

## *WHAT IS LEFT OF APEL'S PART B OF DISCOURSE ETHICS?*

### *An Evaluation's Attempt*

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#### *Abstract*

The aim of this paper is to focus on the problematic aspects of Karl-Otto Apel's part B of discourse ethics in order to understand to what extent it has to be considered an essential element of this theoretical paradigm. On the one hand, and in particular, I will criticise the key argument put forward by Apel to show, in contrast to Jürgen Habermas' stance, the necessity of part B of discourse ethics. I refer to the thesis that, in some conditions, especially when strategic action prevails on communicative action, the moral principle U is not applicable, i.e. not legitimately expectable (nicht zumutbar) since too demanding. I will maintain that the application of U, instead, is always legitimately expectable: otherwise, a self-suspension of ethics would occur. On the other hand, however, I will defend the core of such a part B, i.e. the integration-principle E: this makes it possible to emphasise the utopian content of discourse ethics, which instead risks being affected in Habermas' version. In my view, though, such appreciation of principle E is not enough to justify the introduction of a part B, which therefore turns out to be, ultimately, unjustified. Apel himself recognises, indeed, that principle E should already be grounded within part A. I will defend, however, an alternative path to Apel's to justify principle E, arguing that such a principle could not be grounded

without explaining why the realisation of the ideal into the real communication community has to be considered as a value in itself.

Key words: Part B, principle U, (Un)zumutbarkeit, (teleological) principle E, hypergoods.

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### **Apel's reasons for introducing a part B: a short presentation**

The first time Apel introduced part B of discourse ethics (from now on DE) was in Paderborn in 1976 at a conference that focused on the transcendental foundations of moral norms (Apel, 1978). This issue has since been developed further in some essays of the 80's and 90's, in which the author precisely analysed the conditions in which the moral principle U could not be considered applicable or, better, legitimately expectable (*zumutbar*),<sup>1</sup> and drew up a proposal to integrate DE so that it could be possible to go beyond its apparent impotence in such conditions (cf., e.g., Apel, 1984: 603-634; Apel, 1986; Apel, 1988; Apel, 1992: 47ff.).

The central idea of part B is that U isn't legitimately expectable, since too demanding, in those conditions in which one cannot assume that other people are willing to act communicatively, i.e. to take part in discourses, in order to solve conflicts arising in the life-world. In such conditions, namely, trying to take part in discourses with people who are not willing to do so, or acting in accordance with norms grounded by U, even if such people presumably won't do the same, have to be considered irresponsible. Indeed, each of us is responsible for our own "system of self-affirmation" (*Selbstbehauptungssystem*), which can correspond to one's own person or to a collective identity to which one belongs (or that one represents), which could consist of the family, of a social group or of the State. If one can predict that the interests of one's own system of self-affirmation could be endangered by the strategic or even violent behaviour of someone else's self-affirmation, one is, according to Apel, not only justified, but also morally committed to act strategically, since not doing so would be irresponsible. In other words, in those cases when the people who one interacts with are not (or one has good reasons to think are not) ready to act communicatively, one has to put

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<sup>1</sup> It's not easy to find a suitable equivalent in English for the German term (Un)zumutbarkeit and for the related adjective (un)zumutbar, as they are used by Apel. I use here "legitimately expectable" with reference to the translation of the term, in this case used by Karl-Heinz Ilting debating with Apel, adopted in Benhabib & Dallmayr (1990).

in place “counter-strategic strategies” (Kettner, 1992) for reasons of responsibility. In *Diskurs und Verantwortung*, after having reformulated U in terms of the principle of action (*Handlungsprinzip*), Uh, and introduced some examples of the *Unzumutbarkeit* of the latter (Apel, 1988: 123), the author indicates two clear conditions of such *Unzumutbarkeit*:

