

# What Goes Wrong in Habermas's Pragmatic Justification of (U)?

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*ABSTRACT:* In his moral theory, named 'discourse ethics,' Jürgen Habermas holds that a norm is morally valid only when it is universalizable. He establishes the principle of universalization (U) as the procedural principle for testing the moral validity of norms in moral discourse. He argues that this principle can be derived from the pragmatic presuppositions of argumentation in general. By explicating the fiduciary status of pragmatic presuppositions of argumentation, and by distinguishing perspectival from comprehensive universalization, I argue that Habermas fails to justify his moral principle.

*RÉSUMÉ :* Dans sa théorie morale, dénommée «éthique de la discussion», Jürgen Habermas considère qu'une norme n'est moralement valide que lorsqu'elle est universalisable. Il propose le principe d'universalisation (U) comme principe de procédure pour tester la validité morale des normes dans une discussion pratique. Il fonde ce principe sur les présuppositions pragmatiques de l'argumentation en général. Par la présentation du statut fiduciaire de ces dernières, et en distinguant l'universalisation partielle de l'universalisation globale, cet article vise à montrer pourquoi Habermas ne parvient pas à justifier son principe moral.

**Keywords:** argumentation, immanent justification, pragmatic presuppositions, perspectival universalization, comprehensive universalization, participant's attitude, theorist's attitude

The task of Jürgen Habermas's moral theory, which he calls 'discourse ethics,' is to address the question of normative standards in a world wherein universally

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shared notions of the good life are impossible. He does this by basing his moral theory on two principles: the discourse principle (D) and the universalization principle (U), the latter being both the moral principle and the moral point of view. According to the first principle, “only those norms can claim validity that could meet with the acceptance of all concerned in practical discourse.”<sup>1</sup> According to the second, “a norm is valid when the foreseeable consequences and side effects of its general observance for the interests and value-orientations of *each individual* could be *jointly* accepted by *all* concerned without coercion.”<sup>2</sup> These two principles by which discourse ethics is procedural, dialogic, and universalistic are interdependent. The principle (U) is inspired by the principle (D) and is justified on the basis of considerations relating to pragmatic presuppositions of argumentation.<sup>3</sup> In this paper, however, I only will address principle (U), which Habermas holds to be the principle by which the norms of actions are to be tested for their moral worth.

To be sure, there is a general agreement among scholars of Habermas’s moral theory that he fails to justify this principle. Where they disagree is on the demonstration of this failure. However, very few critics, if any, target Habermas’s strategy for grounding the principle (U): the performative model of justification. Consequently, many authors who argue that Habermas fails to justify his moral principle base their claims on a misunderstanding of his arguments. The cases in point are Albrecht Wellmer and William Rehg. Wellmer maintains that Habermas derives (U) from the general norms of arguing because they amount to universalistic moral norms or meta-norms for morality.<sup>4</sup> On such a reading, Habermas’s insistence that the pragmatic presuppositions of argumentation are morally neutral is ignored. It is a position similar to that of Karl-Otto Apel for whom the “communicative rationality of argumentation presupposes moral norms,”<sup>5</sup> a position that Habermas has

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<sup>1</sup> Jürgen Habermas, *The Inclusion of the Other*, p. 41.

<sup>2</sup> *Ibid.*, p. 42.

<sup>3</sup> Habermas does not explain how the principle (U) is inspired by the principle (D); he only says that it is by way of abduction. See *The Inclusion of the Other*, pp. 42–43. But the interdependence of the two principles is easy to see, for (D) stipulates that, for a norm to be morally valid, it must be agreed upon in a practical discourse, while (U) is derived from the pragmatic presuppositions of argumentation that are involved in the practical discourse. However, it seems to me inaccurate to see the two principles as more or less equivalent, as Joseph Heath does. Heath takes the following sentence to be more or less equivalent to (U): “Norm *n* is valid if everyone affected can accept that it satisfies the interests of all better than any feasible alternative.” See Joseph Heath, *Communicative Action and Rational Choice*, p. 230.

<sup>4</sup> Albrecht Wellmer, *The Persistence of Modernity: Essays on Aesthetics, Ethics and Postmodernity*, p. 182.

