

The Person: Rights, Power and the Right

Ethics in Ricoeur and Habermas

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It is not uncommon for a treatment of rights to be treatment against power with some concession to the responsibilities that a tutelary of rights enjoys. We owe it to legal philosophers of the Scholastic persuasion who recognized rights as the entitlements that allow a person to fulfill duties – whether these arise from nature or from contract. In this sense rights were subordinate to and enjoyed for the sake of duties that one had. One may debate this way of putting things, but it had the marked advantage of clarity and showed the internal connection between rights and duties. Also in the scholastic anatomy of rights, there was such a thing as the “term” of the right – he against whom the right could be claimed, and therefore he or she upon whom a duty was incumbent to desist from transgressing the right of the tutelary. In this sense a “right to” was concomitantly “power against”, but power, in the sense of claim or entitlement. For the power to enforce, one had to look to what scholastic philosophers called the “title” of the right – and this could be natural law, positive law that, of course, included contracts.

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I do not think that this was bad at all, but I would like to pick up the subject today by paying attention to two leading figures: Ricoeur and Habermas.

RICOEUR

It is said with good reason that Ricoeur's focus, in his later works, was the "capable person". But as acting and speaking, a person is also subject to precepts. He is accessible to precepts. The vexatious dichotomy between "ought" and "is" therefore does not arise, for Ricoeur, in respect to the person, because the very "is" of his actions comes with the "ought" of precepts.²

Admitting that there is no philosophical necessity for distinguishing between ethics and morals, he nevertheless introduces an *ad hoc* distinction. Ethics refers to the aim of an accomplished life, and morality, the articulation of this aim in norms characterized by the claim of universality and by an effect of constraint. And the ethical intention is "aiming at the good life with and for others in just institutions.

Now practice, whether it be the practice of a profession, of an art or of conduct is unified by the dimension of meaning in which it makes sense to evaluate, and therefore to refer to norms and to the precepts of doing something. Writing this paper is reading books, writing lines, re-writing them, exchanging views with others – all of which have meaning because of the standard of a philosophy paper by which one can evaluate whether it is a carefully thought out paper or not. Standards, however, are never the fruit of the ruminations of the solitary actor, performer or agent, but of a community or society of practitioners.³

From this level of appreciating the capable person, it is clear that basic power is the power to evaluate both his own actions and those of others in accordance with the standards of excellence that serve as constitutive rules. In another work, Ricoeur asks more directly about the "subject of rights". This ethical question

² Paul Ricoeur, *Oneself as Another* (Chicago: The University of Chicago Press, 1992), p. 169.

³ *Ibid.*, p. 176.

culminates in the proposition of philosophical anthropology that the subject of rights is the capable subject who is capable of assignment, by which he means the capacity of the human subject to designate himself as author of the acts. And we are worthy of esteem and respect – which is a way of talking about our rights – insofar as we are able to esteem as good or bad, declare as permitted or forbidden, actions of others or of ourselves. A subject of imputation therefore results from the reflexive application to agents of the predicates like “good” or “obligatory”.⁴

The persons’ basic power – his capacity for assignment (or assignation) is his power to esteem, and therefore also his entitlement also to esteem and respect. On this level, the capable person’s power is at the basis of his rights, but this is not the power to claim rights, nor to enforce them against others, but principally the power to use the qualifiers good or bad in respect to his own actions and those of others, at the same time as he attributes or assigns these actions to himself.

But still following the development of Ricoeur’s ethics, we meet with another, though not unrelated, face of power: The power to engage in praxis whose teleology he can nest within his greater life-plan. Obviously, power can be visited upon a person to engage in praxis that resists coherent integration into his life-plan, and that constitutes the basic violation of the human person.⁵

So what is the good life? It is the nebulous of ideals and dreams of achievement with regard to which a life is held to be more or less fulfilled or unfulfilled. It is that in view of which all actions are directed, though these actions may have ends in themselves. Getting to meet you and discuss power and rights with you today is an end in itself, but to deal with the good life, this finality must somehow be orientated towards what I take – never monadically of course – to be a fulfilled life.

There must perforce be constant reference back to our notions of the good life in commencing that praxis that may have end in itself, just as take the cue for actions in which we engage

⁴ Paul Ricoeur, *The Just* (Chicago: The University of Chicago Press, 2000), pp. 3-4.

⁵ *Oneself as Another*, p. 179.

from our notion of the good life. Life-plans and praxis are therefore to be interpreted by constant reference to each other. Action is therefore interpreted, and the person who interprets his actions must in the same measure interpret himself.

Solicitude is Ricoeur's term for the good life with and for others. It is not an added moment to self-esteem but is essential to it. The path to mine-ness (esteem for myself) traverses the unexpressed reference to the other. To esteem what I have written is to be confident that an exchange with you can only be fruitful, not threatening.