“Als Prinzip einer Verantwortungsethik wäre das Prinzip Uh ohne weiteres anwendbar, wenn wir (schon) in einer Welt lebten, in der damit gerechnet werden könnte, dass (1.) alle faktisch befolgten Normen gemäß dem angegebenen Verfahrensprinzip U begründet werden könnten, und dass (2.) alle Menschen (zumindest) bereit wären, die im Sinne von U begründeten Normen *im allgemeinen* zu befolgen; kurz: die vorgeschlagene Formel U wäre als hinreichendes Verfahrensprinzip für die Lösung aller Probleme der Normenbegründung bzw. Normenlegitimation akzeptierbar, wenn wir (schon) unter den Bedingungen der im argumentativen Diskurs kontrafaktisch antizipierten idealen Kommunikationsgemeinschaft lebten; oder: wenn das Anwendungsproblem der Diskursethik kein geschichtsbezogenes wäre, sondern ein Problem des geschichtlich *voraussetzungslosen Anfangs am Punkt 0*; oder: wenn so etwas wie ein *vernünftiger Neuanfang* innerhalb der Geschichte möglich wäre.” (Apel 1988: 127-128)

The fundamental idea expressed here is that principle U, in the sense of Uh, as well as those norms that can be grounded by U/Uh (*U-gültige Normen*), cannot be applied, for reasons of responsibility, in those contexts in which legal rules and political institutions aren't in general inspired by U itself and where people are not ready to act in accordance with the norms grounded by U. Situations of this kind could occur, strictly speaking, as long as the “ideal communication community” doesn't realise itself completely: such a complete realisation is, however, as Apel often emphasises, impossible in all given historical conditions, since the ideal communication community is a regulative idea. Therefore, one can never exclude that she can find herself in situations in which U is not legitimately expectable. That's why U/Uh cannot be considered the *only* principle of DE, unless one admits that there are situations in which morality *tout court* has to be suspended. This is the risk of Habermas' position, which takes up the thesis of the *Unzumutbarkeit* of U in those conditions in which the “forms of life” don't “go through” this principle, since the latter isn't institutionalised enough (Habermas

1991: 25), but, at the same time, as known, maintains that U is the *only* moral principle of DE (Habermas 1983: 103). In order to avoid such an outcome, Apel introduces the integration-principle (*Ergänzungsprinzip*) E; a teleological principle which prescribes engaging in long-term strategies in order to realise the conditions of an “ideal communication community” (transformative part of the principle), without jeopardising the achievements that have already been obtained in that direction (conservative part of the principle).<sup>2</sup>

### **Critical remarks on Apel's reasons for defending part B**

After having briefly revisited the contents of Apel's part B, I would like to start my critical assessment using the idea of the *Unzumutbarkeit* of U. I don't want to question the fact, emphasised by Apel, that there are some situations of conflicts of interests in which one is justified or even morally committed, for reasons of responsibility, to adopting a strategic behaviour instead of taking part in discourses with those who are not willing to do so. In my opinion this does not mean, however, that U is not legitimately expectable, as I will argue in the following.

Apel's thesis on the *Unzumutbarkeit* of U could be summarised in this way: U is not legitimately expectable in those contexts in which one cannot count on its “general observance”. It was Marcel Niquet who formalised the problem in this way (Niquet, 1996; Niquet, 2002) with the explicit approval of Apel (Apel, 1998: 736; Apel & Niquet, 2002: 83): according to Niquet, one can consider legitimately expectable, i.e. in his words, valid-for-the-observance (*befolgungsgültig*), all those norms that *all* those involved are ready to follow. Indeed, U-valid norms (*U-gültige Normen*) turn out to be valid on the grounds of the counterfactual presupposition, contained in U, of the “general observance” of the norm itself. In cases in which such a presupposition proves to be *only* counterfactual, since not

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<sup>2</sup> The first formulation of the principle, which contains a transformative principle (Veränderungsprinzip) as well as a conservative one (Bewahrungsprinzip), dates back to Apel 1988: 145ff. The concept, though not the name of such a principle, was, however, already present in Apel's first essay on ethics (Apel, 1973: 429ff.), where, nonetheless, the conservation principle was still intended as a principle that prescribes guaranteeing the conditions of the survival of the “real communication community” (not yet the achievements in the direction of the realisation of the “ideal communication community”, as is the case in Apel, 1988).

everyone is willing to act in accordance with the *U-gültige Norm* in question, this norm would result in being not valid-for-the-observance.