<sup>5</sup> Karl-Otto Apel, *The Response of Discourse Ethics to the Moral Challenge of the Human Situation as Such and Especially Today*, p. 41.

consistently rejected by arguing that the inescapable pragmatic presuppositions of argumentation have no moral content.<sup>6</sup> As for Rehg, following Habermas's intention of working out a universalistic morality, he attempts to reconstruct the principle (U) in a way that avoids the charges of circularity and being overly consequentialist. But his argument presupposes that Habermas derives (U) from the presuppositions of *argumentation on validity of norms*. This is how Rehg defines the problem of the bridge from the pragmatic presuppositions of argumentation to the moral principle (U): "A major difficulty in a derivation of 'U' is to show how a rule of argumentation ... amounts to a pragmatically unavoidable presupposition of argumentation over norms. In particular, the problem consists in explaining why practical argumentation has to consider specifically the consequences a norm will have for various *interests*, terms which hardly seem obvious for a moral theory claiming Kant as its forebear."<sup>7</sup> On this interpretation, Rehg overlooks Habermas's idea that the pragmatic presuppositions from which he derives (U) are, in fact, the presuppositions of argumentation *as such*; that is, the argumentation which applies not only for practical discourse, but also for theoretical discourse.

Wellmer and Rehg, to name just a few, ignore Habermas's mode of the justification of (U): the performative grounding. According to Habermas, the justification of (U) is not based on the concept of logical inference, but on that of transcendental-performative justification.<sup>8</sup> He reflexively reconstructs (U) as a virtual participant in a discourse.<sup>9</sup> Therefore, my purpose in this paper is to show that (U) is not inherent in argumentation in general by arguing that the theorist engaged in rational reconstruction prescind from, and cannot make use of, the performative justification of norms by participants in a discourse. I intend to accomplish this task in two steps. I will begin with presenting Habermas's pragmatic transcendental grounding of the moral principle, that is, the way he claims to derive the principle (U) from the pragmatic

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<sup>6</sup> Wellmer's reading ignores the differences between Habermas and Apel on the status of pragmatic presuppositions of argumentation. While for Habermas these presuppositions are morally neutral, Apel believes that they are fundamental ethical norms, in that they are principles that "prescribe the *procedures of identifying and solving material moral norms*." See Apel, *The Response of Discourse Ethics to the Moral Challenge of the Human Situation as Such and Especially Today*, p. 47. For Apel's detailed account of the moral character of the pragmatic presuppositions of argumentation, see Apel, *Auseinandersetzung*, pp. 689-838. For Habermas's reply, see Habermas, *Between Naturalism and Religion: Philosophical Essays*, pp. 77-97.

<sup>7</sup> William Rehg, "Discourse and the Moral Point of View: Deriving a Dialogical Principle of Universalization," in *Jürgen Habermas Vol. III*, p. 140.

<sup>8</sup> Jürgen Habermas, *Moral Consciousness and Communicative Action*, pp. 79-81.

<sup>9</sup> Joseph Heath, "The Problem of Foundationalism in Habermas's Discourse Ethics," *Philosophy & Social Criticism* 21(1): p. 77.

presuppositions of argumentation as such. Then, I will produce two arguments which demonstrate how (U) is not inherent, but external, to the argumentative practice as such. First, by explicating the fiduciary<sup>10</sup> nature of the pragmatic presuppositions of argumentation, I will argue that there is a disjunction between the attitude of the theorist who justifies the principle (U) and that of the participant in practical discourse. Second, by making a distinction between perspectival and comprehensive universalization, I will argue that the universalization involved in argumentation as such is perspectival and that, for this reason, it cannot be a moral point of view in the way Habermas understands it. My second argument highlights a disjunction between the operation of universalization engaged in by the participant and the universalization carried out by a theorist who adopts the attitude of the participant.

### 1. The Inherence of the Moral Point of View

The principle (U) as the moral principle and argumentation rule in moral discourse, results from a consideration of two premises that are interdependent.<sup>11</sup> The first concerns the irreplaceability of argumentation as a method of resolving conflicts among human beings: “We may assume that the practice of deliberation and justification we call ‘argumentation’ is to be found in all cultures and societies (if not in institutionalized form, then at least as an informal practice) and that there is no functionally equivalent alternative to this mode of problem solving.”<sup>12</sup> Because of the universality and non-substitutability of the practice of argumentation, Habermas holds that (D) inspires (U) via abduction.<sup>13</sup> The second premise concerns the pragmatic presuppositions that any

<sup>10</sup> By the term ‘fiduciary,’ I am referring to the mode of trust that Hunyadi calls ‘primary trust,’ that is, a trust so fundamental that, without it, our practical relationship with the world would be pathological. See Mark Hunyadi, *L’Homme en contexte*, p. 61.

