pragmatic ones for conflict avoidance. These respond to phenomena of a psychological nature related to the right to cultural self-determination (crossing categories from the personal to the communal level). These aspects must be considered when resolving conflicts peacefully but ultimately belong to the realm of implementation.

The psychological nature of these conflicts is easily revealed at the personal level. It is enough to observe how – even when people act in determining their own existence based on knowledge, preferences and principles that are clearly harmful to their own health and well-being – they will not accept that others decide for them. Even if, based on evidence, they are shown to be

16 Jaeggi, R. *Critique of Forms* ..., cit., pp. 28-36

wrong, they tend not to give in easily. Moreover, very often, it is counterproductive to try to convince them of their error. They consider it a certain humiliation of their own capacity and of their right to exercise rational control over their own action, etc. to let themselves be *bossed around* or to see themselves diminished in their judgements by others.

This of course, is independent of the fact that we all have irrational aspects and emotional needs, which we demand to be allowed to occasionally exercise in peace as a form of recreation and rest from the demands of our own faculty of reason. However, I am talking about lorng term investments on clearly harmful practices. Communal identity reactions are in many ways similar. However, a society is not an individual whose right to stake one's own life we might consider, nor can it demand (for the psychological vanity of self-determination) that *its* members live a life determined on the basis of obsolete knowledge and closed to inspection. One cannot so easily extrapolate from the right to determine one's own life – or death – to the right of a state to determine that of its citizens as if it were equivalent property.[17]

Now, if the problem is related to the difficulty *in some cases* to determine whether some practices or others are beneficial in the long term, or what is meant by beneficial beyond those constitutive dimensions of human life protected by moral norms (if we agree to them), or whether the available knowledge is sufficient to believe oneself entitled to dictate it, then we are in another scenario. In this case, we would truly be in the realm of preferences. This need not mean arbitrary preferences, but opting for those options that, according to our knowledge, seem the most correct or appropiate to our case. Appealing, likewise, to intellectural humility as not to tell others, individually or socially, how to do things. This is not equivalent to recognising that since knowledge *evolves* over time (and not, as is sometimes implied, is continually falible), we cannot adopt an objective point of view from which we can judge both claims to knowledge and other practices and behaviours when appropriate.

Finally, personal preferences about the good life also admit cognitivist considerations to some extent – that is, if there is a difference between the arbitrary preference that merely identifies volition with goodness, and prefe-

17 In this respect, I think that the discussion on the 'Responsibility to Protect', where the need to counteract the subordination of citizens' rights to the conditions im posed by the state in which they are enrolled, is very pertinent.

rences or attributions of goodness that we take to be meaningful. In other words, those that would admit second-order preferences in Harry Frankfurt's scheme, reflexively wanting or approving what was wanted spontaneously at the first-order level because it was considered, upon reflection, good, valuable, etc. with a view to an objective or hierarchy of objectives whose ultimate goal (if we follow Aristotle and, in this sense, Habermas as well) would be personal happiness. Thus, here again, the weight of value attributions would fall on the goals.

Not only can we say that an action *truly* serves an objective and to that extent is good for that end and is evaluable in terms of correctness or truth, but also, with respect to our objectives, there is room for second, third, fourth or *nth* order considerations. We can ask to what extent these objectives ultimately serve the satisfaction of the ultimate objectives of my life and by reference to these they are good. I will not go further into this point now, but I will come back to it later. However, leaving exceptional cases aside, the difficulty of these issues and the importance of self-determination for personal identity make it advisable to adopt clarifying and not imposing attitudes in the first-person case.[18]

In conclusion, we can say that the terms of the distinction between morality and ethics are not sufficiently defined in the sense of the values/norms duality, the sense of universality/particularity or in the sense of cognitivism/non-cognitivism. On the contrary, if anything seems to be determinant, it is rather the universality (or fundamentality) of the goals, and this would be shared by some value conceptions and moral norms. We have also pointed out that a good number of ethical evaluations would admit discursive treatment to determine their validity once they have been adequately formulated. However, whether this is possible and whether it has any prospect of acceptance will depend precisely on whether we can defend the existence of an objective point of view for our evaluations. That is, it depends on the extent to which we can respond to the criticism that what is offered from the moral standpoint is a) merely identifiable with the liberal standpoint, b) a mere formalism reducible in practice to mere historically determined factual agreements and on the basis of c) historically refutable knowledge.

18 Habermas, J., *Erlauterung zur Diskursethik* ..., cit. pp.100-119, refers to psychological analysis as a form of personal clarification in such cases.

Therefore, it is necessary to review how classical transcendentalist or post-metaphysical fundamentalist approaches can defend both the stability of their formal or procedural proposals and the results of these.

1.2. The foundations of morality again

In what follows, I reconsider the foundational proposal of DE, but in the wake of it, I readjust some Kantian elements that, from my perspective, allow us to reconstruct implicit steps needed to complete a more solid formalist foundation of morality capable of responding to standard criticism.

