

MORALITY AND THE MEANING OF LIFE

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THE RESPONSE OF DISCOURSE ETHICS

to the Moral Challenge of the Human Situation
as Such and Especially Today

(Mercier Lectures, Louvain-la-Neuve, March 1999)

Karl-Otto Apel



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or “transcendental solipsism”⁹, and Husserl claimed that every “honest thinker” has to start out from this ultimate position.

Now, under this presupposition of “transcendental solipsism” no *transcendental* foundation of ethics can reflectively be uncovered as belonging to actual thought or self-consistent reason. Not even the *need* for such a thing as *ethics* can be found on this condition. For it thus far appears, as if *reason* can be thought as a faculty of an *autarchic subject*, for which only objects are thinkable or cognisable.

Quite different, however, is the foundational situation, if we had to start out from a *transcendental inter-subjectivity of actual thought*. Now, this, I would claim, is indeed our primordial situation, given the fact of reflection that every thinking or cognition of *something as something*, and in this sense even the *reflective self-understanding* in the judgment “I think” (or, respectively, “*je pense*” or “*ego cogito*”), must already presuppose a *mediation of its intentional meaning* through a *public language*.

At this point, the *transcendental-pragmatic* dimension of the so called “linguistic turn” of philosophy in the twentieth century becomes relevant. For it shows itself that philosophically relevant *thought* has always already the structure of *public argumentation*. As such, however, thinking is not *autarchic* in the Husserlian sense of “methodical solipsism”, but it *transcendentally* presupposes a *public language* and, together with this, a *communication* or *discourse community*. (This holds even for empirically solitary thinking; for as serious thinking implying *claims to inter-subjective validity*, it has the same structure, in principle, as has argumentation in a public discourse. Thinking is, according to Plato, the “*voiceless dialogue* of the soul with itself”¹⁰; and we can know today that this voiceless dialogue is only an *internalisation* of a *real dialogue* with partners who can function as opponents and hence have to be convinced by arguments. In short: *Thinking*, understood as *argumentation*, always presupposes, in principle, the *existence and cooperation of discourse partners*.

Now, with this ascertainment, we have opened the door for an ultimate foundation of *ethics* through transcendental-pragmatic reflection. For, by overcoming the methodical or transcendental solipsism of modern times’ philosophy of the *subject* of thinking, we have uncovered the *transcendental dimension of inter-subjectivity* which is at the same time the *foundational dimension of discourse ethics*. We now have to show what it means for the foundation of ethics that through transcendental reflection we can find out that, together with serious *thinking as arguing*, we always already must presuppose the *existence and cooperation of discourse partners*.

⁹ See E. Husserl: *Cartesianische Meditationen und Pariser Vorträge*, ed. by S. Strasser, 2nd ed., Haag: Martinus Nijhoff, 1963, especially V. Meditation.

¹⁰ Cf. Plato: *Sophistes*, 263d.

II.3. The Foundational Vantage Point of Discourse Ethics.

Let us now again apply, in reflecting on our actual thinking, the test of *avoiding the performative self-contradiction*, as we did in the case of Descartes’ *cogito, ergo sum*. We now can see that it is not only the *existence* of the solitary subject of *I think* that cannot be doubted or contested, if the self-consistency of reason has to be saved, but furthermore the *existence* of a *language* as *medium* of self- and world-understanding and the *existence* of a *communication community* as *discourse community*. And, since argumentation presupposes unrestricted cooperation of co-subjects of thought, it becomes clear that it also presupposes *fundamental ethical norms*.

This does not mean that through transcendental-pragmatic reflection on the presuppositions of argumentation we — i.e. the philosophers — could already detect *material, situation-related norms*, or at least principles, from which material norms could be deduced. But we can indeed uncover the *normative conditions of the possibility of a cooperative solution of problems by arguments*. And among these *normative conditions of argumentative discourse* in general — the distinction between *theoretical* and *practical* discourses is not yet relevant on this primordial level — there are also the *transcendental*, and hence *a priori valid, principles of discourse ethics*. These principles — which fulfil the criterion of being undeniable without committing a performative self-contradiction — indeed prescribe the *procedures of identifying and solving material moral problems* — as they may arise in cases of conflicts of interests — *through practical discourses* of the affected persons or their advocates. Now, what are the *formal and procedural principles of discourse-ethics* that can be uncovered through *transcendental-pragmatic reflection*?

It seems clear, I think, and undeniable in the above sense that, on the level of reflecting the normative conditions of argumentative discourse, we know that we want to solve all problems — and thus also the moral problems — *through arguments only*, i.e. not through strategic bargaining or rhetorical persuasions¹¹, and that by arguing, i.e. by providing reasons for validity-claims, we must, in principle, strive for a *consensus* of all possible discourse partners. (Arguing against the transcendental-pragmatic *consensus-postulate*, as in the case of J.F. Lyotard¹², of course also strives for consensus and thus immediately entangles itself into a *performative self-contradiction*. And this is

¹¹ Cf. J. Habermas: *Theorie des kommunikativen Handelns*, Frankfurt a.M.: Suhrkamp, 1981, vol. I, and K.-O. Apel: “Das Problem des offen strategischen Sprachgebrauchs in transzendentalpragmatischer Sicht”, in the same: *Auseinandersetzungen*. Frankfurt a.M.: Suhrkamp, 1998, 701-726.

¹² Cf. J.-F. Lyotard: *The Postmodern Condition*, Minneapolis: Univ. of Minnesota Press, 1984, 75.

completely independent from our empirical expectations of actually reaching consent or dissent.)

These indications of the aims of serious argumentation suffice in order to indicate that the following *normative principles* (or *fundamental norms of discourse ethics*) must always already be acknowledged:

1. All possible discourse partners must acknowledge each other as having *equal rights* in representing their interests by arguments.
2. All possible discourse partners are supposed to bear *equal co-responsibility* for identifying and solving problems of the life world through argumentative discourse.¹³

(This second principle is usually overlooked by philosophical reflection, because in traditional ethics *responsibility* is equated to *individual accountability for specific duties*. But this accountability presupposes already a *socially co-responsible attribution of duties*, as later has to be shown. Thus far it also presupposes already that primordial co-responsibility without specific accountability of duties that can be uncovered by *transcendental-pragmatic reflection* as being *co-original* (“*gleichursprünglich*”) with all discourse partners’ having *equal rights*.)

The pre-supposition of primordial co-responsibility shows that the *transcendental apriori of argumentative discourse* must not be understood as a language game among other language games that has its purpose in itself and may be played or not, according to one’s arbitrary choice. By contrast, the primordial argumentative discourse belongs to the very possibility of serious thought about the life-world and thus far is *non-circumventible* (“*nichtin-tergebar*”) in philosophy: In this sense the primordial co-responsibility of all possible discourse partners for identifying and solving life-world problems corresponds to the fact that morally relevant problems of the life-world — like conflicts of interests — can only be solved without application of violence (i.e. open fighting or purely strategic negotiation), if they are dealt with by argumentative discourse. This is what we *know a priori*, when we presuppose the *co-originality of equal rights and equal co-responsibility* on the level of a reciprocal acknowledgement of all possible discourse partners. The co-originality of both presuppositions constitutes the *primordial solidarity of the discourse community* that can be uncovered by transcendental-pragmatic reflection.)

3. If the need for solving *moral* problems through argumentative discourse arises, then, if possible, *practical discourses* have to be established: i.e.