<sup>11</sup> Habermas, *The Inclusion of the Other*, p. 43.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, p. 42. Gordon Finlayson, “Modernity and Morality in Habermas’s Discourse Ethics,” *Inquiry* 43(3), p. 331, holds that by way of abduction Habermas derives the principle (U) from these two premises. I think this is inaccurate. It is only from the consideration of the first premise, namely the content of the principle (D), that (U) follows abductively. In *The Inclusion of the Other*, p. 42, Habermas writes: “The principle of universalization (U) is indeed inspired by (D), but initially it is nothing more than a proposal arrived at abductively.” But, since basing the principle (U) on only this premise could lead to a charge of Eurocentric prejudice, he goes on in the next page to argue that (U) is implicit in the pragmatic presuppositions of argumentation as such. “But ethnocentric assumptions, and hence a specific conception of the good that is not shared by other cultures, may have insinuated themselves into the abduction of (U). The suspicion that the understanding of morality operationalized in (U) reflects ethnocentric prejudices could be dispelled through an ‘immanent’ defense

argumentation involves. Habermas holds that, since these presuppositions have a normative content—that is, they have the form of discourse rules which every subject capable of speech and action intuitively knows—they amount to the principle of universalization (U).<sup>14</sup> For Habermas, the latter is thus immanent in argumentation as such. Discourse ethics is a universalistic moral theory not only because it claims the universal validity of moral norms as its distinguishing feature, but also because the moral principle is inherent in the pragmatic presuppositions of argumentation that are universal.

Habermas defends the thesis of the immanence of (U) as a way of anticipating the objection that his theory involves ethnocentrism. Consequently, he argues for a universalistic morality in the form of a debate between a moral cognitivist and a moral sceptic.<sup>15</sup> The first round of the debate is about the existence of the domain of moral phenomena; second, the truth of the practical question; third, the impossibility of reaching a consensus on the questions of moral principle; fourth, the objection that the principle of universalization involves ethnocentric fallacy; fifth, the strategy of transcendental justification; sixth, the sceptic's refusal to enter into discourse; and seventh, the objection to ethical formalism.<sup>16</sup> In this paper, I address the fifth round of the debate, namely the transcendental grounding of the principle (U) as a response to the charge of ethnocentric fallacy. "The skeptic voices the objection that (U) represents a hasty generalization of moral intuitions peculiar to our own Western culture, a challenge to which the cognitivist will respond with a *transcendental justification* of his moral principle."<sup>17</sup>

The objection of the ethnocentric fallacy is the question of whether Habermas's moral point of view is binding to moral agents who do not belong to the democratic culture, that is, the culture in which people have recourse to argumentation in order to establish the legitimacy of moral norms. Participants in argumentation logically are, under pain of contradiction, compelled to consider as moral only the norms that are universal. To hold that participants in argumentation performatively are obliged to adopt a universalistic moral standpoint, one presupposes that participants already recognize argumentation as the legitimate means of establishing valid norms.

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of this account of the moral point of view, that is by appealing to knowledge of what it means to engage in the practice of argumentation as such," p. 43. Habermas justifies the principle (U) in two steps; it is only the first step that is abductive and he clearly shows that he moves to the second step because the first is insufficient.

<sup>14</sup> Habermas, *Moral Consciousness and Communicative Action*, pp. 43-109.

<sup>15</sup> Habermas holds discourse ethics to be a cognitivist moral theory. See Habermas, *Moral Consciousness and Communicative Action*, 43-109, and *The Inclusion of the Other*, pp. 3-46.

<sup>16</sup> Habermas, *Moral Consciousness and Communicative Action*, pp. 76-77.

<sup>17</sup> *Ibid.*, p. 76.