If, as we have said, the universal acceptability of the goal from whose satisfaction the correctness is derived determines the claim to universality of moral norms and evaluations, the first thing to do would be to clarify what that goal is. However, this is precisely what seems to be not entirely clear in the formalist approaches of the Kantian type, as well as in DE.

In fact, the criticism that these approaches are mere empty formalisms seems to ignore the possibility that a formal approach could carry within itself the conditions of its validity.[19] In this respect, I argue not only that this criticism, which Hegel once made against Kant, does not apply to Kant but also that it does not apply *especially* to Kant[20] , for whom the appeal to the human being 'as an end in itself' already marks the hybrid 'formal-epistemic' pole of reasoning.

In the Kantian proposal, when we consider the norms that human beings would choose as a universal law, we are already referred, *on pain of contradiction*, to those whose generalised following would not go against that which makes their very choice possible and meaningful for us. That is, those that would not go against their full existence as the rational and social human beings that they are and, only to that extent, in need of norms of action and with interests with respect to them. They themselves, their own psychophysical and social existence, are the conditions of possibility for everything that (beyond this existence) they might want and for their choice of norms themselves. Indeed, it would make no sense to choose norms whose generalised following would

19 This is a formal argument in terms of existential conditions of possibility, which is completely different from requiring a substantive principle on the basis of which the rule is confirmed.

20 Cf. Kant, E., *Fundamentación de la Metafísica de las Costumbres*, trans. Manuel García Morente, Madrid, Colección Universal Espasa Calpe, 1921, from the German *Grundlegung der Metaphysik der Sitten*, (1785).

amount to exterminating the existence for whose governance we choose them and the reasons we have for doing so.

In my view, the Kantian appeal to the human being 'as an end in itself' is more fundamental than Kant's argument about the logical contradiction of universalised maxims in the case of lying or false promising since the breakdown of the very institution of promising, for example, is relevant for us because of the impact its absence would have on our existence, and that precedes and is not a result of the contradiction of our maxim. It rather reveals its importance in that more original sense.

This second formula of the categorical imperative is not an *extra* substantial goal that we set for ourselves in respect of which we consider a norm to be valid. Through a reflexive process, the appeal to the 'human being as an end in itself' turns from a condition of possibility, into a limiting goal that everyone could recognise for themselves when choosing norms to govern our life. This, I believe, is how Kant himself thinks of it. Awareness of this fact would lead us *to understand* that respect for or protection of the human being, thus understood, is the ultimate objective of our normative reflection.

Discourse Ethics, in its desire to overcome the monological and solipsistic character of the Kantian approach, which, after the Hegelian criticisms and the linguistic turn, seems untenable, renounces this path to determine what constitutes the specific 'moral' point of view from its perspective. This, however, amounts not just to a transformation of the Kantian position but, in a way, to a deviation from the original Kantian route by proposing a significantly different foundation of morality. Since in the original approach of DE, this self-referentiality, which without abandoning the formal approach brings us back to the object that marks the ultimate goal of the norm, is lost.

As Apel, K.O.[21] argues, replacing 'I think' with 'I argue' we overcome a conception of the subject of knowledge as an isolated cognitive individual, which would obviate the always intrinsically linguistic (and, thus, social) nature of the human being. This is decisive when it comes to the determination of specific moral norms and the need to justify our judgements through argumentative processes of a linguistic nature. But the Kantian approach is a truly formal-logical approach that does not contradict the *later* DE proposal that explains how the specific evaluation of norms is to be carried out according

21 Here, I use a short online text from Apel, Cf. Apel, K.O., "Discourse Ethics", https://www.mercaba.org/DicPC/E/etica_del_discurso.htm.

to what is specified in the logical reconstruction. That we should use language in formulating the procedural approach does not mean that what we are proposing is any more socially dependent than mathematics because of its being expressed in a common language. In fact, what Kant does is to make the Cartesian Cogito productive for moral purposes: (i) if wanting or choosing norms requires existence, and (ii) only because of existence does it make sense to want something, (iii) you cannot want that which prevents you from wanting and the sense it can make for you to do so.

This can take the form of a paradox: the set of all the norms I can want to govern my life cannot include norms whose observance amounts to getting rid of the life for whose governance it made sense to want them on the first instance. Or put it otherwise, the set of all the things I can want for my life cannot include a member that implies the negation of the set itself, which, if I am not mistaken, would be a version of a set-theoretic paradox. It would be a confusion of levels to claim that the linguistic form of the expression must in all cases affect its correctness equally, subject it to historical vagaries or misgivings about its possible fallibilistic invalidation or require consensus to determine its truth. It is characteristic of formal statements that they do not depend on experience for their truth.

However, at least since Frege, formal reconstruction already includes a reference to epistemic objects in the abstract. We can get a better or worse formulation of the logical structure at stake, to express that it would be a paradox to deny it. However, it is the necessity of reasoning which determines that all those who follow it can come to ascertain its correctness.