¹³ See K.-O. Apel: “How to Ground an Universalistic Ethics of Co-responsibility for the effects of Collective Actions and Activities?”, in M. Batens et alii (eds.): *Problèmes moraux: vie privée, vie publique*, in: *Philosophie* 52/2 (1993), 9-29, and the same: “Der primordiale Begriff der Mit-Verantwortung”, in M. Kettner (ed.): *Angewandte Ethik als Politikum*, Frankfurt a.M.: Suhrkamp, 1999 (forthcoming).

discourses that, in accordance with the *first two fundamental norms* (of discourse solidarity) and with the *general consensus postulate of argumentative discourse*, stand under the following *regulative principle*: those material norms have to be established that in case of their being generally obeyed probably will have consequences that could be acceptable to all affected persons.¹⁴ (If necessary, this regulative principle has to be followed by single persons *in foro interno*, i.e. by way of an experiment of thought. This shows that the regulative principle of consensus formation in practical discourses is a *universalisation principle* that — on the level of discourse ethics — can be considered as equivalent to Kant’s “categorical imperative”. I shall come back to this relationship, in order to explicate in more detail the analogy and the differences.)

Thus far we have explicated those formal moral principles of discourse ethics that belong to the normative conditions of an unlimited *ideal communication community*, which, so to speak, is *counterfactually anticipated* by the participants of a serious argumentative discourse.¹⁵ (That this is necessarily the case, notwithstanding the empirical opinions and mental dispositions of those who argue, can be seen from the *performative self-contradictions* of sceptics or relativists who defend opposite tenets through engaging in serious arguments in the context of discourses.)

But at this point it has to be added that, in the situation of the primordial argumentative discourse, we must not only — because of our *universal validity claims* — presuppose and counterfactually anticipate normative conditions of an unlimited *ideal communication community*, but, at the same time, historically determined conditions of a real communication community as well.¹⁶

For an argumentative discourse must also, in each particular case, presuppose a *particular audience*; and, in order to defend a proposition — be it a theoretical tenet or be it a practical proposal concerning norms — a person who argues cannot start out simply from what — according to his/her opinion — is true or just (not to speak of what is true or just in itself); but he/she has to start out from premises that have already been accepted as being true or just by the particular audience to be addressed. This is an insight of the argumentation

¹⁴ This principle was formulated by J.Habermas as *universalization principle* (U) in *Moralbewußtsein und kommunikatives Handeln*, Frankfurt a.M.: Suhrkamp, 1983, 75f. and 103f. Cf. also K.-O. Apel: *Auseinandersetzen*, loc.cit. (see note 11), “Sachregister”, 864: “Universalisierungsprinzip”.

¹⁵ Cf. K.-O. Apel: “Das Apriori der Kommunikationsgemeinschaft und die Grundlagen der Ethik”, in the same *Transformation der Philosophie*, Frankfurt a.M.: Suhrkamp, 1973, vol.II, 358-436; Engl.transl. in the same: *Collected Papers*, vol.II: *Ethics and the Theory of Rationality*, New Jersey: Humanities Press, 1996, 1-67; French transl.: *L’Éthique à l’Âge de la Science*, Presse Universitaires de Lille: Opuscul.

¹⁶ Ibidem.

theory of “*nouvelle rhétorique*”¹⁷ which on its part, I suggest, is only a prominent structural element of the general insight of *hermeneutic phenomenology* (Heidegger, Gadamer) into the so called “pre-structure” (“*Vorstruktur*”) of “being-in-the-world”, i.e. the “apriori of facticity”, of “historicity” and of “pre-understanding” of the life-world, according to one’s belonging always already to a *particular community tradition*. (see the 6th lecture.)

Thus we can sum up our account of the transcendental-pragmatic reflection of the primordial presuppositions of argumentation by speaking of a *double-apriori* of simultaneously presupposing the conditions of an *ideal communication community* and those of a *real communication community*.

In what follows, I will try to unfold the implications and consequences of this novel foundational vantage point of discourse ethics within the following perspectives:

In a 5th lecture, continuing my *first* introduction of discourse ethics, I will try to show that, and in what respect, *discourse ethics* can be considered as a (transcendental-pragmatic) *transformation* of *Kantian ethics*. Here the accent is put on playing off the *double-apriori* of discourse ethics against the metaphysical idealism of Kant’s orientation of his foundation of deontological ethics towards the apriori of the *ideal communication community* (i.e. Kant’s “kingdom of ends”) only.

In the 6th lecture — i.e. in a *second* introduction to discourse ethics, which tries to give an answer to the situation of contemporary ethics after 1970 — I will show that, through the presupposition of the *double-apriori*, discourse ethics can take into account the insight of (continental) *hermeneutic phenomenology* and (Anglo-Saxon) *communitarianism* into the *history- and culture-dependency* of concrete forms of “substantial morality” (Hegel) without giving up the *moral universalism* of Kantian provenance and falling a victim to *historicism-relativism*.

Finally I shall have to deal with an implication of the *double apriori* of discourse ethics that is as novel as it is unpleasant (indeed embarrassing) in the light of a traditional ethics of ideal principles. One of the paradigmatic features of discourse ethics is the postulate that we should enter upon *real discourses* in order to find out by *ideal* procedures which norms could be capable of an *ideal* consensus of all affected persons. Now this is, on the one hand, oriented toward ideal principles, but, on the other hand, makes the application of discourse ethics dependent on the *historical contingencies* of the *real* communication community we are living in. What have we (i.e. those who have the good will to practice discourse ethics) to do, if — or, respectively, when — our virtual discourse partners are not willing, or not competent enough, to join

us in *practical discourses*; if (or when) they prefer to put through their interests by violence or purely strategic negotiations or enter into the practical discourses only apparently, i.e. with all kinds of deceptive reservations?

I shall deal with these problems in my *last two* lectures that are devoted to the *application* of discourse ethics as an ethics of history-related co-responsibility.

¹⁷ See Ch.Perelman/L.Olbrechts-Tyteca: *La nouvelle rhétorique. Traité de l’argumentation*, Brüssel 1970.

Application Problems of Discourse Ethics

Part I: The Distinction between *Part A* and *Part B* of a History-related Ethics of (Co-)Responsibility

I. Programmatic Introduction of the Last Two Lectures.

The topic of my last *two* lectures could be indicated under the title: “Actual Problems of the Application of Discourse Ethics: Its Architectonics as a History-related Ethics of Co-responsibility”. Today I want to introduce the general problem of the *history-related application* of discourse ethics and the *response* to this problem by way of a distinction between *part A* and *part B* of *discourse ethics*. Then, in my last lecture, I shall deal with the relationship of discourse ethics as *history-related ethics of co-responsibility* to the *social institutions*, or, respectively, *functional social sub-systems*, of *politics*, *law*, and *economy*.

II. The Problem of *Applying* Discourse Ethics to the Real World.

In the last part of my last lecture I have dealt already with the relationship of discourse ethics to *history*, especially to the *future dimension of history*. But, considered from the point of view of *ultimate foundation*, that was an anticipation. For, we have not yet dealt with the foundational problem of *applying* discourse ethics to the *real world*, and that means: with the structure of discourse ethics as an ethics of *responsibility*, or, as we can precise: as a *history-related ethics of co-responsibility*.

The *first* point we have to discuss now and try to clarify is the problem of the relationship between the *foundation* and the *application* of discourse ethics. For the structure of this problem in *discourse ethics* is different, I suggest, from that in traditional types of ethics, especially in Kantian ethics. The difference, as you may expect, is constituted by the fact, that discourse ethics *idealiter* postulates *real discourses* (of the affected persons or their advocates) for the solution of moral problems, i.e. for the *foundation of concrete, material, situation-related moral norms*. By this *ideal* dependence on *real discourses*, the *application* of *discourse ethics* becomes a special problem in two respects, which do not come up in the same way in traditional types of ethics.