Such an approach to the issue raises some problems, as shown by Micha Werner, whose analysis of the problem of *Zumutbarkeit* in Apel's and Habermas' texts is, in my opinion, unavoidable when attempting to understand this issue and will therefore be often employed in the following (Werner, 2003). The first observation that comes to mind, emphasises Werner, is that, if one takes these considerations at face value, *U-gültige Normen* could never be legitimately expectable. If one wants to avoid such an outcome, continues the author, one should introduce some criteria in order to understand in which situations a norm is followed enough and can, therefore, be considered legitimately expectable. It's not clear, however, how one can introduce such criteria. Nonetheless, if one admits, for the sake of argument, that it would be possible to identify a criterion, one could ask a question regarding how the mere fact of the non-general observance of a norm represents, for post-conventional ethics, a sufficient reason for the *Unzumutbarkeit* of a norm (Werner, 2003: 187-189). It's surely possible that, in some contexts, it proves to be irresponsible to apply a U-valid norm since it is generally not respected. But this is a possibility, not a necessity (Werner, 2003: 199); it cannot represent a *sufficient* reason. Indeed, claiming that the non-general observance is a sufficient reason to not apply U means believing that moral subjects can lose their moral rights by virtue of their having acted in a non-moral way. This would lead us back to conventional ethics, based on *do ut des* relationships. One has to indicate further conditions if she wants to indicate in which cases it's not responsible acting in accordance with a U-valid norm that is not universally observed (or at least generally not observed). One particularly has to expect that, if she behaves in accordance to such a norm, the consequences of her actions for her or others involved would be worse than the consequences that would occur in cases of the non-observance of the norm in question (Werner, 2003: 188-189).

Let's now take into account the cases in which the non-general observance of a norm (actually) represents a good reason to not apply a U-valid norm and is therefore necessary to adopt "counter-strategic strategies". On the basis of which criterion, one has to take such a decision? In such cases it is certain that one cannot take part in discourses *with people who, at least presumably, are not*

*ready to act communicatively*. This does not mean, however, that one cannot take part in discourses at all. Rather, one *must* take part in discourses in order to decide how to behave, with all those who could be negatively affected by the strategic behaviour of those who are not ready to act communicatively. If it is not the case, as for example in the so-called “extreme situations” (*Grenzsituationen*), where, as Sartre would say, a single person has to decide for all of humanity (since she hasn't the possibility of communicating with anyone else), the “criterion” of the choice has always to be, as Apel himself admits, the mental anticipation through an “internalised discourse” of the consensus of the “ideal communication community” (Apel, 1973: 428-429). If this is so, how could I not apply U/Uh, admitted that U is the rule of every practical (real or internalised) discourse? After all, if discourse is non-circumventable (*unhintergebar*) and the possibility of the refusal of discourse cannot be considered a good reason against such *Unhintergebarkeit*, as Apel insistently, and properly, emphasises, why should U be considered circumventable in those cases in which someone is not willing to take part in discourses?

At the end of the 90's, Apel tried to clarify his position, taking a path that hadn't been pursued yet, which is nonetheless, in my view, unable to solve such problems, as Werner already argued (Werner, 2003: 205-206). In his essay *Auflösung der Diskursethik?* – his third attempt in thinking with/against Habermas – as well as in *First things first*, Apel refers to a “primordial principle of discourse” (*primordiales Diskursprinzip*) – from now on PD – to which a moral principle also belongs, which is not, however, identical with U, but rather wider than it, since it contains also a reference to the “primordial co-responsibility” (*primordiale Mit-Verantwortung*) (Apel, 1998: 792-801; Apel, 2000: 34ff). Apel argues that, in those cases in which it is necessary to act strategically for reasons of responsibility, U is not legitimately expectable; but that is not the case of PD, which is instead always legitimately expectable. U is indeed considered to be the principle that embodies an abstract idea of justice, while the idea of co-responsibility is also included in PD, which contains U. Then, even if U, the principle of justice, has to be suspended, PD has to be applied (Apel, 1998: 789): this should guarantee, according to Apel, that the choice of acting strategically is a moral choice, even if it is not the result of a deliberation through U/Uh. Therefore, the principle of responsibility even turns out to be overriding in