First, substituting 'I think' for 'I argue' does not seem to allow us to self-referentially deduce the existence of others in the same way as in the first-person case, as these others could be given in the imaginary of the transcendental self. Nevertheless, let us suppose that we can and do follow the Kantian route; from here, we could not directly deduce either that, when choosing norms, we would have to choose those that would safeguard the lives of all concerned. There would not be the same kind of self-referential necessity in reasoning as in the Kantian case.

In fact, this is not the DE line of argument either. Following Apel's reconstruction, the awareness of the subject as always already immersed in communicative practices of argumentation leads us, via a reflexive-transcendental procedure, to recognise that these practices are not possible without

the recognition of the other as an equal with the same rights of participation and claims to validity. That is, these practices are not possible without the recognition of moral presuppositions. This morality implicit in the argumentative exchange requires the recognition of the right of all others to determine which norms would be correct under identical conditions of equality.

However, as Tugendhat, E.[22] contends, this *alone* does not lead us to the moral point of view or to the conclusion that the necessity of norms and their consequences must be equally in the interest of everyone. Only by presupposing the Kantian argument (i.e. that everyone at this juncture will reject that which negatively affects one's own existence) do we come *to understand* that everyone involved will want the norms to safeguard everyone's existence.[23] In other words, it is only when, adopting the perspective of the other, we think about what is necessarily at stake for those subjects we recognise as equals, that we come to this conclusion. Given the logical character of the argumentation at this level (where the 'moral point of view' is being determined), it is not necessary for each of them to confirm it. In fact, in the formulation of principle (D), Habermas refers to the norms that we can all choose *as affected persons*, thus picking up on the Kantian self-referentiality of the human being as an end in itself.

However, while the Kantian context remains at the formal level, DE refers to factual (ideal, but factual) situations of argumentation. For this reason, Habermas considers it necessary to complement (D) with the principle of universality (U), as the fact that everyone chooses norms that safeguard their own existence, insofar as they are affected, does not mean that everyone sees the need to safeguard that of everyone else. According to Habermas, this purely monological use of reason would be avoided by means of (U). (U) requires reference to the interests of each individual, both in their choices

22 Cf. Tugendhat, E., *Lecciones de Ética*, Gedisa Editorial, 1993, pp. 157-158.

23 Ibid. p. 160. Tugendhat offers a different argument for the role of the categorical imperative (CI) in the construction of Discourse Ethics, but he also considers that the implementation of this reasoning is not discursively grounded. The CI is considered a reason to require affected persons to be consulted to express their particular interests, which is ultimately bassed on the recognition of their autonomy. From my perspective, the participation those affected is not necessary for this reason; the CI offers to any reflective subject the knowledge that each affected person cannot want norms that go against the conditions of possibility that lead them to want moral norms at all.

of norms and in their consequences, thus also responding to the utilitarian critique.

There are two important issues to consider here, the first of which refers to the discrepancy between the Kantian context and that of DE. In my opinion, the Kantian proposal offers us a formal structure in wicht in the variable of the choosing subject we can each time place the *existential representation* of an individual, which, by virtue of self-referentiality, will also be the existential *object of* reflection. Each of us can use this structure and see that by placing different individuals from an ordered domain in place of the reflecting subject each time, we will obtain the same result for all of them. Namely, each one will want to safeguard his own existential place.

In this process, the architect of the experiment does not have to identify himself with any of the concrete existential places, which mark that they are of different individuals despite being existential representations. Rawls's model[24] seems to be constructed in a similar way so that the voter does not know which individual in the domain will be equivalent to his own existential situation and, thus, may want any of them to benefit from the rule. In this sense, Rawls's model would be akin to the reconstruction I am proposing of the Kantian structure. The veil of ignorance would be nothing but the use of the described structure, satisfied each time by the different places of existence as if it were a theatre. Habermas rejects this proposal in the case of Rawls because he understands – correctly, I would say – that Rawls wants to use this procedure for the choice of concrete norms. In his words,

> However, with (U) I have given a version that excludes a monological application of this principle; it only regulates the discussions between the different participants and even contains the perspective of the actual discussions to be held, in which all those concerned are admitted as participants. In this respect, our principle of universalisation differs from Rawls' well-known proposal.[25]

Habermas suggests that Rawls's proposal would still be a monological application of the Kantian approach. I do not see this as a problem when we talk about the formal procedure; rather, I would say that it is the best way to reach the moral goal (perhaps also implicit in DE). However, Habermas is

24 CF. Rawls, J. *A Theory of Justice*. Cambridge Mass. The Belknap Press of Harvard University Press, 1971.

25 Habermas, J. *Erläuterungen zur Diskursethik*...(cif.), p. 76.

right in claiming that this monological procedure cannot be used to choose concrete moral norms. It merely serves to conclude that it is in our interest that the norms we choose, whatever they may be, take equal account of the interests of each individual.