1. The *first* dimension of the specific problems of *application* is constituted by the fact, that the *possibility* of entering upon *real* discourses in the case of urgent moral problems, say e.g. in the case of conflicts of interests, is not a matter of course, since it depends not only on the good will of the *agents*, i.e. those who are *willing* to enter a discourse, but on the good will (and also on the capacities or competences) of the *needed discourse partners* as well.¹ (I shall later come back to this grave and specific problem of the application of discourse ethics.)

2. The *second* dimension of the specific problems of *application* is constituted by the fact that even in those cases where *real practical discourses* are *possible*, the fulfilment of another essential demand of discourse ethics is not a matter of course: namely the possibility of finding out — with the aid of experts — *which interests* of the *affected* people are in the play and have to be taken into account and, beyond that, *which consequences* (effects and side-effects) of the universal acceptance and observation of proposed moral norms have to be expected. (Also to this grave and specific problem of the application of discourse ethics I shall come back later.)

At the moment I want to stress that both of these *application* problems are novel in so far as they do not arise in traditional ethics, especially in Kantian ethics. If, as in Kantian ethics, the ascertainment of the *universal validity* of a maxim of action is only a business of a *mental experiment of a single agent*, then the *application* of the universalisation principle poses no *special* problem that could be different from the *foundation* problem concerning the ascertainment of the aptness of a maxim of action as a possible law for all persons. A similar simplification holds in the case of the consideration of the *consequences* of the universal observation of *certain norms*, or, respectively, *maxims*. For, even if we suppose that this problem is considered by Kant at all, it is in any case reduced to a problem of the mental experiments of the single persons as well; and therefore it is not considered by Kant as a *specific* difficult problem of *applied ethics*, as I mentioned already in my last lecture.

Even in the *utilitarian* type of ethics, where the ascertainment of the *foreseeable* (*useful or harmful*) consequences of our actions, and of our collective activities, plays an important role, even there our two specific problems of the application of ethics have not been raised explicitly. The reason for this fact is of course that also traditional *utilitarian ethics* is primarily related to the

¹ Sometimes the situation is even more intricate, since the good will of solving moral problems by discourse may exist with both parties of a conflict, but at the same time a justified reciprocal distrust and hence a risk-related responsibility may paralyse the initiatives of both sides, as e.g. in the case of disarmament negotiations. With regard to this cf. K.-O. Apel: "Konfliktlösung im Atomzeitalter als Problem einer Verantwortungsethik", in the same: *Diskurs und Verantwortung*, Frankfurt a.M.: Suhrkamp, 1988, 247-269; French transl. "Résoudre les conflits à l'époque nucléaire: un problème d'éthique de la responsabilité", in the same: *Discussion et Responsabilité*, II, Paris, Éd. du Cerf, 1998, 39-56.

deliberations of *solitary subjects of morality*, or, to express it more cautiously: the problem of *real discourses* of the affected persons, or their advocates, is at least not explicitly reflected upon.

But why have we in the case of *discourse ethics* to speak of a *specific* problem of *application* that, in a sense, is different from the *foundational problem*? Couldn't we simply say that the *foundational* problem of discourse ethics as such implies the possibility of *real discourses*, so that, in one sense, real discourses are always possible, as long as philosophical argumentations are possible, or, in an other sense, if real discourses are not possible, philosophical argumentations and hence the ultimate-foundation of discourse ethics must break down. From this supposition indeed *two* — apparently demolishing — arguments have been derived against, say the *relevance* or the *possibility*, of the *transcendental-pragmatic foundation of discourse ethics*.

In one sense it has been argued that the *transcendental-pragmatic ultimate foundation* of discourse ethics is an overestimated *triviality*, which has nothing whatsoever to do with the demanded foundation of morality for *real interactions* and discourses in the *life world*. For — thus the argument goes — the so called *fundamental procedural norms of discourse ethics*, like e.g. *equal rights* and *equal co-responsibility* of all possible discourse partners, are *trivially* accepted by those persons who have *decided* to enter upon a discourse, since these persons have a *common interest* in solving a problem by cooperation in an argumentative discourse. Hence the procedural rules or norms of the discourse instrumentally serve the common purpose of the participants in the discourse. But this follows trivially from their *common purpose*; it has nothing to do with the *moral* solution of *genuine conflicts of interest* in the life world outside the philosophical discourse.²

From this argument it seems to follow, that my problem concerning a *difference* between the transcendental-pragmatic *foundation* of discourse ethics and its *application* to the *real world* dissolves itself, because both sides have nothing to do with each other, since the foundation *and* the application of genuine ethics can only relate to *real interaction* outside the argumentative discourses of philosophy.

Against this argument I have several times argued as follows³: the argumentative discourse, through which we want to find out *what the truth is* or

² This argument was most rigorously carried forward by K.-H. Ilting in his article "Der Geltungsgrund moralischer Normen", in W. Kuhlmann/D. Böhler (eds.): *Kommunikation und Reflexion*, Frankfurt a.M.: Suhrkamp, 1982, 612-648.

³ See especially my argument against Ilting in "Faktische Anerkennung oder einsehbar notwendige Anerkennung? Beruht der Ansatz der transzendentalpragmatischen Diskursethik auf einem intellektualistischen Fehlschluß?", in K.-O. Apel: *Auseinandersetzungen*, Frankfurt a.M.: Suhrkamp, 1998, 221-280. Cf. also K.-O. Apel *Éthique de la discussion*, Paris: Éd. Du Cerf, 1994.

who is right has to be conceived by the participants as a *serious* enterprise that as such stands in a *reflective relationship to the problems* — and thus also the *conflicts* — of the *real interaction* in the life world. (This reflective relationship is meant in my thesis — in the 4th lecture — that: besides the acknowledgment of equal rights, a second moral presupposition of serious discourse is that of equal *co-responsibility* of all discourse partners for discovering, identifying and solving — by practical discourses — all morally relevant problems of the life world.) In a *serious* discourse we must presuppose that the life-world problems like conflicts of interests can only be dealt with and eventually solved through discourses, if violence or pure bargaining are to be avoided. Thus, on the level of *philosophical discourse on the foundation of ethics*, we must indeed presuppose that the discourse is not an *isolated purpose of itself*, but stands in a necessary and privileged relationship to the genuine problems of the life-world. If this should not be the case, the discourse may indeed only be a *play* that would be morally irrelevant. (To illustrate this case of *non-serious* discourse I once gave the example of a Roman slaveholder of the 2th century BC. Being bored, he ordered his Greek house slave, who he knew was a learned philosopher, to come up and have a *discussion* with him — say, about the problem of a *just order of the society*. For the time of the discussion the slaveholder conceded equal rights of speaking between him and his slave, but when he lost his interest in the discussion, he ordered the slave to return to his work, as if nothing special had happened. The question is: was this an illustration of the function of a *serious* discourse about a moral problem of the life world? Obviously not, it was only a way of passing time. To be sure, if it would have been a *serious* discourse, this wouldn't have meant that the two discussants would have reached a consensus about the justice of slavery, or even that the slave holder would have drawn practical (juridical) consequences from the discussion; but, nevertheless, the discussion *could* have changed his attitude to slaves in general, as it in fact did with many humanistic — minded Romans at the time of the younger Scipio.)

However, after having refuted in this way the objection that the *ultimate foundation* of ethics through self-reflection of the philosophical discourse would be *irrelevant*, we have nevertheless to concede that there is a *difference* between the treatment and eventual solution of moral problems through an *ideal argumentative discourse* (on the level of philosophy) and the *application of this paradigm* to the real conditions, say of conflicts, in the life world. For, in the *real life world*, it can of course happen that our adversaries and virtual partners are *not willing* to enter upon a discourse in order to solve the problems by arguments, or that they will enter the proposed discourse with a secret reservation, say with the intention to follow the moral rules of the discourse only *apparently*, in order to *instrumentalise* the discourse in the service of their pre-fixed interests.