Life can be good only with friends. Hence at the heart of the aim at the good life is a "lack": we need friends, and "need" not be a term of utilitarian monopoly. In fact, Ricoeur puts it very well: "Need has to do not only with that which is active and incomplete in living together but also with the sort of shortage or lack belonging to the very relation of the self to its own existence." There is lack therefore that dwells in the most solid of friendships.⁶

Ricoeur makes the very pointed observation that in many languages, goodness is the ethical quality of the aims of action and the orientation of the person towards others. An action is not held as good unless it is done on behalf of others, where *mabuti* bears reference not only to what a person does, but to what he does in behalf of others, or for the sake of others, thus distinguishing *mabuti* from *mahusay* or *magaling*. Solicitude is benevolent spontaneity. I adjudge care and concern for others good, and myself as good insofar as I am truly solicitous.⁷

For Levinas, the Other appears as the master of justice, the preceptor of the right, the embodied prohibition against murder. The Otherness of the other precisely defines exteriority and thus excludes relation. This asymmetry is compensated by benevolence, through the movement of recognition. But the inverse situation is also the appearance of the other in suffering: suffering will not be confined to physical pain, or even mental pain, but by reduction even the destruction of the capacity for acting, for being able to act, experienced as a violation of self-integrity.

⁶ Ibid., p. 181-186.

⁷ Ibid., p. 190.

This gives us the negative side of power: It is within my power to cause the other to suffer, principally in violating the other's self-integrity. The exercise of this kind of destructive power, which I shall call violence, is the very negation of the right of the other, which I also understand as the magisterial or instructive position of the other. It is the antithesis of the benevolent spontaneity that is solicitude.

But this also allows us into another important dimension of the power of the human person: the power to receive the pain and anguish, the suffering and distress of the one who has less power (or is even powerless). It is the capacity of sympathy which is the heightened for of the capacity for solicitude. In this regard, all effort to balance talk of power and rights with attention to responsibilities is superfluous. The power that we here encounter is the power of responsibility – in the sense of responding not with pity but with sympathy to the plight of the other. It is the power for the subservience of power to the weakened condition of the other.

Once more, however, we must advert to the execrable form of the use of power – and that is when power is directed against the power of the solicitous and sympathetic person. The most dramatic examples of this terrible brutalizing use of power come to us from those movie clips of Nazi prisoners tasked to dig the graves of their own relatives and friends and to toss them nonchalantly like garbage into a common pit, or to shove them into a crematorium. The power each of those hapless prisoners had to sympathize with the victims – totally stripped of all power – was suppressed, stifled, shackled by the overpowering power of brute force or strategic advantage and superiority, so that one just dug, picked up bodies, even if they were the bodies of loved ones once cuddled and caressed, without any emotion. This is the power directed against the very heart of the ethical, and therefore the most unethical use of power, but it is the power that attempts at canceling solicitude and sympathy that are at the very heart of the aspiration to live a good life with others.

Between the extremes of summons by the Other from a magisterial height that always excludes relations (Levinas) and the spontaneity of sympathy at the immense suffering of the other is friendship where the self and the other wish to share the same

life together. The presupposed equality of friendships is re-established by the acknowledgment of the superiority of the other who calls, and in sympathy, by shared agony, vulnerability and fragility. To self-esteem in its reflexive moment friendship adds the dimension of lack – we need friends, and a sense of equality: I am, with friends, an equal to them.⁸

The recognition of right must of necessity be part of the ethical moment, because the consequence of the denial of rights is the denial of equality. While it is true that there is something aristocratic about friendship (it does not extend to all), to wish for the good life with others cannot mean excluding the others from the good life, or excluding anyone *a priori* from the circle of friends from whom I am solicitous. Responsibility is my susceptibility to summons; it is at the same time the essence of solicitude that must first of all recognize the equality of the other, my equality with him, and thus a basic recognition of right. The misuse or abuse of power is precisely the perversion of sympathy because it exploits the vulnerability of the other, where sympathy shares in weakness and anguish.

The last item in Ricoeur's analysis is "just institutions", for the transformation of the veritable subject of rights into an actual subject of rights does not take place without the mediation of the Other, and the other is not encountered only in the dialogical and in the intimate, but also in the anonymity of the third person. Interpersonal relations do not exhaust the whole gamut of living together that will include communities, societies, nations.⁹

There is a will to live together. The ethical aim includes this will. "The good life in unjust institutions" is incomprehensible. It is incoherent. Ricoeur borrows from Arendt the notion of "power in common" to deal with plurality which extends to all others whom I do not encounter face to face and are therefore third persons. A plea for the anonymous is therefore part of the ethical life.

For Arendt, the space of appearance comes into being whenever persons are together in the manner of speech and action.

⁸ *Oneself as Another*, p. 192.

⁹ *The Just*, p. 5.

This space is prior to the state, prior to organized polity. It exists for as long as persons are together and act together; it ceases when they disperse.¹⁰ Political communities are killed first by loss of power and then impotence. Power is never stored up so that it may tapped in times of crises. There is no such thing as stored power, only power *in actu*. It exists only in its exercise, in its actualization. "Power is actualized only where word and deed have not parted company, where words are not empty and deeds are not brutal, where words are not used to veil intentions but to disclose realities, and deeds are not used to violate and destroy, but to establish relation and create new realities."¹¹