Stepping back, we would have to distinguish very clearly two moments: 1) the determination of the procedure by which we obtain the moral objective and 2) the use of the procedure obtained in the choice of norms. I have argued that monological use is not a problem and is presupposed in DE reasoning for 1), but the monological approach is insufficient, and the discursive approach is superior for 2). That is, in the factual situation, one would occupy a specific place, and one knows this, from that place, one does not necessarily want the interests of those who occupy other places to be served as well, even if one can understand that they want it.

Understanding it is not the same as wanting, and Kant is aware that the intervention of volition is required for this in his model. Habermas intends to resolve this point by means of (U). With the introduction of (U) the participants in the factual situation will be required to accept only those norms, the (foreseeable) consequences of whose generalised following are in the interest of everyone.

Here we come to the second question I want to consider: (ii) How has (U) been derived in Habermas's approach? According to Habermas's explanation,[26] (U) results from the 'operationalisation' of (D). (D) tells us when a norm is correct (i.e. when 'all those affected as participants in the practical discourse would agree with its validity'). However, when we ask ourselves in which case the participants would accept the norm, we conclude (via Kantian reflection) that each one would accept it when its generalised observance is in the interest of everyone.

This reflection also provides us with the moral objective. Once this *understanding* is achieved, if we go forward to consider factual discourse and the need to agree with other participants (that is, given this need for agreement and having concluded that each person will want to protect his own existence) we will *also* want to protect the interests of all. In this way, DE explains how we move from understanding to volition in a necessary way in the practical situation of communication (which is absent from the Kantian approach).

26 Habermas, J. *Wahrheit und Rechtfertigung* ..., cit., p. 309.

From this point on, and when it comes to applying the procedure according to (U) for the choice of concrete norms, the procedure of DE is clearly preferable to the Kantian one. While the formal poles of reflection remain stable and historically immovable, our access to and understanding of what they refer to can only be epistemically and linguistically mediated. For this, as in any other field of knowledge, the exchange of information, the contribution of different perspectives and the joint search for truth are undoubtedly enriching. In our specific case, the discursive approach would allow us to respond to two issues more adequately. The first one is especifying what safeguarding or benefiting the existence of (every) psychophysical and social human being (Kant) or 'the interests of each one' (Habermas) would consist of in. The second one would be determining when widespread adherence to the norm would contribute to this and allow us to affirm its correctness.

Moreover, as Habermas and Apel argue, discursive practice, insofar as it (1) already places participants in an ideal situation of mutual recognition in pursuit of truth and (2) is oriented towards understanding and agreement, requires inherently from them to adopt the perspective of the other to assess their arguments.[27] However, making the procedure epistemically concrete is precisely what shows the dependence of agreement on factual aspects that depend on our knowledge; what would seem to set the ground for criticism as to the possibility of a universalist foundation that could serve the ambitions of a-historical objectivity to which DE aspires. Thus, it is argued that such knowledge is fallible and revisable and, therefore, does not provide the required stability according to the supposed foundation for social critique.

Habermas's[28] response to this question consists of differentiating between the truth of theoretical statements and the conception of truth attributable to practical normative statements in terms of correctness. Just the correctness of the latter would depend on the agreement of human beings. I cannot explain this argument in detail here, but I will say that I do not think it serves Habermas's aims for reasons opposite to those that Habermas puts forward. The point is not that there is a difference in this sense between theoretical and practical statements but rather that there is not, not because the practical ones are governed by epistemic criteria and the others are not, but because both are governed by epistemic criteria.

27 Habermas, J., *Erläuterungen zur Diskursethik* ..., cit., pp.13-14.
28 Ibid.

In fact, the attribution to the statements of theoretical knowledge of a realist conception of truth is precisely what underlies the Hegelian, idealist conception of knowledge, according to which all our knowledge is always fallible and subject to a process of continuous change, whose truth would ultimately depend on a transcendent entity. All that is rational is real, but only after the realisation and objectification of the spirit, when we would supposedly reach an ideal identity.

Insofar as the truth of our judgements depends on a reality independent of what we can say about it, we can never know whether what we hold to be true is the truth, and therefore, we can never rely on it with the necessary firmness. Tomorrow, everything could be revealed as false. This view of knowledge, thus understood, is pernicious and illusory. It is true that knowledge evolves and that new empirical discoveries allow us to draw new conclusions, restrict our generalisations, refine our concepts, consider new phenomena, and add new data. However, this does not mean the continuous falsification of our statements. Who would dare to get on a plane if that were the case? Who would dare to take penicillin, who would eat all the food we eat without fear of poisoning, who would dare to launch a rocket to the moon hoping to come back, who would let his heart be ripped out and substituted by another one, and who would write on a screen to his beloved one waiting for a reply to come from the other end of the world?