Surely, it is not contradictory to say that there is a universalistic moral standpoint only binding on a certain culture. Universalizability can be a moral validity criterion in one culture, but not in others. We can establish for ourselves, in accordance with our own democratic culture, that a norm is moral when it is universalizable, without implying that it is binding for each moral agent in every context. The universalizability for the moral validity of norms can be required only in *our* democratic culture. In this case, it would be a moral universalism that does not involve ethnocentrism. But this is not the kind of moral universalism that Habermas claims.

Habermas's moral universalism may be called a 'comprehensive universalism' in the sense that there can only be one moral point of view, binding on each and every moral agent, in every context. In order to properly see the significance of this thesis, we must bear in mind that Habermas makes a distinction between morality and ethics. Ethical questions are those regarding the good life and self-fulfilment, while moral questions concern issues of justice. The validity of ethical norms may depend on individuals or context, whereas the validity of moral norms is always context-transcendent. Habermas calls moral "only those norms that are strictly universalizable, i.e., those that are invariable over historical time and across social groups."<sup>18</sup> For Habermas, morality has an absolute sense; a norm cannot be moral in one context and non-moral in others. According to discourse ethics, a moral norm in the strict sense is universal in the Kantian sense, that is, valid for every rational being. Therefore, it is important, for Habermas, to consider the possible sceptic's objection about the ethnocentric fallacy in order to defend moral universalism against moral relativism. It is from the perspective of moral relativism that Habermas's moral theory would be regarded as an attempt to universalize principles that are specific to his own European culture. "By justifying (U), discourse ethics rejects the basic assumptions of ethical relativism, which holds that the validity of moral judgment is measured solely by the standards of rationality or value proper to a specific culture or form of life," Habermas states.<sup>19</sup>

To meet the challenge of the sceptic—in other words, to reject the charge of ethnocentric fallacy—Habermas argues that his moral principle is immanent in argumentation in general. The pragmatic presuppositions of argumentation constitute the foundation of Habermas's moral theory. He holds that the grounds of the moral validity of norms can be elucidated through an analysis of the presuppositions that speakers unavoidably make when they engage in good faith in any argumentation. He singles out four presuppositions as the most important: unlimited inclusiveness, equal opportunity to make contributions, sincerity, and absence of coercion.<sup>20</sup> Habermas claims that (U), which can be derived

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<sup>18</sup> *Ibid.*, p. 111.

<sup>19</sup> Habermas, *Moral Consciousness and Communicative Action*, p. 121.

<sup>20</sup> Habermas, *The Inclusion of the Other*, p. 44.

from the universal presuppositions of argumentation as such, has a universal validity because the opponent who may contest this thesis commits a performative contradiction when the proponent proves that, by engaging in argumentation, one must make the unavoidable presuppositions proper to every argumentation language game involving criticism.<sup>21</sup> It is in this way that Habermas claims to justify immanently the moral point of view. He does not elaborate on the link between the pragmatic presuppositions of argumentation and the universalization principle (U). He proposes a reflexive derivation of (U) from the pragmatic presuppositions of argumentation without working it out in detail.<sup>22</sup> He does not explain how pragmatically inescapable presuppositions of argumentation in general amount to (U). Without further details, Habermas asserts, without argument, that engagement in argumentation implies an acceptance of the procedural conditions that amount to recognition of the argumentation rule (U).<sup>23</sup>

Habermas believes, then, that the pragmatic-transcendental foundation enables him to avoid the charge of ethnocentric fallacy and consequently refute moral relativism. He writes:

The suspicion that the understanding of morality operationalized in (U) reflects Eurocentric prejudices could be dispelled through an 'immanent' defence of this account of the moral point of view, that is, by appealing to knowledge of what it means to engage in the practice of argumentation as such. Thus the discourse-ethical model of justification consists in the derivation of the basic principle (U) from the implicit content of universal presuppositions of argumentation in conjunction with the conception of normative justification in general expressed in (D).<sup>24</sup>

One of the difficulties of this immanent justification of the moral principle is that it operates in an automatic manner. According to discourse ethics, the move from the pragmatic presuppositions to the principle (U) is not inferential. It is intuitive and performative. I believe this is the reason that Habermas left a logical gap between pragmatic presuppositions of argumentation as such and (U).<sup>25</sup>

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<sup>21</sup> Habermas, *Moral Consciousness and Communicative Action*, pp. 80-81.