Arendt therefore contrasts power and force. Force is that which is employed by those who have cornered the means of violence (despots, aristocrats, even rebel groups as well as the lords of society's netherworlds) for themselves. While violence can destroy power, it can never substitute for it. So it is that there then can co-exist force and powerlessness, the impotent spent force of futile impositions. Arendt therefore reaches a spectacular conclusion, inspired, she admits by Montesquieu: Tyranny is not a form of government but the very antithesis of plurality, because the tyrant thrives by isolating himself from the people and by isolating people from each other. Tyranny then breeds the germ of its own destruction the moment it makes its appearance because it is unable to sustain the power to remain in the public space of appearance.¹²

Power is therefore fundamentally wanting to act and to live together and thus does not have to be forced to submit to ethical precepts. It is part of the ethical aim to live a good life with others in just institutions. This brings justice into the picture, and it has two faces: the 'good' that extends interpersonal relations to institutions, and the 'legal' whereby the judicial system gives law coherence and society, constraint.¹³

¹⁰ Hannah Arendt, *The Human Condition* (Chicago: The University of Chicago Press, 1958), p. 199.

¹¹ *Ibid.*, p. 200.

¹² *Ibid.*, p. 202.

¹³ *Oneself as Another*, p. 197.

Power from this perspective is the guarantor of right, not principally in the sense that an armed sector of society polices against violators of right, but in the sense that what allows for justice – the extension of the interpersonal to institutions and the coherence and restraint of legal systems (including constraints to legal behavior and restraints against violations of rights) – is the will to live together, action or power in common. The ‘will to live together’ must also be an elemental form of responsibility, but this cannot be other than a dimension of the ethical aim of living a good life with others in just institutions.

Habermas¹⁴

Habermas observes that what has been considered amenable to rational treatment has been pared down to the “cognitive-instrumental”. What is a double-helix? How do you bring about a genetic change in an organism? How do you use ethanol to run a car? Questions like: “Is it licit to use the pluri-potential cells harvested from embryos for experiments?” are considered beyond the realm of rational examination. Moral precepts or ethical propositions are then deemed statements of preference (whether personal or collective) in much the same way that for no apparent or easily appreciable rational reason, one prefers blue to orange, or striped shirts to plainly colored ones!

P.F. Strawson (who authored “Individuals”, an exposition of what he terms “descriptive metaphysics”) draws on the phenomenon of resentment to exhibit that moral experience has real content that allows for rational examination. Resentment, parenthetically, also received Nietzsche’s special attention as it did Scheler’s. When is one resentful? Imagine the situation where, in the presence of one’s peers and subordinates, one is berated by one’s superior: One is hurt and hurting, but is relatively powerless because of the superior’s superior position! Although a relatively powerless reaction, resentment is in fact moral condemnation.

¹⁴ Sources for this section: Jurgen Habermas, *The Theory of Communicative Action*, Volume 1, Thomas McCarthy, trans. (London: Heinemann, 1981); Volume 2, (Boston: Beacon Press, 1987); Jurgen Habermas, *Moral Consciousness and Communicative Action*, Lenhardt and Nicholsen, trans. (Massachusetts: MIT Press, 1990).

When later on, the superior should call you aside and say: “*Alam mo, kaya ko nasabi yon sa iyo kasi ayaw kitang mapahamak*”, the superior is actually asking you to look at what you considered an “insulting incident” as in fact an act of friendly if not fraternal concern. He could also say: “*Sorry, pare ko, kaya kita nabulyawan kanina kasi wala ako sa sarili ko. Puyat ako at galit pa sa mga pangyayari dito*”, then this is an invitation to look at the actor – in this case, one’s superior – in a different light. If either of these is acceptable to you, you should start feeling better! In fact, you may even feel good, after all.

From this, Strawson – with Habermas obviously approving – concludes that one can take two positions: an *objectivating* position – that of an observer, an outsider, one who studies a situation “at arm’s length”, or a *performative* position, that of a participant. When one is either the superior, or the victim of the superior’s ire, one is a participant, and there is either moral praise or condemnation (as the condemnation that resentment carries), but when one assumes an “observer” position – as when one is asked to observe the perpetrator, or to observe the act (or omission) itself, then one annuls whatever condemnation or approval there might be. These cease to be relevant, and the whole realm of approval or disapproval, praise and reproof is neutralized!

It is important that moral phenomena be appreciated, grasped for what they are – moral phenomena, not merely data of human interaction. The average human person, before he takes the stance of a detached observer, feels admiration for noble deeds, revulsion at thoughtless selfishness, guilt over wrong done, and self-esteem because of good accomplished. These are moral phenomena **as** moral phenomena, but they are available only to one who is so embedded in everyday life. And there is a certain degree of “un-avoidability” to this. We cannot decide that henceforth we shall be immune to all this. Perhaps, even such a decision comes as a reaction when one is deeply hurt.

Thus understood, the objectivating attitude is a secondary, one may even say “contrived” attitude. Before one “objectively” distances himself from everyday life, one is a performer (one is an agent who, in Ricoeur’s terms can ascribe not only deeds but goodness or malevolence to himself and to others) or the recipient

of the effects of the actions of others. That is simply another way of saying that we are participants in the moral exchange before we assume the position of detached observers and commentators.