In fact, the realist conception of truth is questionable for more than one reason. First, it presupposes that there would be a reality capable of making our statements true, independent of what we have or would have (if we are not present) to say about it. That is, if we state, for example, 'There is a teacher in the classroom', whether there is or not would be independent of what we humans equipped with the necessary linguistic capabilities can or could (if we are not present) recognise as making our statement true. This amounts to presupposing the existence of a reality already individuated in itself according to our concepts, something like a 'ready-made world' in the sense of the first Putnam.[29] Reality itself would present *eidetic* instantiations of our concepts which alone deal with the truth of our statements. Thus, conceptual application would respond to the model of 'rules as rails' denounced by

29 Cf. Putnam, H. "The Meaning of Meaning", included in *Language, Mind and Knowledge. Minnesota Studies in the Philosophy of Science*, 7, Keith Gunderson (Ed.), Minneapolis, University of Minnesota Press, 1975, pp. 131-193.

Wittgenstein,[30] a mechanical process that would proceed without our mediation as if everything had already been predetermined.[31] When it is not clear from the outset precisely which states of affairs would fall under a concept, we often encounter borderline or debatable cases with respect to which it is necessary to decide whether they are to be included in its extension. Hence, it is necessary to resort to our own judgement to determine this or, if necessary, change the concepts themselves.[32]

Second, the realist conception cannot be asserted based on the fallibilist assumption. For, while error in our checks is possible -and it might not be true, for example, that the person some of us saw at the front of the class was the teacher - to show such error requires, as Wittgenstein also argues, our own appreciation anew to determine what we now do consider correct by making the former false on the basis of the same means. Habermas clings to the epistemic conception of truth as correctness in the practical case because of his willingness to argue that the correctness of moral norms depends on what we can determine and, therefore, assume to be valid. If this validity were dependent on a truth that transcends our judgements and about which we can always be wrong, the very basis of the critique is undermined. However, if the supposedly constitutive difference between theoretical and practical statements were maintained, we would be in that precise scenario (or, at least, we would be if we were to maintain a realist conception of truth for theoretical statements). On the other hand, defending our ability to determine the validi-

30 Cf. Wittgenstein, L. *Philosophical Investigations* trans. by Anscombe, G.E. M. Macmi llan Publishing Company, 1953. § 218-

31 Cf. Wright, C., *Rules to Infinity*, Cambridge MA, Harvard University Press, 2001, has often argued against such a reading of Wittgenstein, pointing at the epistemic character of assessment and the aforementioned argument from Wittgenstein against the sceptic.

32 The position defended here is by no means that of a naive realism of the kind of McDowell, J., *Mind and World*, London, Harvard University Press, 1994. That truth can be attributed only to our assertive utterances and does not exist in any real or ideal vacuum (reality simply is what it is; it is neither true nor false except with respect to what we can say about it) does not mean that reality has to be conceived as conceptual, nor, indeed, that we cannot access a pre-linguistic reality which we cognitively structure afterwards by applying concepts and on the basis of which the concepts themselves are introduced. This is quite different from clai ming that reality is in and of itself an eidetic version of our concepts to which we can refer to in general independently of them.

ty of moral norms does not imply denying the revision and nuance of these norms in successive discourses or reconfirming what is already known.

I will now question whether there is such a constitutive difference between the correctness of theoretical and practical statements. Habermas argues that the justification of moral norms does not depend on our knowledge about the world in the same way as the justification of theoretical statements does. Moral norms refer to the world of social relations, and a norm is correct if it gains the discursive acceptance of those concerned. This acceptance does not depend directly on states of affairs, hence Habermas's formulation of (U) where the correctness of the norm depends on the extent to which it safeguards the interests of each individual, the latter being determined precisely by their agreement with respect to the validity of the norm. That is, *what* the interested parties appeal to when agreeing on the latter is left out of the equation; it is enough for them to confirm that it is in their interest.

However, if Habermas does not want to suffer Lafont's criticism, according to which the DE proposal implies an empty[33] decisionism, he must offer a different reading of this idea. Otherwise, it could be understood, as Lafont suggests (and as we pointed out above), that the acceptance that determines the metalinguistic correctness of the norm would depend on those affected confirming that they accept it, thus expressing that it is in the interest of all of them. This amounting to nothing other than a new formulation of the agreement. In my view, neither formally (in the sense argued above) nor to maintain the internal coherence of his own approach can Habermas avoid the fact that there must be something for the participants in the discourse to consider in determining whether the norm is in their interest. This does not mean that it will not be through the epistemic ascertainment of their interest (achieved through such considerations) and their corresponding acceptance of the norm that the rightness of the norm is determined, as he wants to defend.

33 Lafont, C., "Realismo y constructivismo en la teoría moral kantiana – El ejemplo de la Ética del Discurso" *Isegoría*, Nº 27, (2002), pp. 115-129 (in English Lafont, C. "Can Constructivism be reconciled with Ethical Realism" *Ratio Juris*, Nº 17, 1, (2004)). Also, other authors such as Tugendhat, E., Lecciones de Ética ...,cit. pp. 161-162, (Tugendhat, E. *Vorlesungen über Ethik*, Frankfurt, Suhrkamp, 1993, Davis, F. "Discourse Ethics and Ethical Realism. A Realist realignment of Discourse Ethics", *European Journal of Philosophy*, Nº 2, 2, 1994, pp. 125-142. have similarly found confusion in the way the validity of the norm and its legitimacy is determined.