<sup>22</sup> Rehg, "Discourse and the Moral Point of View: Deriving a Dialogical Principle of Universalization," in *Jürgen Habermas Vol. III*, p. 137.

<sup>23</sup> Jürgen Habermas, *Justification and Application*, p. 32.

<sup>24</sup> Habermas, *The Inclusion of the Other*, p. 43.

<sup>25</sup> In my opinion, this point is insufficiently considered in the studies of Habermas's discourse ethics. Surely, Habermas himself is aware of the logical gap between the moral principle and the pragmatic presuppositions. However, he does not mind, because he is convinced that deduction is not the only way of rational justification. The principle of universalization (U) is not susceptible to deductive justification, but it can be justified in pragmatico-transcendental manner. See Habermas, *Moral Consciousness and Communicative Action*, pp.78-82.

The latter is at work as soon as we enter into moral discussion. In the discourse, there is, therefore, a kind of automatic operational connection between pragmatic presuppositions of argumentation and universalizable interests. Habermas claims that if the consensus can only be based on universalizable interests, then it is by virtue of the formal properties of argumentation. Habermas clearly states:

The problematic that arises with the introduction of a moral principle is disposed of as soon as one sees that the expectation of discursive redemption of normative-validity claims is already contained in the structure of intersubjectivity and makes specially introduced maxims of universalization superfluous. In taking up a practical discourse, we unavoidably suppose an ideal speech situation that, on the strength of its formal properties, allows consensus only through *generalizable* interests. A cognitivist linguistic ethics [*Sprachethik*] has no need of principles. It is based only on fundamental norms of rational speech that we must always presuppose if we discourse at all.<sup>26</sup>

Because of axiological pluralism, the consensus can only be based on universalizable interests; this consensus is only made possible by formal properties of argumentation. The move to universality is guaranteed by these properties: “The discursively formed will may be called ‘rational’ because the formal properties of discourse and of the deliberative situation sufficiently guarantee that a consensus can arise only through appropriately interpreted, *generalizable* interests, by which I mean needs *that can be communicatively shared*.”<sup>27</sup>

Habermas insists on the claim that the connection between the foundation procedure—the task of the philosopher—and the procedure of selecting norms competing in the life-world or the particular context—the task of discourse participants—takes place from the very moment the moral discussion begins, that is, from the moment the agents move from action to discussion. Pragmatic presuppositions, and the universalization principle they contain, function on the model of the *gearing principle*.<sup>28</sup> According to Habermas, from the moment we leave the ground of non-reflexive interaction and enter that of the discourse, we unavoidably engage in idealizing presuppositions and, consequently, we implicitly accept and mobilize the principle (U).

One might object to the foregoing interpretation of the immanence of (U), by appealing to Habermas’s statement in *Between Facts and Norms* that constitutes, for some scholars, an abandonment of moral universalism. “In complex

<sup>26</sup> Jürgen Habermas, *Legitimation Crisis*, p. 110.

<sup>27</sup> *Ibid.*, p. 108.

<sup>28</sup> Mark Hunyadi, « L’idée d’une contrefactualité contextuelle ou : comment ne pas devoir transcender tous les contextes possibles, comme le veut Habermas? », *Revue philosophique de Louvain* 107(2), p. 332.



societies, however, ... it turns out that all the proposed regulations touch on the diverse interests in respectively different ways without any generalizable interest or clear priority of one value being able to vindicate itself. In these cases, there remains the alternative of bargaining, that is, negotiation between success-oriented parties who are willing to cooperate.”<sup>29</sup> For Alessandro Ferrara, Habermas implicitly abandons moral universalism here.

This statement indicates a major theoretical shift in the direction of a sober realism and a total embrace of liberalism. Habermas here implicitly abandons a long strenuously defended stronghold of moral universalism, namely the idea that moral discourses, *if* conducted under ideal situations, normally do generate a rational consensus on the legitimacy of a norm and allow for the identification of truly generalizable interests.<sup>30</sup>

However, it is doubtful that Habermas has abandoned moral universalism and the gear-model functioning of the principle of universalization associated with it. This is what Habermas writes 10 years after *Between Facts and Norms*, the text to which Ferrara refers:

These unavoidable presuppositions of argumentative practice, no matter how counterfactual, are by no means mere constructs; rather they are *actually efficacious* in the behaviour of the participants themselves. Someone who seriously takes part in an argument de facto proceeds from such presuppositions. This is evident from the inferences participants will draw, if necessary, from perceived inconsistencies.<sup>31</sup>

From this quotation, it is clear that, for Habermas, although pragmatic presuppositions of argumentation are performatively *counterfactual* assumptions, they have a *factual* role in communicative action. Universal pragmatics resituates the Kantian opposition between the real and the ideal within the realm of social practice.