Hence it turns out thus far that there is indeed a necessary *connection and a difference* between the ultimate *transcendental-pragmatic foundation* and the *application* of the foundational paradigm of practical discourses on the real problems of the life world.

This result can be confirmed and further elucidated by a discussion of the *second* version of the argument that a *transcendental-reflective ultimate foundation* of discourse ethics is impossible because *discourse* ethics is dependent on the possibility of *real* discourses. The argument I have now in mind reads as follows⁴: There are *sceptics*, or even *cynics*, who — for some prefixed reasons — *refuse* every discourse about the *foundation* of morality or on the solution of specific moral problems. For this reason, it is now concluded, a foundation especially of *discourse* ethics is *impossible*, in principle, since already the ultimate foundation by a *self-reflection* of argumentative discourse presupposes the possibility of a discourse, even of a *real* and *ideal* one, e.g. with the *sceptic*.

Now, this last ascertainment is completely correct, but the presupposition of the argument — that in the case that is supposed no argumentative discourse is possible — this presupposition is completely false. For, there is indeed a discourse going on between me and the person that told me about the *sceptic* (or *cynic*) who refuses every discourse. With this person I *share* the problem of grounding ethics, and hence I have to address my foundational argument *only to him/her*, whereas the *sceptic about whom* one tells me is irrelevant because that person cannot argue.⁵ But, cannot the person who argues (by telling me about the sceptic outside) represent and defend the position of the *sceptic* who does not argue?

The answer to this crucial argument is the following: the person who actually is in discussion with me cannot *apply* the argument about the sceptic, who refuses every discourse, to *himself/herself*. This person just wants to refute my position of ultimate foundation through arguments. This, I suggest, is the crucial knock down argument against the *second version* of a radical objection against the possibility of a transcendental-pragmatic foundation of discourse ethics.

But again it turns out that, by the arguments of both sides, a *difference* is shown up between the *reflective ultimate foundation* of discourse ethics and the dimension of the *application* of discourse ethics. For, my refutation of the

⁴ The argument was brought forward by J. Habermas in "Diskursethik — Notizen zu einem Begründungsprogramm", in the same: *Moralbewußtsein und kommunikatives Handeln*, Frankfurt a.M.: Suhrkamp, 1983, 108ff., and by W. Reese-Schäfer in *Apel zur Einführung*, Hamburg: Junius, 1990, 125ff., and the same: *Grenzgötter der Moral. Der neuere europäisch-amerikanische Diskurs zur politischen Ethik*, Frankfurt a.M.: Suhrkamp, 1997, 73ff.

⁵ Cf. my appeal to the famous Argument of Aristotle in *Metaphysics*, book 4., in my fourth lecture, note 4.

argument about the sceptic has only — indeed — shown that the *a priori pre-supposition of argumentative discourse* in philosophy is *non-circumventible*. But this insight, which makes *reflective ultimate foundation* possible, does not show that the paradigm of a discursive settlement of moral problems can be *always applied to the life world*. For the supposed case of the radical *sceptic*, or of a radical *cynic*, makes a grave difficulty for the *application* of discourse ethics to real interaction in the life world.

In the case of the radical *sceptic* we could e.g. suppose that he/she is an “existential *sceptic*” in the sense of S. Kierkegaard, i.e. that he/she even would give up *argumentative discourse* with himself/herself and deliver himself/herself to *despair* (or *desperation*). This case would, at the same time, constitute a moral problem for us, namely that of *responsible care* for this person.

But J. Habermas, when he in 1983 introduced the *sceptic* who refuses argumentation as an argument against ultimate foundation of discourse ethics, supposed that the sceptic by his/her refusal may want to escape being refuted by *transcendental-pragmatic arguments*.⁶ In this case, I would argue, the so called “sceptic” uses, for himself/herself, a *strategic argument*. Through this type of “argument” he/she, on the one hand, anticipates and thereby confirms, that, on the level of *argumentative discourse*, a *refutation of the sceptic*, and hence an *ultimate foundation of discourse ethics may be possible*. (Thus far Habermas’ argument is indirectly an argument *in favour* of transcendental-pragmatic ultimate foundation.) But, on the other hand, on the level of *application* of discourse ethics in the life world, the so called “sceptic” by his/her *strategic* deliberations tendentially takes the position of a “cynic”, who in fact is not interested in finding out something about the truth or justice concerning a controversial issue, but only wants to *put through* his/her strategic interests.⁷

To sum up: our argumentation concerning the two objections against the transcendental-pragmatic foundation of discourse ethics has shown, I suggest, that this *foundation* is always possible but that there is not only an *intrinsic connection* but also a *difference* between the *reflective foundation* and the *application* of discourse ethics; and our discussion has also shown that this structure, which is different from that of traditional types of ethics, is primarily constituted by the fact that discourse ethics, with regard to its *foundation*, can rely on the reflective *non-circumventibility* of the *transcendental philosophical discourse*, but, at the same time, with regard to its *application*, is

dependent on the possibility of *real discourses* in the life world which are not *non-circumventible*. Our discussion has also shown, I would emphasize, that the primary *difficulties* that go along with the difference between the *foundation* and the *application* of discourse ethics obviously are constituted by the dependence of the *application* on the good will (or the *capacity* or *competence*) of the possible partners of real discourses.

Thus, at this place, indeed a problem arises that cannot be immediately solved by recourse to the *reflective ultimate foundation* of discourse ethics, since it depends on *contingent facts*, and among them on *human voluntary decisions*. Nonetheless, the new problem that here arises for discourse ethics is not one of *decision* which would transcend the *cognitive foundation* of discourse ethics altogether. For the problem that is posed by the *application* of discourse ethics is not immediately that of *motivating the good will* of those who have to carry through the real discourses, but the problem is only one of those who indeed have the good will of entering upon *real discourses*; for them it is a novel problem in so far as they cannot assume that their needed discourse partners will or can *cooperate*. This means that those who are willing to apply the procedural norms of discourse ethics, in order by discourse to reach an agreement about material moral norms, may by *risk responsibility* even be prevented from applying the fundamental procedural norms of practical discourses, as e.g. the norm of *sincerity*, i.e. of abstaining from the covertly strategic use of language.

Wouldn’t it be necessary, at this point, to consider a *supplementation* to the very foundation of discourse ethics, in order to tell those who are willing to apply discourse ethics what they should do in situations lacking the reciprocity of cooperation?

III. The Problem of a *Supplementation* to Discourse Ethics in the Case of *Reciprocity Responsibility*.

At first sight, it looks, as if every attempt at a *supplementation* to the foundation of discourse ethics for reasons of lacking *reciprocity of communicative cooperation* must be bound to destroy the very point of discourse ethics. Therefore it is understandable that one has tried to avoid the need for a *supplementation* by avoiding the whole problem of the *risk of reciprocity* in *real discourses*. But how should this be made possible since settling moral problems by *real discourses* (of the affected persons, or at least their advocates) seems to be the characteristic feature of discourse ethics?

In the preceding, I have myself pointed out, that — in contra-distinction to the problem of *application* — the problem of *ultimate reflective foundation* of discourse ethics by refutation of the sceptic can always be solved since the

⁶ See J. Habermas, loc.cit. (see note 4), 109.

⁷ This was correctly maintained by E. Dussel in his article “vom Skeptiker zum Zyniker (Vom Gegner der ‘Diskursethik’ zu dem der ‘Befreiungsphilosophie’)”, Mainz 1992, typescript; see my response in “Die Diskursethik vor der Herausforderung der lateinamerikanischen Philosophie der Befreiung”, in R. Fornet-Betancourt (ed.): *Konvergenz oder Divergenz. Eine Bilanz des Gesprächs zwischen Diskursethik und Befreiungsethik*, Aachen: Augustinus-Buchhandlung, 1994, 17-38.

transcendental foundational discourse is *non-circumventible* for those who raise the problem of a foundation of ethics. In what follows, I will call this *non-circumventible* discourse the *primordial* discourse, in order to avoid the disputed term "transcendental" for the sake of the following argumentation.