Habermas's second motivation for opposing a realist conception of truth on the practical realm is his rejection of a conception of human interests in metaphysical terms, and Lafont's defence of such in terms of the existence of a sphere of interests independent of what we may say about them.[34] But, we need not accept this; Habermas can maintain an epistemic conception of truth without denying substantive content to the agreement.

The dispute between realists and anti-realists in this respect should not be understood in the sense that there is an object of agreement for the first while there is no such object for the latter. Rather, from the anti-realist position, something can be determined as being in our interest only from the human perspective. This does not mean, as Habermas sometimes would seem to imply, that all those affected must participate in the agreement to express their acceptance or to express how the norm affects them and that only then could we consider the norm to be correct. This demand would be understandable only assuming that since interests do not exist per se without a subject that generates them, we could only know about them through the first-person perspective in their contribution to the discourse.

However, this does not even seem to fit with Habermas's point of view. Although interests are not guaranteed, calculating them from a third-person perspective is by no means unthinkable; in fact, the possibility of role-undertaking – which, according to Habermas, is connected to the argumentative exchange – would allow for just this. For one to see this point more clearly, we should consider what interests really are.

Firstly, an interest expresses a certain propositional attitude of a subject in pursuit of an object (the object being understood in a broad sense as an action, situation, or event). This propositional attitude is always a function of an informational state. Simply because I have prior information about how something is directly or indirectly beneficial for beings like me or for some of my goals, I generate interest in that thing.

Thus, interests are also attitudes that develop based not only on information but also on prior evaluative judgements. An interest would make explicit that something (about whose value and capacity to affect me I have previously informed myself) is in favour of (or against) my particular life goals. I may or may not want it, but I can still see, based on the knowledge I have of it

34 Habermas, J. *Wahrheit und Rechtfertigung* ..., cit., p. 308 y Lafont, C. Ibid.

and of myself, that it is in my interest.[35] If this is correct, and if this information can be made available to a third party (both the possible benefit and the characteristics of the person), that third party could, on that basis, *calculate an interest* on my behalf the same way I would. Thus, it would not be necessary for everyone in the discourse to agree on the correctness of the norm. We can expect that, given the necessary information, they could, following the same procedure, confirm their interest and this way come to generalizable interests. Not because this is a special condition in the case of practical discourse (as we have said) but because no other way of determining the truth of the discourse is available to us. In this sense, one could understand Habermas's demand that everyone must be able to approve, keeping the conception of epistemic truth in terms of correctness (*Richtigkeit*) that he wants to defend.[36] In fact, in the last formulations Habermas offers, he speaks of 'deserving recognition' (*Anerkennungswürdigkeit*). In other words, it is precisely a question of the participants *being able to* recognise the validity of the norm, not of their actually doing so. Perhaps the insistence on acceptance by all is an attempt to ensure the availability of the information necessary when considering whether something is in the interests of the other participants.

However, this conception would create a dilemma for Habermas, as he would have to renounce the realist conception of truth in the theoretical realm. Since the appeal to experience to determine those aspects necessary even to determine the interests themselves, would seem to demand understanding in terms of the realist conception of truth he has adopted for theoretical statements, thereby returning him to the problems he wanted to avoid with the epistemic conception for practical discourse. In my opinion, this renunciation of the realist conception, far from being a problem, would be an advantage in general. The extent to which we can rely on our knowledge about reality, especially about ourselves and our most basic interests, has been continuously reaffirmed for centuries. The fact that we can do so reconfirms us. Tomorrow

35 Note that the recognition of necessities works in a similar manner. What he call 'necessities' are also propositional attitudes derived from the recognition of situation of scarcity or malfucntioning of a body and obtained information of what could restore its well being. As a result, a desire of it, or interest in it, can be derived. As we see these attitudes allow building upon each other.

36 Davis, F. "Discourse Ethics and ..., cit., pp.125-142. Although his understanding of interests is different from that proposed here, and though he defends a realist position, there is an attempt to explain in a similar way why the participants would have to reach an agreement in the sense of Habermas.

we might discover that the energy we need to live can be obtained directly by some alternate means without falsifying that we need energy to live or that we get it from food. Similarly, there are many other aspects of our knowledge on which we can rely and on whose reliance our life is possible at all.

Having rethought the validity and stability of the fundamentalist approach, let us now return to reconsidering the possibility of a cognitivist perspective and a critical reflection on ethical issues.