Ethical theory can dwell on the position of the “outsider” to everyday life – she who takes a step back from involvement with quotidian affairs and assumes an “observer’s” position. The problem with this however is that the person who makes moral judgments, who is bothered with ethical issues is not the detached observer, but the person immersed in daily life, a life-world, a social contest. Such a person is she who, when confronted with the latest model of a cell-phone left inside the classroom, wonders whether she may keep it for herself or not, or who asks whether submitting herself to cosmetic surgery that, the surgeon informs her has inherent risks, is permissible. The position of a “detached observer” – which is the position taken by for whom ethics cannot make any rational claims (or rationally justifiable claims) – is not a position that we as human persons can take for long, because the pressures of everyday living are such that sooner or later we must return to a state of being-in-the-world!

You come home one day and find your wife in the tight embrace of another man, and it is obvious to you that both are indeed having a very good time. You are outraged, and you have every reason to be outraged, and your rage is directed at the interloper, and perhaps (better: certainly!) also at your own spouse. You have been **wronged**. Before any provision of law can be cited, you know you have been wronged. They too know that they have wronged you because they cannot look you in the face. Your wife has not acted as you expect (and have a right to expect!) your wife to behave, and the interloper certainly had no business interloping! In other words, it is not merely husband vs. interloper (and wife), but the violation of a **normative expectation** that is involved here. And when the outburst begins and you start delivering your impromptu diatribe against your wife and her paramour, one of the things you can be expected to say will be: “Kahit sino na asawa ay magwawala sa nakita ko ngayon!” *Kahit sino...* that is important because it points to the “general” character of the norm. What is particularly offensive – and what makes the extra-marital interlude immoral is the violation of a “general normative expectation”.

It is violating this general expectation that makes the miscreants ashamed of themselves as well!

When you are the town mayor who decides one day to walk the streets of your municipality *incognito* and are accosted for no other reason than that a policeman who swaggers around does not have a particular liking for your get-up, you identify yourself to the abusive officer, and he is suddenly profuse in his apologies. But you retort: "*Kahit na sino, dapat igalang mo!*" Once more, *kahit na sino* points to the root of your outrage. What gets at you is not that this officer crossed your path but because he did not act as he ought to have acted. A public officer acts with courtesy towards all – that seems to be a general normative expectation, and precisely because of its generality, it can claim *moral authority*. Morality does involve persons but its authority lies in the supra-personal character of its claims. *Walang personalan!*

What then is the relation between "moral obligatoriness" and the "impersonality" (supra-personality) of the expectation? Martin complains that his elder brother has left him to fend for himself. He is sulking at Benedict, his elder brother who has, however, extended him assistance several times in the past, but Martin is hopelessly addicted to the poker table. Martin may believe that Benedict has trespassed a general norm – that the elder brother should take care of the younger – but Benedict is prepared (in fact eager!) show Martin that the norm is unreasonable if it is taken to obligate an elder brother to support a younger sibling who makes no effort to support himself and squanders every opportunity given him. What is happening here? What is happening is what many ethical theorists thought does not happen in ethics – reasoning and understanding reasons. To say that Benedict is no longer obliged to support Martin's indolence is in fact to say that there are good *reasons* not to lend such support. This is not only a Benedict – Martin affair. It is a matter of reasons supporting a general norm! This means in effect that you get strike out the names "Benedict" and "Martin" and substitute them with the variables *y* and *x* provided of course that these are persons and are siblings, the norm would still apply because of its reasons.

There are to be sure attempts to reduce the distinctiveness of the moral question. *What ought I to do?* asks the college student

who carries a pregnancy she does not want. Some translate this question into: *Ano kaya ang mainam gawin?* which misses the point because that question turns the matter to herself alone – prudence, or looks into desirable results, expediency. Neither will it to do to render it as: *What do I want to do?* because the question is precisely in the wake of a conflict I experience between what I would like to do and what I have reasons to believe I ought to do. And while the pragmatist proposes that the question be rendered as: *How do I bring about a situation that will leave me in peace and that will achieve acceptability on my part with the rest of the members of society?* this will not do, because social usefulness does not seem to be the concern of the pregnant girl in this situation. Utilitarianism misdirects the girl's concern and waylays the real issue.

So, what exactly is the girl asking with *What ought I to do?* She is raising the question as a participant in everyday life, as a member of a community with moral feelings, moral attitudes, moral dispositions towards things and situations. To do justice to her question then it will not be correct to attempt any reduction or re-direction of her query. It must be dealt with where we find it – in the midst of everyday living, with the complex web of attitudes, feelings, intuitions and expectations that constitute living and living together.

Habermas sides with the cognitivists, and believes that ethical theory should take on the form of an analysis of ethical argumentation. *How does one reach conclusions in ethics?* It is immediately apparent that Habermas will not take for an answer the skeptical position that no argument goes on and that it is feelings that ultimately prevail or, that “we just do it” with no real argument for or against what we do. Habermas believes there are arguments, and ethics consists in studying our arguments in ethic. At the heart of Habermas' concern with ethical argumentation is his concept of the *lifeworld*.