To the extent that we transform the ‘ideas of reason’ into idealizations performed by speaking and acting subjects, the ideal no longer depends on the assumption of a noumenal sphere beyond the phenomena we can describe. Rather, with idealizations we explain from a participant’s perspective the operations that actors must accomplish

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<sup>29</sup> Jürgen Habermas, *Between Facts and Norms*, p. 165.

<sup>30</sup> Alessandro Ferrara, “The Ambiguity of Habermas’s Notion of Generalizability,” in David M. Rasmussen and James Swindal (eds.), *Jürgen Habermas* Vol. IV, p. 4.

<sup>31</sup> Jürgen Habermas, “From Kant’s ‘Ideas’ of Pure Reason to the ‘Idealizing’ Presuppositions of Communicative Action: Reflections on the Detranscendentalized ‘Use of Reason,’” in William Rehg and James Bohman (eds.), *Pluralism and the Pragmatic Turn: The Transformation of Critical Theory*, p. 35.

in their actual performance of certain everyday practices, namely those we describe as communicative action and rational discourse.<sup>32</sup>

True, argumentative idealizations are operations that we make here and now; despite that, their meaning transcends the context. But, if the idealizing presuppositions of argumentation amount to implicit requirement of the principle of universalization, and if this is the core of morality, then why is there a serious competition of different moral conceptions?<sup>33</sup> Logi Gunnarsson's distinction between a weak discourse principle (WD) and a strong discourse principle (SD) illustrates this objection. He calls the 'strong discourse principle' the discourse principle (D) that requires that norms be discussed directly. "SD excludes the possibility that the parties agree not to discuss each norm directly."<sup>34</sup> SD is a principle of justification that competes with the original position as a principle of justification in John Rawls's theory. He calls the WD principle the discourse principle by which the affected parties would, in a rational discourse, agree that the norms affecting them should not be discussed directly. "Rather than discussing the pros and cons of these norms directly, they could agree that the validity of these norms should be decided by the principle of utility, or they could agree that the validity of these norms should be decided in a Rawlsian original position, etc."<sup>35</sup> The argument of the possibility of a weak discourse principle (WD) seems to be a challenge to the purported automatic functioning of the principle (U) in argumentation. It shows that, with the thesis of the immanence of (U) in the very procedure of establishing the validity of moral norms, one will be unable to account for the disparity of moral points of views in meta-ethical debates.

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<sup>32</sup> *Ibid.*, pp. 36-37. Because they are actually efficacious, pragmatic presuppositions of argumentation are not ideals to be realized. Habermas regrets the term ("ideal speech situation") that he once used to describe the state in which the idealizing presuppositions would be fulfilled. See Jürgen Habermas, *Autonomy and Solidarity, Interviews with Jürgen Habermas*, edited by Peter Dews, p. 260. Likewise, these unavoidable pragmatic presuppositions of argumentation in general are not regulative in the Kantian sense of regulative Ideas, "since these conditions must be fulfilled *hic et nunc*, in an adequate approximation, if we wish to engage in argumentation at all."

<sup>33</sup> I concur with Uwe Steinhoff that the demonstration of the existence of the necessary presuppositions of argumentation has no implication for a justification of any moral principle, but I believe he is mistaken to claim that these presuppositions have no normative force. See Uwe Steinhoff, *The Philosophy of Jürgen Habermas: A Critical Introduction*, p. 134.

<sup>34</sup> Logi Gunnarsson, *Making Moral Sense: Beyond Habermas and Gauthier*, p. 95.

<sup>35</sup> *Ibid.*, p. 96.