comparison to the principle of justice: in this way, Apel's project of a "substantial ethics of responsibility" (Apel & Niquet, 2002), which counterposes itself to Habermas' merely procedural interpretation of DE, would fulfil itself. As stated by Werner, it's in light of such a principle of responsibility that one can decide whether it is the case of applying U or E. One could ask, however, how it's possible for E to work alone, as a substitute for U, since one can't tell how such a principle can be uniquely applied: for instance, how is it possible to understand, without the aid of U, whether in a certain situation one has to give priority to the transformative or to the conservative part of the principle? Apel would maybe answer that also this issue has to be solved by PD, as revealed by the following:

“[M]üssen sogar alle konkrete Abweichungen von der idealen Diskursmoral in Bezug auf die reale Lebenswelt und alle Forderungen einer institutionellen Ergänzung der idealen Diskursmoral selbst noch im Rahmen des primordialen Diskursprinzips konsensfähig sein.” (Apel, 1998: 796-797)

As I understand the passage, it's in light of PD that one can decide whether to apply E and how to apply it, because every decision that deviates from the ideal morality of discourse has to be the subject of an agreement through PD. As far as I can see, PD plays now the role that U played in the original version of Apel's DE, i.e. leading the partners of discourse towards the solution of moral problems. U can therefore be applied only in those situations in which real and ideal communication community already coincide. One can, however, ask (admitted that such situations exist) how one can be *sure* that she finds herself in such an ideal situation?<sup>3</sup>

Then, I don't think that this recent formulation of the relationship between the moral principles of DE could solve the problems previously emphasised. First, U cannot be considered only as an abstract principle of justice. Despite Apel's statements to the contrary (Apel, 1998: 799), one can't tell how such a conception of the principle can be reconciled with the conception that U has to take into account the *consequences* of the norm in question for all those virtually involved.

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<sup>3</sup> Such a problem was presented by Habermas in "Wahrheitstheorien" in relation to the concept of an "ideal linguistic situation". The author stated that it is possible that in some situations an "ideal linguistic situation" could occur, but there is no external criterion to understand whether it is the case (cf. Habermas, 1985: 179-180).

I believe that there's no need to question the original interpretation of the principle, along with the idea of justice contained within it, which implies as such the concept of (co)-responsibility. Moreover, I don't see how one can say that principle U has different content compared to PD. Indeed, Apel admits that U is nothing but a principle that, taking the form of a rule, expresses in a procedural way the contents derivable from the presuppositions of discourse, which are represented by PD itself. I maintain that Apel's recent considerations are the consequences of a lack of clarity about the relationships that the different presuppositions of discourse identified by him should have between them.

Therefore, I don't believe that Apel has good reason to state that there are cases in which U should not be considered legitimately expectable. Every time that a U-valid norm is not applicable since it is not legitimately expectable, the only way to take a moral choice is to take part in other (real or internalised) discourses in order to ground another U-valid norm, which has to be considered legitimately expectable this time because it is more specific and is therefore "adequate" to the situation (e.g., Werner, 2003: 229). The reason why a U-valid norm doesn't prove to be valid-for-the-observance in a certain situation is that it conflicts with other norms, which turn out to have the priority for those involved. This is what happens in the situations indicated by Apel, where one can suppose that the other people aren't willing to follow U-valid norms, but also in situations where the question whether a norm is generally observed or not doesn't arise. I refer, for example, to the tragic situation in which one has to decide whether or not to tell a friend or relative the truth about her mortal illness in order to mitigate her pain. If one decides not to tell the truth, one adopts a strategic behaviour for an aim considered valid: the norm that prescribes not creating pain is considered overriding in this situation compared to the norm that prescribes not lying and this can justify a strategic behaviour. What happens in this situation is not different from the well-known case analysed in the discussion between Kant and Constant, quoted by Apel himself (Apel & Niquet: 85). Nothing changes in the procedure of deliberation, even if the need to choose between two conflicting norms here derives from the fact that, in such a situation, somebody is not ready to act in accordance with U, as she exhibits violent behaviour. The same can be said about the so-called "extreme situations", in which one violates apparently all moral norms in order to save himself: here, the norm "preserve your life" is