Since Habermas presents the *lifeworld* as complementary to that of *communicative action*, let us first attend to his notion of communicative action. In the first volume of *The Theory of Communicative Action*, Habermas writes of “communicative action” as the “actions of the agents involved... coordinated not through egocentric

calculations of success but through acts of reaching understanding." Communicative action is speech-action (and the relations it establishes) that go into consensus-formation. This involves a common definition of the situation – *Talaga bang may krisis sa bigas o wala?* – and then a harmonized plan of action. But the definition of the situation will have to be negotiated in the sense that we will have to give reasons for the different positions we maintain, we will have to assume that the other is good-willed in the sense that he is willing to be persuaded by reason (and by the better reason alone!) and then we will attempt to convince the other of the correctness of our position, or review ours in the light of what the other has to say. Communicative action is therefore the action that consists in reaching agreement between speaking and acting subjects. This has to be clear: Agreement arising from external coercion, for example, does not demonstrate communicative action, but a consensual determination that there is a threat, and the successful attempt of one member of the community to propose to others an effective coping mechanism is an example of communicative action. What should be underscored is that communicative action is eminently *rational*: I must be able to convince others, and this I can do only if I have the right arguments, or I must be prepared to be convinced by them, if the flaw in my argument can be shown and the correctness of theirs, exhibited!

Participants in social processes can be either "success-oriented" or "consensus oriented". Of course, consensus is some form of success, but a success-oriented process is one where agreement is not as important as getting something done, or winning consent, either by twisting arms, bluffing, intimidating or overpowering! When one aims at an agreement one entertains the possibility that others may just not agree, and so one must be armed with a battery of good reasons to convince the others. What indicators do we go by that an agreement has been reached? We just know! – and this is not a matter of irrational feeling. It is familiarity with our ways of being together, a familiarity that has taught us to discern when we have reached an agreement. When, on the eve of elections, your neighborhood gathers and you bat for a candidate your neighbors do not feel much for, you point out the qualities that you believe will convince them to vote for him, and you endeavor to show that voting for him is the better

alternative. There is no pre-arranged signal that marks the moment of consensus, but you know – as do all others in that intimate circle – when you are all agreed on what to write on the ballot next day!

Unarticulated though the consensus or meeting of minds might be, communicative action has a rational content and a propositional core. In effect, each person in that barangay circle is agreeing: “Yes, voting for Bogak in tomorrow’s elections is the better thing to do.” That is a proposition and that has been supported by your arguments. It can be contested, its truth questioned, and therefore disagreements can likewise be settled by argument. Habermas is a believer in reason – and I don’t see how one can reasonably argue against confidence in reason – and he points out that he who posits the proposition as to the desirability of his candidate and he who agrees with the proposition or opposes it maintain the positions that they do on the basis of reasons.

What then is the *lifeworld*? It is Volume II of “Theory of Communicative Action” that explains Habermas’ use of this term. In the classroom for example, the teacher teaches (or so I hope!) and the students attentively listen. As a general rule, the teacher will be treated with deference and addressed with respect. The students will also expect the teacher to have the answers to their queries. When the teacher orders a student to erase the board, most of the time this will be carried out unquestioningly. When the teacher raises his voice, that will commonly be taken as a signal that a storm is brewing, and the ensuing diminuendo in classroom chatter will follow as a common gesture of placation. The entire situation illustrates how many things are taken for granted and simply lived – unthematized, unquestioned. The entire complex relation between teacher and student is never itemized in some rule book, although student manuals often vainly attempt to do this. The students’ expectation of the teachers’ familiarity with the subject, and the teacher’s ascendant stance over her pupils – none of this is talked about, none of this is bothered about, but all of this is unquestioningly presupposed, performatively assumed. This is the *life-world*. In his characteristically difficult, but powerful language, Habermas says: The lifeworld is represented by a culturally transmitted and linguistically organized

stock of interpretive patterns. Members of a society are so not because of some common ID card held, but because of interpreting the world in common.

Language and culture are constitutive of the life-world, and language is spoken, not treated as an object of disinterested inquiry. To be sure, it can be such an object, but in that case will cease to be the lived reality that it is for those who communicate with one another in that language while they take the observer's position. Our reaction to a slight is cultural; our sense of yielding is also cultural – and in so far as we are hurt after we are slighted, or yield to elders or superiors, all this is *lifeworld*. The moment, however, a non-conformist asks why elders should always be right (a valid question, to be sure!), then the sense of yielding ceases to be life world and has become thematized, objectified in the sense of being put forward for study.

You say *kabagis* for example, in Ilocano, to refer to a sibling or a very close relative. That is symbolic, and the symbolism always remains pre-interpreted, for the moment one starts examining *kabagis* one takes a step back from the interpretation of human relations that the term symbolizes. So siblings will stand for each other, and good friends will go at great lengths, and *kabagis* will explain it all with its symbolic power!

So how does all this relate to reaching understanding? We can reach understanding because there are some – in fact many – things we hold in common, unquestioningly. The *lifeworld* provides members of a society with a stock of knowledge from which to draw in living life, in conducting affairs among themselves, in defining themselves before the rest of the community. And precisely because it is a common stock drawn from that there is understanding. And it is because we live within this matrix of the pre-interpreted and the “already understood” (albeit unquestioned) that understanding is possible. It is the life-world that makes expressions and themes possible, so that the life-world cannot itself be thematized. You can use a hammer to drive a nail into wood, and by the self-same token, you cannot use the hammer to hammer itself!