2. *Hierarchy of objectives and ethical awareness*

The reconstruction that follows requires adapting both the Habermasian and Kantian approaches. Since I am aware that, on the one hand, it amounts to doing certain violence to Kant's proposal consonant with the previously proposed subordination of the universalization of maxims to the idea of the human being as an end in itself[37]. On the other, it also reinterprets the moral dimension in Habermas's case, unifying it structurally with the prudential and ethical ones. But I believe that ultimately the proposal need not go against either the spirit of Kant or Habermas, and it allows, from my point of view, to systematize more clearly the different cases through a common structure.

Earlier, I said that most evaluations are by reference to a goal. Habermas[38] recognises this with respect to prudential or pragmatic values and ethical preferences. The former would respond to the strategic structure of means to practical ends; the latter would depend on communal or personal goals linked to the determination of one's own identity. But, in the moral case, although Habermas[39] argues that the DE procedure requires the use of a substantial content expressed from the moral point of view, he does not recognise that this could also constitute an objective. However, I want to argue that this is just another case in which the determination of the value of the norm is decided by referring to an objective. As mentioned above, Habermas wants to deny that, in the moral case (where it is a matter of making prac-

37 What is meant here is that, althought the temporal procedure of reflection acor ding to which (1) we ask ourselves about the universalization of norms and (2) arrive at the idea of the 'human being as the ultimate goal' would situate this se idea afterwards, from the point of view of its fundamentality we can say that it is because of (2) that the choice of specific norms in (1) makes sense and has value for us and is to that extent subordinated to it.

38 J. Habermas, *Erläuterungen zur Diskursethik* ... cit., pp. 100-118.

39 Ibid., p. 21

tical decisions about what we should do), what is at stake is the verification of statements upon reality. He is right in that normative statements are not assertive statements that we can verify on the basis of empirical experience. An imperative statement that says, 'we must do such and such' can be justified only by reference to a 'why?' (e.g., 'Why should this rule be respected?'). The answer is always 'because it serves a purpose' because its validity is *with respect to it* beneficial.

In my opinion, in the three practical cases pointed out by Habermas (i.e. pragmatic, ethical and moral), we would have the same structure: *a functional* structure. Such a thing, be it a norm, a behaviour, or an object, is valued to the extent that it satisfies a previously determined function. Kant characteristically denies that this structure, which he recognises for what he calls hypothetical and prudential statements, applies in the moral case. The moral 'ought' would not be so by reference to a goal but would be good categorically. However, with the introduction of the human being as an end in itself, Kant marks not the absence of an aim but *the ultimate aim* of all evaluation, which is not the same thing. The structure of the evaluation of the moral norm is the same; it is the aim that would be 'the ultimate'. In this sense, Kant recognises a hierarchy of aims that is not so different from Aristotle's, where the ultimate aim is the one with respect to which it is no longer possible to ask what it is good for - what is human life good for? A supra-norm that tells us that we must respect human life as a function of another more all-encompassing norm that progressively advances towards a new end would not fit. This is where the justification of the objective works backwards by reflexive self-referentiality to the conditions of possibility of the choice of norms itself because its negation leads to a contradiction. The categorical is, in fact, the ultimate and fundamental objective, but it does not cease to exist. As we also said before, in the formulation of the problem of DE, the Kantian justification is abandoned in order to obtain (U), thus renouncing the most direct way to reach the moral objective. Meanwhile, to the extent that the acceptance of norms by reference to (U) is understood as a discursive acceptance that expresses the interests of the participants, the existence of an objective would seem to be neglected and diluted into mere acceptance. However, we have also seen that we must not confuse the fact that its determination can only have an epistemic character (and depend on our verification) with its non-existence.

2.1. Extending the formal structure of practical reasoning.

In this section, I want to address how the different levels of practical thinking might be integrated and how the conditioning relations among them emerge. If we accept the reconstruction we have given and the Kantian idea of an ultimate and fundamental goal, which suggests the idea of a hierarchy of goals, we can take up the above discussion of ethics and, from this perspective, ask how ethical and moral evaluations fit together. Since, on the one hand, the particular historical human being who asks himself what he ought to do is, in turn, an instance of the general human being of Kantian reflection. On the other, the particular society in which he has to interact with others is an instance of the society of interpersonal relations of people with each other. Thus, the goals (and preferences) of this particular human being are expected to be circumscribed or have as their ultimate ends the general goals of the moral formulation and, likewise, the social norms in particular contexts be bounded by those that regulate the interactions of men in social contexts in general. Thus, I intend to expand the formal approach to include certain elements of stability in the changing structure of its embodiment in specific historical contexts. It would be a matter of rescuing the stable elements in an approach that could incorporate in some way both Kant and Hegel.

Let's start by outlining a hierarchy of objectives and consequent assessments:

a) *General*. For specific purposes: playing football; playing the piano; saving the environment; or the survival of plants, animals, or humans.

b) *Human*. For the survival and development of the human being and under consideration of his psychophysical and social constitution.

c) *Social*. For the regulation and organisation of life and social relations in general. (physical interactions and traffic, exchange of goods, human relations...)

c.1. under specific contextual conditions of societies S1, S2, S3.