prioritised, on the basis of U, over the norm “don’t harm the other men”, so that even violent behaviour can, in some extreme situations, be justified for moral reasons, since U, as a principle of justice, does not require self-surrender. From these examples, one can keep in that it’s not possible to clearly distinguish, as Apel claims to do, between micro-ethics, where the *Zumutbarkeit* of U doesn’t generally represent a problem, and macro-ethics, where U often has to be considered not legitimately expectable (Apel, 1988: 123); there isn’t any difference of principle between these two levels. In both cases, U/Uh, as a principle of justice *qua* co-responsibility, should be considered legitimately expectable, since it plays the role of solving conflicts between *prima facie* valid norms, justifying a more specific norm/maxim of action.

### **The necessity of principle E, despite the redundancy of part B**

What has been said until now is, however, not yet sufficient enough to question the *contents* of part B of DE *in toto*. Indeed, I believe that principle E, which represents the core of part B, plays an important role within DE, emphasising its utopian character, which, in Habermas’ view, has become weaker and weaker. Habermas is right, in my view, when he maintains that there’s no need for a part B of DE, since a principle of responsibility in relation to history, which Apel claims to introduce in part B, is already contained in principle U (Habermas, 1991: 199). Habermas also argues, however, that, with such a part B, Apel wants to provide answers, on the level of moral theory, to questions that can be answered only at the level of political or legal theory. According to him, ethics cannot identify a long-term goal that would guide human action; this would represent a sort of *deus ex machina*, which has to remedy the shortcomings of deontological ethics from the outside, as if Apel had in mind a sort of “teleological suspension of ethics” (Kierkegaard) or, in the words of Habermas himself, a “self-transcendence” (*Selbstüberbietung*) of DE (Habermas, 1991: 195). Habermas could actually be right if one considers (E), as Apel seems to do, as a “substitute” of (U) in situations in which the latter is not legitimately expectable. If one argues instead, as I tried to do here, that (U)/(Uh) is *always* legitimately expectable, one can see the teleological principle (E) as a true “principle of integration” of (U), i.e. not as a mere surrogate of the latter in particular situations, but as a principle that

contributes to the orientation of moral action in cooperation with U. I don't believe, however, that the introduction of a part B is necessary if one wants to add value to the role of E. Apel himself indeed maintains that E can already be grounded in part A, thanks to a reflection, which every discourse partner can do, on the *gap* existing between real and ideal communication community, which represents a transcendental fact. Thereby, problems are not over yet: I actually don't believe that such a principle could be properly derived directly from the presupposition of argumentation. Indeed, it doesn't seem to be a principle that one cannot deny without falling in a performative self-contradiction, such as regarding the ideas of equal respect and co-responsibility. Therefore, even assuming that principle E can be grounded in part A, we still have to understand how such a foundation is possible. That's what I will try to do in the following.

### **Proposal for an alternative foundation of the teleological principle**

My thesis is that this principle can be obtained through a reflection on another level, which has to do with the recognition of reason itself and of its presuppositions, as well as values in themselves, i.e. to use Taylor's words, as *hypergoods* (Taylor, 1989: 63), which deserve to be preserved and pursued. In other words, only if one manages to justify that the realisation of the ideal in the real communication community is an aim that deserves to be pursued, one can ground principle E. But how is it possible to show that reason and its presuppositions represent hypergoods and therefore that the realisation of the ideal in the real communication community is a worthy aim?