We can then follow Habermas with greater ease (although Habermas is never easy!) when he distinguishes sharply between

“strategic” action and “communicative” action. When I wrest your acquiescence to my plans by threatening to assign you to teach in Bolo’s Point, that is strategic. But when I give you the reasons for my plans, listen to your objections and counter them, lay to rest your doubts and allay your misgivings effectively, I am acting communicatively. As long as my trustworthiness is not compromised, if I tell you “There is an asteroid headed our way”, I may succeed in motivating you to accept this, not because I have actually proved the truth of what I say, but because you trust me to provide you with acceptable reasons should you doubt or question the truth of what I say.

Let us go back to the dreadful announcement I make about the asteroid: “There is an asteroid headed our way.” To communicate successfully, I make the following claims that my listeners (one or many, and in fact those who I may not now address but will read my declaration at some indefinite time in the future) can accept:

- a. *You can understand me.*
- b. *What I say is true.*
- c. *You can trust me.*
- d. *The relation I seek to establish with you is normatively correct.*

The last calls for immediate attention because it is not something familiar. Every speech act consists of an “illocutionary component” – an unsaid component that nevertheless does something, or brings something about.

“There is an asteroid headed our way.” In factual fact when I face you, or an audience, or when I write in broadsheet or a tabloid, my complete speech-act is:

“I am informing you that an asteroid is headed our way.”

The italicized portion is often left unarticulated, but it is powerful because it establishes – or at least attempts to establish a relation: in this case, the relation between one who supplies information and one who receives it. And, of course, because every speech-act endeavors to establish a relation, there is always the

risk that the relation that one seeks to establish never gets established because it is normatively incorrect.

If, for example, in all earnestness and sincerity, I were to break into the emotionally charged scene of a dying mother whispering endearingly to her weeping children and making known to them her dying wish, and announce: "There is an asteroid headed our way" the truth of what I say, notwithstanding, the communication will fail, because in that situation the relation I seek to establish is simply one that is "normatively unacceptable". And when it is asked where the norm comes from that the relation informer – informed is not acceptable in this situation, then we will usefully remember the *lifeworld*.

As for "sincerity" as distinguished from truth, just recall how the nation reacted to PGMA's announcement that the economy was on the mend. For all we know, she was right. She had the figures; her financial analysts had done their homework, but communication did not quite succeed because she suffered (justly or unjustly) – and somehow still does – a credibility problem, a problem of trustworthiness!

When someone has planned on migrating to the (fantasy?) land of dreams – the United States – and convinces you that you should join, she might say something like this: "This is the worst time in the economy of the Philippines and it will not get any better". Obviously she is making an attempt at getting me to agree with her on a common definition of the situation – particularly the economic plight of the Philippines. She is also attempting to establish the relation between enticer – enticed, initiator – initiate, recruiter – recruited with me. Both claims are criticizable, in that you may question the proposition that we are worst off now, or in contesting the relation she seeks to establish with you. But communication goes on for as long as you are sure that she is able to vindicate her claims should you criticize or question them.

Consider the following propositions:

- a) "Do not kill".
- b) "It is a universal command that one should not kill."

This speech-act is characterize as "regulative", its focus on the validity of the norm. We have seen that norms are nothing

new, nothing extraneous. Normative validity is presupposed by every speech-act insofar as a speech-act attempts to establish a relation that the speaker believes to be normatively correct.

But insofar as formulation “a” is concerned, the command in sentential form or in a speech-act is only secondary. When I stop people, maybe even by force, who are both armed and apparently dead set on harming each other, I am in fact commanding them not to kill. Assertoric statements (statements of norms) therefore have an existence independent of the act of uttering or writing them. They exist in the conduct by which we desist from harming or killing each other, or in the revulsion we feel when we hear of the murder of another, or the remorse the perpetrator experiences after he has killed another. We can therefore say that the very fabric of living involves norms, and it is in human existence, human interaction that norms principally reside. We live norms before we formulate them!

For Habermas, the world of norms is as real as are the worlds of the physical facts and the world of the subject. But there is an ambiguous character to normative validity. In many places in the Philippines, it is still a norm that “ang lalaki ang masusunod”. The existence of this norm is recognized. But the fact that it is recognized is not necessarily an endorsement of the norm, nor a recognition of its worthiness to be recognized, nor a recognition of its validity. So, in the words of the title of another of Habermas’ works, there is a difference between “facts” and “norms”. Some norms are social facts; they exist as norms, but whether they command our respect, obedience or can rightly claim validity is a distinct matter.

Why do we endeavor to act with courtesy and respect towards others? For one, we see that there is a point to acting in such wise. We can put the reason in so many ways: We sense that the other person is worthy of respect, or we can use a Confucian approach and say that we act with courtesy and respect towards others but we would like to be treated in turn with courtesy and respect. But coupled with the “reason” is also some kind of “force” arising from social pressure. The boor is ostracized; the ill-mannered, uncouth and inconsiderate person is shunned, and this always pains! The point to this is that “positivism” that main-

tains that whatever may be the content of a norm, once a norm, it is worthy of respect and demands compliance does not give a very credible account of norms.