Now, one could try to *transform* the problem of *application* of discourse ethics (as I considered it) into a problem of *primordial* discourse. If this would be possible, the unpleasant problem of the *risk of reciprocity in real discourses* would disappear, since we could always presuppose the *ideal reciprocity* and *cooperation conditions* of the *primordial* discourse. But what then about the *real* situations of the life world in which a solution of moral problems by real discourses cannot be reached (or only in a distorted form)? The answer would be: these situations would not be ignored, but they would no longer be treated as *reciprocity situations of grounding material norms by real discourses*; they would simply be treated as *objectifiable complexes of situation marks* to which the material norms have to be *applied* by those who are in charge of the *primordial* discourse.

In order to make this *transformation and defusion of the application problem of discourse ethics* possible — so to say, its reintegration into the realm of *ideal* discourse —, the *primordial* discourse somehow has to cover even the problem of *grounding material norms and applying them to real situations*. This could be reached by a division of the *primordial* discourse into a "foundational discourse" ("*Begründungsdiskurs*") and an "application discourse" ("*Anwendungsdiskurs*"). The former would — only in a provisory form — ground material norms that would fulfil the criterion of *universalisability* (i.e. of being acceptable by all affected persons), whereas the latter would find out, which of the universalisable norms can be "coherently applied" to the *concrete situations* conceived as *complexes of marks*. The latter business could best be illustrated by the discourse of a court (with jury) which would try to apply a stock of available norms to a particular case.

Thus far we have described, in rough outlines, the intriguing solution of the *application* problem of discourse ethics that was proposed by Klaus Günther⁸ and adopted by J. Habermas⁹. It has to be noticed, however, that Günther's and Habermas' theory was not intended to solve our problem of applying the *procedural* norms of discourse ethics to situations of lacking *reciprocity of cooperation* but only to solve the problem of proving the applicability of *universally valid* norms to *particular*, historically unpredictable situations. But, since they obviously did not see a specific problem of the kind I exposed, I tried

here to subsume my problem under the presumably more general and abstract problem of K. Günther and J. Habermas — using the trick, so to speak, of *objectifying* the situations of reciprocal interaction from the point of view of the *primordial* discourse and thereby dissolving the problem of *reciprocity responsibility* for real interaction. But the problem is of course, whether this subsumption trick is permissible.

Could we say that *our* problem is solved by Günther's and Habermas' general theory of *grounding* and *applying* material norms through different types of discourses, which are both parts of the *primordial* discourse of discourse ethics insofar as they can presuppose ideal procedural conditions of cooperation? Hence, could we say that there is no longer the *special problem of the risk of reciprocal cooperation in real discourses as a moral problem* already for *grounding the material moral norms by real practical discourses*?

I do not think so, and this for the following reason: It is true that we in philosophy can and must always presuppose the *primordial* discourse of those who have posed the problem of grounding ethics and that through *self-reflection of this non-circumventible discourse* (and thus e.g. through refutation of the sceptic) we can always provide the *transcendental-pragmatic ultimate foundation of the ideal procedural norms of discourse ethics*, i.e. of settling moral problems through *practical discourses* of the affected persons or their advocates. But this does not mean that the *practical discourses* themselves, whose ideal procedures have been grounded, could be *carried through* by the *primordial* discourse as well. For, in order only to find out *material* norms, the consequences of whose universal obedience could be accepted by all affected persons (to use the formula (U) of the discourse ethical principle of *universalisation*¹⁰), we need *real practical discourses with the affected persons* (or their advocates) outside the philosophical discourse, because otherwise we could not find out which norms could be acceptable by those who are affected and might be candidates for conflicts of interest. Precisely this postulate made up the step of discourse ethics beyond Kant's *abstract* principle of *universalisation*. Hence K. Günther's proposal could at best suggest an experiment of thought as a substitution for the genuine but risky procedure of applying discourse ethics.

But then we are again thrown back upon our problem of what to do in those cases where we cannot (i.e. for *risk responsibility, must not*) assume that our needed discourse partners will cooperate, i.e. that they will sincerely apply the procedural norms of discourse ethics in solving moral problems, instead of, say, taking recourse to — open or covered — strategic modes of interaction, including communication.

⁸ See K. Günther: *Der Sinn für Angemessenheit*, Frankfurt a.M. 1988; and the same: "Universalistische Normenbegründung und Normenanwendung", in: M. Herberger et alii (eds.): *Generalisierung und Individualisierung im Rechtsdenken*, ARSP, Beiheft 45, 1991.

⁹ Cf. J. Habermas: *Erläuterungen zur Diskursethik*, Frankfurt a.M., 1991, 138ff., and the same: *Faktizität und Geltung*, Frankfurt a.M., 1992, 264ff.

¹⁰ Cf. Habermas: "Über Moralität und Sittlichkeit — Was macht eine Lebensform 'rational'?", in H. Schnädelbach (ed.): *Rationalität*, Frankfurt a.M. 1984, 219, and the same: *Moralbewußtsein und kommunikatives Handeln*, Frankfurt a.M. 1983, 75f. and 103f.

It seems clear that, after all, we need a *supplementation principle* for the ideal principle of discourse ethics, in order to say what one *ought* to do in cases where the ideal procedural norms of settling moral problems by practical discourses cannot be applied. But seeking for a supplementation principle must not transcend the foundation of discourse ethics altogether; for, according to this foundation, even the maxims of those who have to act in the cases of lacking conditions of ideal reciprocity, have to be capable of finding potential consent by the members of an ideal discourse community; the latter are supposed to *understand* those who have to act by putting themselves into their situations.

It turns out here again that the problem of the relationship between *foundation* and *application* (of moral norms) in discourse ethics is a special one, since in real discourses (or even before entering real discourses) we have to deal with the problem of *reciprocity responsibility* (*"Reziprozitätsverantwortung"*)¹¹ And in case one cannot and must not follow the ideal procedural norms of discourse ethics, one cannot say — as perhaps in traditional *ethics of good intentions* (*"Gesinnungsethik"*) — that we have reached the *limits of morality* (of its foundation and its application).

Take e.g. the case of a "moral politician" in Kant's sense¹², who has the best will or intention to *apply* the procedural norms of discourse ethics to a case of settling a conflict, but simply cannot *afford* to do so for reasons of *reciprocity responsibility*. What then is his moral duty?

One could perhaps tell this politician that he/she has reached the *limits of morality* and therefore has only *two possible options*: either to ignore the responsibility for the *reciprocity risk* and act according to the ideal procedural norms of discourse ethics, i.e., in such a way, as if the conditions of an ideal communication community were really existing; or to abandon morality altogether and practice so called "*Realpolitik*", i.e. *amoral politics* according to the suggestions of Machiavelli, Richelieu, Bismarck and recently Kissinger (in his book on "*Diplomacy*"¹³). This latter advice has indeed been the license that was usually attributed to a politician by modern times' philosophy and political history.

But I would say: if we would suggest to our politician the two alternative options, we would simply abandon the "moral politician", i.e. leave him/her in the lurch. Hence, I suggest, this cannot be an adequate response to our problem, which, as it appears, constitutes a crucial difficulty of the whole conception of discourse ethics.

¹¹ The term was introduced by M. Niquet in his article "Verantwortung und Moralstrategie: Überlegungen zu einem Typus praktisch-moralischer Vernunft", in K.-O. Apel/M. Kettner (eds.): *Die eine Vernunft und die vielen Rationalitäten*, Frankfurt a.M. 1996, 42-58.