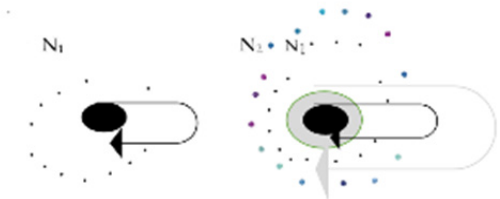
d) *Personal*. For the determination and well-being of my personal life.

Habermas's pragmatic goals would fall under a). Although they can be structured into hierarchies from a personal point of view, I have included them indiscriminately here. Among these, I have placed the survival of living

beings since there is nothing in structural terms that differentiates the functional character of our evaluations by reference to this particular end, nor does that which would be considered beneficial towards this end have, in principle, any moral nature. Determining it is rather, likewise, a purely empirical question.

From the survival of the human being as such, we move on to the need to regulate social interactions, which will constitute an objective by reference to which we will evaluate the institution of norms. These may need to be adapted to specific contexts and may merely be forms of organisation of mobility, space, exchange of goods, etc., or they may refer to the relationships among human beings. Finally, in the light of the above, concrete individuals will have to determine the objectives of their personal lives.

Notice that the self-referential question posed when considering the ultimate end of the norms that are to regulate human relations, is posed first at the a-historical level, taking into account the human being as such (first figure) and then again at the historical level, where we find a human being immersed in a given context (second figure).

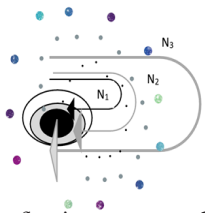


In the first exercise of self-referentiality (Figure 1), the terms of reasoning are whatever determines the preservation of the life and development of the human being in what constitutes it as such and (via discursive participation if we accept the DE proposal) the determination of a series of norms that, negatively, as Habermas says, would serve this purpose (represented by the first line of dots in Figure 1).

To determine this, we will use the empirical information and the corresponding assessments accumulated in this respect. When the exercise is carried out again in Figure 2, we find a subject in a given context whose survival and development may require concrete specifications. The norms that are benefi-

cial for this purpose will have to be applied in consideration of the conditions of the contextualised human being and his specific context. This contextualised human being is signalised through the grey zone in Figure 2. This must be done without ignoring the constitution that this subject has in common with all other subjects of the type in other contexts, the norms that are beneficial for the particular situation cannot contradict those that are beneficial for the general one, for they are ultimately applications of the latter to the context.

If we think of the particular individual with his or her psycho-biological specificities, specific vulnerabilities, gender characteristics, 'race' peculiarities, etc., we can close the circle a little more. Again, the ultimate goal of the reflecting subject – now characterised as the result of the three sets – is the preservation of his existence as a human being. However, this goal is constrained by specific circumstances (which may be either those of his own culture or those of the present global culture in which he is embedded) and the peculiarities that characterise him as an individual. This is marked through a new white circle surrounding the grey one in Figure 3. He cannot choose goals for his own life that are contrary to his survival, considering the demands placed on it in a given environment or environments; nor can he guide his particular actions by N3 principles while ignoring the level 1 norms (N1) and the level 2 norms (N2).[40]



These structural layers of reflection are not deterministic, if there is an apparent conflict between what the particular social context requires, for example, and the constitutive characteristics of my existence as a human being, instead of trying to preserve my existence in the context, I can change

40 This reconstruction is not meant to be a reproduction of the foundational process, which would require considering the existence and interests of all those affected and determining the corresponding norms from that perspective. It is instead exemplifying what is it that any reflecting subject considering his own existence as an ultimate end has in view at the different levels of concretization and his consideration for the norms that protect human life from each of these perspectives.

the context such that the conflict ceases. Such conflicts expose the order of relevance in goal setting. Even if I am immediately constrained by my particular circumstances and the demands of my context and historical moment, the defence and preservation of the characteristics that constitute me as a human being prevail. Similarly, if the norms of behaviour (or institutions) applied specifically in my society were to conflict with the norms that we have considered to govern the relations among human beings, the latter would prevail at the expense of the former. In a way, this is nothing new, yet this reconstruction showing normative forms of dependence as a constitutive structure of the human being and its reflection in the different stages of its concretisation, as well as the levels of normative constitution and interdependence, clarifies that, far from being an arrogance of the 'liberal way of life' (as it has come to be said), we are dealing with a structural phenomenon.

From a critical point of view, this also allows us, to arrogate to ourselves the same measure of authority when assessing the structural relationships in the application of norms in specific contexts or existing restrictions upon the development of constitutive aspects of the human being. Likewise, it serves the scrutiny, from within or without a given social context, of those norms or implicit normative concepts which might have become spurious or obsolete.

Of course, beyond those normative restrictions based on fundamental objectives, particular conceptions of happiness can be plural, as Habermas says. However, this plurality would take place within a stable formal frame of reference.

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olgaramirezcalle@gmail.com