In more direct terms: If you want people to abide by a norm, be sure that the norm is valid, and what validity ultimately means is that the norm can be justified. That is to say, that the acceptance of the validity of the norm is the expectation that the ought-statement that expresses the norm – One ought to act towards others with courtesy and with respect – can be justified with reasons, or in Habermas' more involved terms, "discursively vindicated." It becomes apparent then that even in a group that goes by the norm: "*Magnakaw nang mabuhay!*" there will be no mass loyalty; while the "norm" may actually describe the *modus vivendi* in a time of privation, hardly anyone will defend its validity – because no reasons can be advanced in favor of it.

The norm: "Do not kill anyone unless you have to defend yourself" is an example of a norm whose validity is generally accepted. In ought-form: "One ought not to kill another unless in self-defense" is a proposition that can be reasonably or rationally justified or vindicated. But essential to its validity is its "universalizability" – it holds for all, everywhere, everytime. In fact its universal range is indispensable to its validity. No one can seriously take a tailor-made norm – one formulated to suit me. Precisely the claim: "One ought not to kill another unless in self-defense, although I may" has a ridiculous ring to it!

So how is this principle of universalization best formulated? Following in the lead of other thinkers, Habermas offers the following formulation: ***All affected can accept the consequences and the side effects its general observance can be anticipated to have for the satisfaction of everyone's interests, and these consequences are preferred to those of known alternative possibilities for regulation.***

Habermas gives this principle the label "U" – obviously for universalization. It is for him a rule of argumentation. Any argument put forth in ethical discourse must comply with this requirement.

One who is seething with murderous intent can accept the consequence of the norm – that she cannot carry through with

her “final solution”, and members of society understand and accept the consequence that no matter how virulently averse they may be towards another, there is no way they can lift their hands to stomp him out of existence. Everyone sees that it is in everyone’s best interests to accept this norm and this state of affairs – and an alternative that creates exceptions for some has complications that are undesirable. One other way then to formulate Habermas’ principle of universalization is to say that a norm must be submitted to all others for purposes of testing its claim to universality by an unhindered, free and rational exchange among equals!

There are then two assumptions of discourse ethics: a) that normative claims to validity can be treated like claims to truth; b) the justification of norms and commands requires that real discourse be carried out, and so cannot be the achievement of an individual mind.

I claim as valid the norm: “Abortion is wrong” or “One ought not to terminate the life of a human fetus.”

The first assumption is that there is a similarity – better an analogy – between this kind of a claim and a claim to truth such as: “The hole in the ozone layer has widened this year.”

For a norm to be justified, it must be shown that all affected can deal with its consequences and can accept them, and find them preferable to alternatives. By my lonely self, I cannot find this out, and so real discourse has to take place!

Habermas is clearly therefore a cognitivist theorist. And he is a particular weapon against the skeptic: performative contradiction. When the skeptic opposes the cognitivist theory, the skeptic must involve himself in the very argumentation that he denies is valid argumentation for ethics. White, one of Habermas’ commentators puts it thus: “People engaging in communicative action at least implicitly invoke and so presuppose the validity of certain norms, whose validity could only be tested through argumentation. If they were to reject the cognitive status of judgments of normative validity, they would have to engage in forms of argumentation that implicitly support the principle of universalization itself.” (*The Cambridge Companion to Habermas*, p. 149) You cannot

reject cognitivist ethics without arguing in cognitive fashion and supposing the very universalization that you reject!

The process of argumentation makes at least the following presuppositions:

- ⇒ Every subject with the competence to speak and act is allowed to take part in discourse.
- ⇒ Every is allowed to question any assertion whatever.
- ⇒ Everyone is allowed to introduce any assertion whatever into the discourse.
- ⇒ Everyone is allowed to express his attitudes, desires and needs.
- ⇒ No speaker may be prevented by internal or external coercion from exercising his rights as laid down above.

These are not freshly minted rules by Habermas. They are the entailments of discourse. You want discourse, then observe these rules, otherwise, by simple definition, there is no discourse. You cannot for example claim that discourse has taken place when you have sealed the lips of a vociferous opponent with packing tape and locked him away in some closet with a hungry crocodile to keep him company!

Now we come to the key principle: the principle of discourse ethics (D): ***Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in practical discourse.***

Note that this principle is procedural principle. Hence the discourse theory of ethics is a procedural theory of ethics. The procedure is principally what Habermas calls “the discursive redemption of normative claims to validity.” A norm is valid if its claim to validity can be discursively redeemed, that is redeemed with reasons acceptable to all who are affected. The rejection by those who are affected for non-rational reasons – such as personal animosity for the proponent of the norm, or an *a priori* option for anarchy or non-conformism, or because he had a quarrel with his wife the night before and has a bad hair-day today – do not count! This also means that the norm must be supported by reasons

that can meet objections that not even the proponents may have anticipated.

Practical discourse does not generate norms. It tests norms. But practical discourse supposes the life-world, and also conflicts, for if all agreed about everything, there would no need to test norms, and perhaps no need even for norms!

ON LAW AND RIGHTS

Law plays today the role of archaic institutions and a seamless, undisturbed, uncolonized life-world in the past. Archaic institutions are just that – surpassed by the post-conventional, and the life-world is increasingly rationalized and therefore subject to the ravages of unrelenting pluralism. But with law and its role of lending society coherence and stabilizing behavior expectations, there arises the tension of its facticity – want it or not, it is there, it is a social fact – and its validity – whether or not in commands obedience and allegiance, whether or not it justifies the employment of the coercive power of the State.