¹² Cf. I. Kant: "Zum ewigen Frieden", Anhang 1, in *Werke*, Akademie-Textausgabe, vol.VIII, 370ff.

¹³ Cf. H. Kissinger: *Diplomacy*, New York 1994.

J. Habermas, who first followed K. Günther in dealing with the problem of *application* in discourse ethics, later took up again the problem of the difficulties as I had posed it.¹⁴ But he seems to have confused this problem with that of the *lacking* (or *too weak*) *motivation* that is tied up with *discourse ethics* as a *postconventional, cognitive* type of ethics. As such, i.e. in contra-distinction to the conventional (traditional) form of morals (to "*substantielle Sittlichkeit*" in Hegel's sense), it cannot, in fact, provide sufficiently efficient forces for putting norms through. In the face of this situation, Habermas also saw the answer to my problem, as far I can see, in a combination of two devices: on the one hand, in *restricting the scope of discourse ethics* to the scope of a possible application of its *ideal procedural norms*, i.e., according to Habermas, of the *universalisation principle* (U) as "rule of argumentation" for practical discourses¹⁵, but, on the other hand, in *supplementing* the narrow scope of discourse ethics by the institution of *law* (whose principle he equates to that of the *democratic state of law*).¹⁶ The institution of *law*, which historically emerges simultaneously with *postconventional morality* through a differentiation of the older institution of "*substantielle Sittlichkeit*", has to compensate, so to speak, the motivational insufficiency of *cognitive morality* by the *power monopoly* ("*Gewaltmonopol*") (and other "pragmatic" means) of the constitutional state.

Now, I don't want to dispute the historical and functional relationships of *compensation* and *supplementation* between the ideal procedural principles of *discourse ethics* and (the state of) *law* as stated (or postulated) by Habermas.

But, again I have to complain that my problem of a necessary *supplementation* of the ideal principles of discourse ethics is not met, let alone solved. It has been rather skipped and replaced by another problem (which I myself shall have to face in my last lecture). That my problem is not solved can easily be seen, if we return to our example of the "moral politician" and *reciprocity responsibility*. The paradigm case of this situation has been, until now, precisely characterized by the fact that there is no order of coercive law that could sublate the risk of lacking reciprocity in political interaction, at least on the level of foreign politics. Rather the "state of nature" is still predominant here, although there are, at present, already certain institutions and conventions of *international law* (*jus gentium*), as e.g. the UNO, whose authority can provide a certain *supplementation* of the authority of morality and of the coercive law of particular states even in the field of foreign politics.

We are at present 1999¹⁷, once again, confronted with a typical situation of a political (and military) action in the face of a refusal of settling a conflict by

¹⁴ See J. Habermas: *Erläuterungen zur Diskursethik*, Frankfurt a.M. 1991, 195ff.

¹⁵ See J. Habermas: *Faktizität und Geltung*, loc.cit. (see note 9), especially 140.

¹⁶ Ibidem, 145f.

¹⁷ I.e. May 1999!

practical discourses or at least negotiations. The situation seems to be one of *compulsion toward action without authorization by international law*, but — as one can suppose — on the basis of some *moral responsibility for putting through human rights*. What I mean is of course the (restricted) war of NATO against Yugoslavia concerning the Kosovo region. The pertinent comments of politicians, top military people, law experts, philosophers and other intellectuals illuminate the vast variety as well as the uncertainty of the public opinion with regard to the legitimacy of what is going on.

Habermas e.g. has defended the legitimacy of the NATO-policy, which cannot base itself on a mandate of the UNO, by the quasi-juridical fiction of a “self-authorization” (“*Selbstermächtigung*”) through an anticipation of a mandate by a *cosmopolitan order of law* that would protect the *human rights* of the Albanian inhabitants of Kosovo.¹⁸ This comment, I suggest, is quite plausible, but it does not change but rather elucidates the fact that the Kosovo policy of NATO, if it is more than just power policy, has to be understood and judged from the vantage-point of some *ethics of history-related (co-)responsibility*, i.e. as a policy that at best can *prepare* the establishment of those institutions of law that, according to Habermas, should provide a *supplementation* of the application of ideal procedures of discourse ethics. This assessment of the general situation, in my opinion, holds for *two reasons*:

First, it has to be emphasized that the decisions of those who at present are in charge of NATO policy can not and must not be withdrawn from being judged on the basis of an *ethics of responsibility*. In this context, the Habermasian argument (regarding the quasi-juridical self-authorization) is just one important viewpoint; but *another one*, it seems to me, is the question, whether the resolution to open a restricted war of bombing a country, accompanied by public declarations concerning one’s strict abstention from deployment of ground forces, whether such a strategy (which shifted all risks from the side of the NATO to that of the civil population) could be considered as *promising success* and so far responsible. (It seems to me that the restricted war of NATO rather has made worse so far the situation of the Kosovars by facilitating Milosevic’s policy of “ethnic purge”). Of course, even *responsible* politics remains an “art of the possible”, and a deployment of ground forces in the Kosovo war, even if it was realizable on democratic conditions, could amount to releasing a global escalation, e.g. with regard to mobilizing military resistance from Russia.

A *second* reason for insisting on the yardstick and viewpoint of a *history-related ethics of (co-)responsibility* with regard to our example of the Kosovo

war is a more principled one; and thus it is more important in our context of discussing the question, whether, in cases of the *risk of reciprocity responsibility*, we have reached the *limits* of discourse ethics, or, to the contrary, have to think of a *widening and deepening* of its basis and horizon. The second reason, in my opinion, is given by the insight that even, and precisely, the *supplementation of a post-conventional cognitive ethics by positive law* has to be grounded, i.e. normatively justified, by discourse ethics. At this point, one should not confuse the *historical fact* of a *differentiation* of traditional morals into post-conventional morality and positive law with the *normative* problem of justifying the difference and relationship between ethics and law. Also Habermas, in his philosophy of law in *Faktizität und Geltung*, does not equate both problems; but he does not try to ground the difference and relationship between ethics and law by *discourse-ethics* either (or: any longer). Instead he tries to give a normative foundation of this necessary differentiation by “discourse theory”, i.e. through a “branching” architectonics that derives the possibility of different sorts of norms (moral and juridical ones) from a “discourse principle” that is called “morally neutral”.

Now, I think, such a normative foundation is impossible for the following reasons¹⁹: First it is impossible to give a normative foundation of *discourse-ethics* from the point of view of a *morally neutral discourse principle*. For, without possible recourse to the *moral dignity of the reciprocal acknowledgement* (of equal rights and co-responsibility) of the members of the primordial discourse community, the transcendental-pragmatic ultimate foundation of discourse ethics is lost. (I know very well that this claim is not shared either by Habermas or by most contemporary philosophers; but after what I have pointed out in the preceding lectures, I can only repeat at this point that, in my opinion, there is no other possibility of *rationaly grounding* the validity and thus the obligingness of moral duties, i.e. neither by recourse to subjective value-decisions nor by recourse to culture-related value-traditions, nor even by the *mere hypothesis* of social sciences — which is indeed very plausible — that universal moral norms constitute a pre-disposition in the “depth structure” of all human life forms as forms of communication by language²⁰).

But also a normative foundation of *positive law* as being necessarily different from *morality* is impossible from the point of view of a morally neutral

¹⁹ See also K.-O. Apel: “Auflösung der Diskursethik? Zur Architektonik der Diskursdifferenzierung in Habermas’ Faktizität und Geltung. Dritter, transzendentalpragmatisch orientierter Versuch, mit Habermas gegen Habermas zu denken”, in the same: *Auseinandersetzungen*, loc.cit. (see note 3), 727-838.