One can answer this question if she tries to understand which is the conception of "good" or "value" presupposed by discourse ethics; a conception that neither Apel nor Habermas have explicitly outlined, but that should, in my opinion, be articulated. Here it is not my aim to develop such an idea in a wide sense, for which I refer to my PhD thesis (Lovelli, 2017): I would simply like to show how is it possible to ground the worth of reason and its presuppositions from the point of view of DE. For this purpose, I will refer to a famous passage of "Das Apriori der Kommunikationsgemeinschaft" (Apel, 1973: 400), where Apel maintains that the recognition of all beings capable of linguistic communication – that is of all human beings – as *persons* depends on the fact that all these beings are virtual *partners*

of argumentation (which therefore has to be understood as the core of human rationality). I understand this passage to mean that what ultimately constitutes the value of human beings is the fact that each of them is at least potentially a partner of argumentation. In this perspective, human *dignity* is classically traced back to the fact that humans are rational beings who use language as the *medium* of rationality. Rationality, understood as rational argumentation, therefore represents not only a transcendental fact, but also a basic value of DE, which ultimately justifies the dignity of human beings. This is connected with the idea that the value of the “real communication community” depends on the fact that it “always already” implies an “ideal communication community”, i.e. a communication community that is virtually open to everyone, where people interact according to the norms of the (intrinsically moral) argumentative reason, instead of giving precedence to the strategic or violent action. The transcendental foundations of moral norms proposed by Apel in part A of his DE therefore implies the recognition of some basic values, starting with the value of argumentative reason, which can thus also be seen as an aim that deserves to be realised throughout history. The integration principle E, can therefore, in my opinion, be justified on that basis. Only in light of an extension of the transcendental reflection in the direction of a reflection about the values presupposed by DE is it indeed possible to understand how a teleological principle can be introduced to integrate the deontological principle (U) without this leading to a self-transcendence of DE.

Such an extension is possible only if one recognises the legitimacy of speaking, in the field of moral philosophy, of universal values and goods, instead of referring uniquely to universal norms and principles, as Apel, not unlike Habermas, does. Apel doesn't believe that one needs to justify universal values in order to justify universal norms, since universally valid norms, in his view, can be derived directly from the presuppositions of argumentation. As Taylor emphasises, however, the answer to the question that Apel aspires to solve with the *Letztbegründung*, i.e. “why be moral?”, cannot be given until one does explain what makes it mandatory to follow the procedure of rational argumentation itself (Taylor, 1993: 349). Apel explains this with his idea of the non-circumventability (*Unhintergebarkeit*) of argumentative reason: one is obliged to follow such a procedure because it is a condition of the possibility of every meaningful human action. One could, however, see such non-circumventability as a sort of prison

and could ask which is the value of the human existence as such, i.e. of a form of existence that cannot avoid presupposing the norms of argumentative rationality, including the moral norms. This is not the place to develop this argumentation, for which I still have to refer to my PhD thesis (Lovelli, 2017); here, I simply wanted to offer some thoughts to show that, even from the point of view of DE, one cannot avoid tackling the problems of values if she wants to face the question regarding the foundations of ethics. A justification and articulation of a minimal conception of the good, i.e. of the values presupposed by DE, is therefore not only allowed, but even necessary, if one wants to fulfil Apel's idea a foundation of moral norms. This is also relevant in our discussion about on the application of DE, since only a moral theory that opens up the possibility of speaking of values in a universalistic sense, instead of defending value particularism, as Habermas does and Apel cannot completely avoid (cf. Lovelli, 2017), can admit in itself a teleological principle. In particular, as previously stated, one can only justify a principle like E within DE if one recognises that argumentative reason, as well as the "ideal communication community", are basic values that deserve to be realised throughout history. A principle that introduces a "utopian" element in DE, which has to be defended even if it cannot be directly derived by the presuppositions of argumentation, as Apel, in my opinion, wrongly argues, and even if part B, as Habermas rightly maintains, has to be ultimately rejected.

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