Legitimate law and coercion can co-exist without antagonism for Habermas, but this can be so only if legal coercion does not destroy the rational motive for obeying the law. While unanimity is not demanded, what must at all times be possible is for all those affected by the law “to grasp the point”, to obey on the basis of insight, on the basis of rational grounds. Precisely because law must leave addressees free to accept or to contest, then it must also leave them free to take the posture of “objectivation”: I really do not care much about the law, but it is better to comply than to be penalized.¹⁵

The basic rights that Habermas identifies are not rights against the State as such but more fundamentally consequences of the discourse principle: allowing only such actions norms to count as valid as can meet with the approval of all potentially affected participating as consociates in rational discourse. That there will be, unfortunately, members of society who refuse to

¹⁵ Jurgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law* (Massachusetts: The MIT Press, 1998), pp. 120-121.

accept rational argument, who employ strategic force in place of participating the public sphere of opinion and will-formation is the very reason that the State must wield coercive power. The basic rights of which Habermas rights regulate the relations among freely associated citizens and are therefore prior to any legally organized state authority against whose encroachments citizens may claim rights. With the right to participate in those processes by which legitimate law is generated, citizens become authors of the law.¹⁶

As legal subjects, persons are given a code within which their autonomy is to be actualized. Human autonomy is autonomy within the space of law. Persons therefore understand themselves as authors of the very rights to which they all submit, but all this within the context of self-legislation that occurs within – not outside – the medium of law itself. It is persons who debate that which legislatures codify as legal rights. More than this, citizens can determine for themselves whether the laws they pass are legitimate through the freedom to participate in basic political processes that form the legislators' will and opinion.

The right of equal participation results from the juridification of the communicative freedom of all citizens. Communicative freedom is the power of unrestrained communication, exchange and will formation to generate rationally motivated consensus. Seen this way, popular sovereignty and human rights go hand in hand, and civic and private autonomy are co-original.¹⁷

But Habermas has grander plan: the reconstruction of law by which he means discovering the conditions under which modern legal and political orders count as legitimate.

The abstract rights of persons become concrete and enforceable through democratic and discursive law making. The power of the law is essentially the power of rationally motivated consensus, and therefore ultimately, the power of communicative action that Habermas contrasts starkly with the strategic use of power. In his reconstructive theory, Habermas first develops a theory of a

¹⁶ Ibid., p. 123.

¹⁷ Ibid., p. 127

system of rights, and then articulates the principles of the constitutional state, by which these rights are secured through law.¹⁸

This is one level of the encounter between power and rights. On this level, one calls on communicative power that is juris-generative to translate the realm of abstract rights into a regime of legally enforceable rights. It also becomes apparent that the most elemental right is the right to participate as consociate in discourse that generates law, that communicative action that later on becomes structured – vertically – as legislative discourse. Rights and democracy are therefore co-equal in the idea of legitimate law.

As for the constitutional state, a central principle of constitutionalism the reciprocal link between law and political power. This is a second-level encounter with power. Institutions for applying law are state-organized and the legal decisions of such institution are enforced through coercive state-power. From one side, political power is legitimate only when exercised in legal form and according to legal procedures. In this sense, law legitimates the exercise of political power. Law and political power therefore presuppose each other. But for law-making to be democratic, something else is necessary and for this Habermas enunciates the discourse principle. Applied to the engenderment of law, it is the democratic principle and it demands that ‘only those laws may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted.’

Some have despaired, without reason to my mind, over what they perceive to be the impossibly stringent demands of this principle. I do not read it as requiring the impossible. In the first place, it does not require unanimity. It merely requires that the legislature be prepared with such arguments for the law as may meet with the rationally motivated acceptance of reasonable persons. Second, it does not require that all citizens legislate. It only requires that the will formation of citizens be taken up by

¹⁸ Hugh Baxter, “System and Lifeworld in Habermas’ Theory of Law”, *Cardozo Law Review* 23:2 (2002), pp. 477-615 at p. 483.

the discursive process of legislation that is itself legitimately constituted.

Responsibility and communicative power demand each other. Communicative power is that power that responsible consociates wield by communication that ensures that all relevant questions, issues and contributions are brought up and processed in discourses and negotiations on the basis of the best available information and argument.¹⁹ This entails the responsibility to advance arguments, the responsibility to raise crucial and critical questions and the responsibility to yield to the force of the better argument.

There is therefore much to commend what Habermas calls in another work “the moral principle” which is actually the articulation of a form of responsibility – an elemental form. Each participant to practical discourse must transfer his subjective desires into generalizable desires. Precisely because Habermas insists that all claims must be redeemed by the responsible speaker or actor, then in a sense even this requirement is superfluous because only such claims are within redemption that advance generalizable interests with which consociates can identify. In fact the basic responsibility is the responsibility to justify and to redeem one’s claims in terms and arguments comprehensible to all possibly affected.²⁰ □

¹⁹ *Between Facts and Norms*, p. 170.

²⁰ Jurgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1973), pp. 107-108.