²⁰ Cf. K.-O. Apel: “Normative Begründung der ‘kritischen Theorie’ durch Rekurs auf lebensweltliche Sittlichkeit? Ein transzendentalpragmatisch orientierter Versuch, mit Habermas gegen Habermas zu denken”, in the same: *Auseinandersetzungen*, loc.cit. (see note 3), 649-700. French transl. *Penser avec Habermas contre Habermas*, Cahors: Éd. de l’Eclat, 1990.

¹⁸ Cf. J. Habermas: “Bestialität und Humanität. Ein Krieg an der Grenze zwischen Recht und Moral”, in: *Die Zeit*, Nr.18 of 29.4.1999. Cf. also K.-O. Apel: “On the Relationship between Ethics, International Law and Politico-Military Strategy in Our Time: A Philosophical Retrospective on the Kosovo Conflict”, in: *European Journal of Social Theory*, vol. 4, Nr. 1, 2001.

discourse principle. For precisely the legitimacy of the *difference* of positive law from morality — i.e., in particular, the legitimacy of passing laws by political authority and putting them through by force — has to be justified by *discourse ethics*, in my opinion. That is to say: it cannot be justified as a *specification* of a — morally neutral — discourse principle (according to Habermas' "branching"-architectonics). For the *primordial discourse principle* in any case is the principle of a "domination-free discourse" ("*herrschaftsfreier Diskurs*", as Habermas himself once emphasized); hence it cannot be *specified* as the principle of a *legislative discourse of a constitutional state*. This latter, which passes positive law by its authority, cannot be *domination-free*, even if the *deliberative discourses* of a *democratic state* are oriented — in a sense, i.e. through releasing a free public discourse — toward the ideal of domination-free discourse.

Precisely the *difference* between the *legislative discourse of positive law* and the *primordial discourse principle* has to be grounded (i.e. justified against the tenets of philosophical anarchism) by *discourse ethics*, whose ideal principle is indeed a *specification of the principle of primordial, domination-free discourse*. But discourse ethics can of course not *specify* its principle as that of *positive law*, but it has to justify the latter as a *necessary and hence legitimate supplementation of its own ideal principle* for reasons of *reciprocity responsibility*.

This brings us back to our problem of the *application* of the ideal principle of discourse ethics in cases of lacking cooperation of the needed discourse partners in the real life world. It becomes clear that in view of these cases the ideal principle of discourse ethics has indeed to be *supplemented by positive law*; but in order to make this possible (i.e. to legitimise it and, beyond that, to legitimise *moral action* even in cases of risk responsibility in the "state of nature", so to speak), we need a *supplementation, or rather completion, of the very foundation of discourse ethics*. It has to be shown that discourse ethics with regard to its *application* in the real world outside philosophy has the status of a *history-related ethics of (co-)responsibility*. As such it is also in charge of *legitimising the power monopoly of the constitutional state of law* and other *functional constraints* of social institutions. But how can we show this?

IV. Discourse Ethics as *History-related Ethics of Co-Responsibility*. The Distinction between *Part A* and *Part B* of Discourse Ethics.

We should remember at this point that discourse ethics, at its foundational point of departure, presupposes a dialectical *double apriori*: on the one hand, because of the universal validity claims of argumentation, it presupposes an *ideal communication or discourse community*, as it was metaphysically anticipated by Kant's "realm of ends", on the other hand, however, it presupposes,

at the same time, a *real communication or discourse community*, to which the arguing person belongs historically, and in which he/she has, even on the level of a philosophical discourse, to argue *actually* and to *address* his/her arguments at least to *one other real person* (as we could learn especially from the case of the argument about the *sceptic* who does not argue).

Now this part of the *real discourse community*, which must be presupposed by our actual argumentation may be called the *primordial discourse community*. It is indeed reflectively *un-circumventible* on the level of philosophy, as must be, on this level, the *good will* to argue seriously and sincerely and hence the counterfactual anticipation of the conditions of an *ideal communication and discourse community* (although, even in this primordial discourse the anticipation of the *ideal* conditions must be *counterfactual*, since the participants are finite human beings whose cognitive and moral competence is not perfect.)

However, this *primordial discourse community*, which may be rather small, has to be distinguished from the *real communication and potential discourse community* that is presupposed for the *application* of discourse ethics. But it has to be noticed that, according to the ultimate foundation of discourse ethics, the ascertainment of the *real interests of all affected persons* ideally requires the communicative cooperation of all members of the *real communication community* outside the *primordial discourse of philosophy*.

Hence, at this point again, it shows itself that there is an *intrinsic connection* as well as a *difference* between the *foundational discourse*, which is the *primordial discourse*, and the *application* of discourse ethics to the real communication community outside the foundational and primordial discourse. And the *criterion* of the *difference* obviously is the following: Whereas also the real discourse with the affected people outside the primordial discourse of philosophy (which potentially comprises the whole of humankind), is *needed* for an *unfolding* of discourse ethics, it is not *guaranteed* here, in contradistinction to the *primordial discourse*, that the application of the fundamental procedural norms of discourse ethics is possible.

Now, for those cases, in which the demanded application is impossible, a *supplementation* of the *ideal demand* of discourse ethics is needed, since persons with good will in those situations need to know what they *ought* to do. The task of providing a *supplementation principle* is even one of the *ultimate foundations* of discourse ethics; for the *co-responsibility* of all possible discourse partners for the *application* of discourse ethics, i.e. for the establishment (realization) of *real practical discourses*, through which moral problems can be solved, belongs to the fundamental norms of discourse ethics, as we know already. Hence it ideally belongs to the *co-responsibility* of all discourse partners, to care for a *supplementation* of the *procedural norms* of the ideal practical discourses for those cases where these discourses are not feasible for reasons of *reciprocity responsibility*.

What, then, could be the needed *principle* of a *supplementation* of the ideal application of discourse ethics?

In order to give a response to this problem, I have in the past introduced a distinction between a *part A* and *part B* of discourse ethics.²¹ One *criterium of the difference* could be provided by an *ideal-typical* distinction between two classes of possible interaction partners: those, *with whom* one can communicate by arguments without strategic reservations, and those *with whom* one cannot communicate in this way, but *about whom* one can do so, at least — ultimately — on the level of the *primordial* discourse. (This distinction is an *ideal-typical* one, since in the empirically given reality the distinction is often blurred by more complex and ambivalent or ambiguous conditions, as I will show later.)

Now, from our ideal-typical distinction it follows already, at least partly, what the criterium of the searched for *supplementation principle* can be: The *supplementation principle* obviously pertains only to *part B* of discourse ethics, where the conditions of an *ideal* communication community are not given in so far as no discourses without *strategic reservations* are possible (be it that only *strategic bargainings* are possible, or be it that not even those *quasi-discourses* are possible but only relations of *war*.)

As a response to this kind of situation, the *supplementation principle* has obviously first to provide a means that corresponds to and satisfies the demands of *risk responsibility*. One of my collaborators has proposed for this means the term “strategic-counterstrategic” measures²². (These may be *open* and *covered* ways of strategic use of speech, e.g. threats or lies, but also measures of violence, as e.g. killing in self-defence or in a just war. By anticipation of the topics of my next lecture I mention here already that the whole institution or functional social system of *law*, or the *state of law*, because of its *monopoly of sanctions*, can so far be justified as a means of *strategic-counterstrategic* measures against criminality²³).

But the *strategic-counterstrategic* measures as such are not sufficient, in my opinion, to fully constitute the content of the *moral principle of supplementation* in *part B* of discourse ethics. It is true that they are *morally legitimised* even as *duties of responsibility* under conditions of *part B*, since, as measures corresponding to the actual risks of reciprocal interaction, they are already counterfactually acceptable for an ideal discourse community; whereas the

suggestion, “not to resist to the evil”, or “to leave the responsibility for the consequences of one’s action to God’s discretion”, would not find an ideal discourse consensus, in my opinion. Nevertheless, taken as pure means of *rationality*, the *strategic-counterstrategic measures* can be considered as being *amoral*, i.e. as simply serving the self-interest of *self-maintenance systems* (from whole states down to single persons). Thus there would be no *moral responsibility* in the play, and thus far no consciousness of the grave deviations from the ideal norms of discourse ethics that are enforced by the bad conditions of human interaction (as e.g. in situations of white lies or killing in self-defence.)

What is needed, in order to constitute the content of a full-fledged *supplementation principle* for the *part B* of discourse ethics is at least something like a *moral compensation* for the enforced deviations from the ideal norms by accompanying attempts at changing the bad conditions of human interaction. This would of course bring a *dynamic* and simultaneously *teleological* dimension into *part B* of discourse ethics, and therefore it seems to be irritating from the viewpoint of a *deontological* or a *formal* and *procedural* ethics.

But, we should think of the fact that already under conditions of *part A* of discourse ethics, where *real practical discourses* about moral problems are possible, in principle, an *ideal consensus* of all affected persons, or at least their advocates, very often is not reached, because even here the conditions of the good will, or of the capacity or competence of those who argue, are not *ideal*. Hence, already in the context of *part A* attempts at improving the conditions of consensus-formation are necessary and even constitute a moral duty from the point of view of the moral *co-responsibility* of all discourse partners for the realization of ideal practical discourses. Now, together with this *duty of improving* real discourse conditions, a *teleological* dimension obviously comes into the play; for the *procedural* rules of a practical discourse from the outset stand under the *regulative idea* of striving for an *ideal consensus*, which even in *part A* of discourse ethics is never completely reached.

This *teleological* dimension, which is tied up with the *regulative idea* of striving for an ideal consensus, is also a *novel feature of discourse ethics* in comparison with traditional ethics of justice, especially in comparison with the purely *deontological* ethics of Kant; but it is also different from the *teleological* dimension of an — individual or collective — *project of the good life*, which constitutes the centre of an Aristotelian type of ethics. This *difference* both from Aristotelian and Kantian types of ethics makes it understandable that the structure of the fundamental procedural norms of discourse ethics, which implies *deontological* norms — as e.g. *equality of rights* and *co-responsibility* — as well as the *teleological* dimension of the regulative idea of consensus-formation and hence of improving the conditions of consensus-formation, — that this structure has met with much irritation and misunderstanding.

²¹ Cf. K.-O. Apel: *Diskurs und Verantwortung*, loc.cit. (see note 1), especially 103ff. French transl. *Discussion et Responsabilité*, I, Paris: Éd. du Cerf, 1996, 91ff.

²² See M. Kettner: “Bereichsspezifische Relevanz. Zur konkreten Allgemeinheit der Diskursethik”, in K.-O. Apel/M. Kettner: *Zur Anwendung der Diskursethik in Politik, Recht und Wissenschaft*, Frankfurt a.M. 1992, 317-348, esp.346f.

²³ Cf. K.-O. Apel: “Diskursethik vor der Problematik von Recht und Politik”, in the same and M. Kettner (see note 22), 29-61.

(It is indeed not in accordance with the distinctions of *analytical meta-ethics*, which have won a dogmatic status in many quarters of contemporary philosophy.)

However, precisely this novel structure of a synthesis of *deontological* and *teleological* features, which we have to suppose already in *part A* of discourse ethics, provides us with the key, I suggest, for an understanding of the necessary structure of the *supplementation principle* in *part B* of discourse ethics. For, in the perspective of this principle, the *strategic-counterstrategic measures* are only — indeed — morally necessary and deplorable *substitutes* for the *ideal deontological* norms of practical discourses in as far as the latter are not applicable in *part B* situations. But the simultaneously binding *teleological* principle of *changing and improving the application conditions of discourse ethics in the long run* is indeed essentially the same in *part A* and *part B* of discourse ethics. Being steered by the *regulative idea* of approximately²⁴ realizing the conditions of *ideal consensus-formation*, which we have always recognized in the primordial *discourse*, *part B* of discourse ethics does not abandon or transgress the *principle of discourse ethics*, as many have suspected. In *part B* it only becomes much clearer than in *part A* that *discourse ethics*, with regard to its *applicability conditions*, is not a pure *deontological* type of ethics that abstracts from its *historical situatedness*, but, to the contrary, is an ethics of *history-related responsibility* or rather *co-responsibility*, as I have already indicated in my fourth lecture.

Now, from this vantage point of *part B* of discourse ethics it becomes possible and necessary to introduce a further *concretisation* of the *application of discourse ethics*. It concerns the relationship between *part B* of discourse ethics and the *functional constraints of social institutions or subsystems*, as e.g. positive law, politics and economy. Thereby the topic of my last lecture is indicated.

²⁴ In earlier texts I have sometimes omitted the word “approximately” in talking about the duty or task of “realizing the conditions of an ideal communication community within the real communication community”. But I have always supposed, and in most cases explicitly declared that I was applying a “regulative principle” in Kant’s sense to which “no empirical circumstances can ever completely correspond”. See especially my essay: “Ist die Ethik der idealen Kommunikationsgemeinschaft eine Utopie?”, in W. Vosskamp (ed.): *Utopieforschung*, vol. I, Stuttgart 1982, 325-355; Engl. transl. “Is the Ethics of the Ideal Communication Community a Utopia?”, in S. Benhabib/F. Dallmayr: *The Communicative Ethics Controversy*, Cambridge/Mass: MIT Press, 1990, 23-59.

Application Problems of Discourse Ethics

Part II:

How to Deal with the Functional Constraints of the Sub-systems of Society: Politics, Law, and Economy

I. Introduction: Mediation of Personal Interaction by Social Institutions. Functional Constraints of Social Sub-systems as a Problem of *Part B* of Discourse Ethics.

In my last lecture I explicitly dealt with the problem of *applying* discourse ethics to the real life world, as it has developed throughout history. In this context I have introduced the distinction between an ideal *part A* and a complementary *part B* of discourse ethics, in order to cope with the rather unpleasant problems of those situations where an *application* of the ideal procedural norms of discourse ethics is not feasible. We have dealt with the novel problems of *part B* by recourse to a *supplementation* principle that was conceived from the point of view of an ethics of *risk*, or, respectively, *reciprocity responsibility* in the context of *personal interaction*. Thus we arrived at the postulate of a *responsible mediation between purely consensual-communicative and strategic rationality* under the *regulative principle* of changing and improving the application conditions of discourse ethics. But at the conclusion of the last lecture we have intimated that a further *concretisation* of the problems of *part B* of discourse ethics is required, considering the fact that in ordinary life personal interactions usually are mediated through moral pre-regulations by *convention* and *social institutions*. This point has to be elucidated more closely at the beginning of my present lecture.

In many phenomenological and existentialist types of ethics, which can easily be recognized as being secularisations of religious dimensions of traditional ethics — e.g. with M. Buber, Eugen Rosenstock-Huussy, Franz Rosenzweig, and especially with E. Lévinas — the evidential centre of moral obligations is constituted by the situation of the *I-thou-relationship*. Thus e.g. for Lévinas, the encounter with the face of the other is the phenomenon where “God falls into life” through the manifestation of a moral obligation that is *not mediated by any rules*.¹ But this is what the existentialist K. Jaspers called a “borderline situation” (“*Grenzsituation*”).

¹ Cf. E. Lévinas: *Totalité et infini. Essai sur l'extériorité*, 1961.