However, such an external criticism is not enough to reject the immanence of the principle (U). One must also explain exactly where Habermas errs in the connection between the universal pragmatic presuppositions of argumentation and the principle (U). Therefore, the remaining part of this paper will consist of two arguments by which I will show two errors in Habermas's derivation of (U) from the pragmatic universal presuppositions of argumentation. First, I argue that Habermas fails to see that, due to the fiduciary nature of the pragmatic presuppositions of argumentation, the attitude of the theorist pre-scinds from that of the participants in the discourse. Second, I will show that, by overlooking the fiduciary nature of these universal presuppositions, Habermas confuses what I call 'perspectival' and 'comprehensive' universalization.

## 2. External Justification of (U)

### *a. Disjunction of Participant's and Theorist's Attitudes*

The first argument I wish to propose against the performative justification of (U) concerns the fiduciary nature of pragmatic presuppositions of argumentation, that is, their unconscious and spontaneous characters. I believe we can understand the status of these presuppositions through the consideration of Mark Hunyadi's conception of the context. Hunyadi advocates an understanding of context that is not merely sociological, distinct from the understanding that is pervasive in anthropology, cultural studies, history of customs, tourism sciences, etc.<sup>36</sup> He proposes a notion of context that goes beyond the notion of an infinite cultural variation to which human practices are liable. Hunyadi argues that there has been a poor understanding of context throughout the history of philosophy, for it has been conceived as the mere background of thought, something contingent and, therefore, non-essential for philosophical thinking.<sup>37</sup> He wants us to understand context in a much broader manner; he claims that it is constitutive of human beings. The context influences our relation to this background of thought.<sup>38</sup> Even in our self-understanding, we are products of our context.<sup>39</sup> Hunyadi contends that contextuality—that is, the idea that immersion in a context is an essential and inescapable feature of a human being—should not be ignored in any area of our activities.

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<sup>36</sup> For Hunyadi's theory of the context and contextual ethics, see Mark Hunyadi, *Morale contextuelle*, and *L'Homme en contexte*.

<sup>37</sup> Hunyadi, *L'Homme en contexte*, p. 15. Hunyadi understands the context in a very broad sense. For him, context is our experiential world, as opposed to a transcendental one. He, therefore, argues that context is a necessary and sufficient resource for developing a moral theory, detecting social pathologies, and making moral criticisms. See *L'homme en contexte*, p. 22.

<sup>38</sup> *Ibid.*, p. 18.

<sup>39</sup> *Ibid.*, p. 19.

A context is what we adhere to spontaneously and naturally, which fashions us in our very being, in all areas of our existence—that is, in our feelings, actions, speech, knowledge, etc. Because the context involves a spontaneous adherence, an infinite variety of our contact with the world is accomplished in the mode of trust. In all dimensions of our being, we adhere to the context in trust. In order to highlight this mode of trust that is involved in our being in the world, that is, in our being always situated in a certain context and certain circumstances, Hunyadi makes a distinction between what he calls ‘original context’ and ‘primary context.’<sup>40</sup> Original context is that to which we adhere as such—that is, before it can be known, doubted, or criticized. It is the world in which we find ourselves, not yet a milieu in which we act, think, or communicate. Original context is an ontological presupposition of our being in the world.<sup>41</sup> It is a presupposition of experience that is not itself experienced.

The first experiential level of our being in the world—primary context—is where our basic attitudes take place. The primary context is immediately available to us; it is immediately within our reach. Here, the basic activities that require immediate adherence to the world occur. It is, for instance, on this level that we *spontaneously* act, love, or communicate. Here, the original context that is an ontological presupposition changes into something differentiated, determinate, more concrete, but always in correlation with these basic activities. The relation of adherence that is established with the primary context is what Hunyadi calls ‘primary trust.’<sup>42</sup> It is the relation of basic adherence to primary context. The primary trust is at work in differentiated, experienced basic activities and attitudes such as discovering, liking, loving, acting, and communicating. As we experience the world within our reach, the context unfolds in different aspects. For example, it unfolds as the pole of cognitive trust where a stock of knowledge of the world begins to accumulate, as the pole of affective trust where secure relation is established, or as the pole of practical trust that ensures a framework of stability to our acting in the world. With primary trust, our modality of being in the world is not articulated and is undergone without reservation. It is being in the world trustfully.

Drawing from this phenomenological description of the context developed by Hunyadi, one can see a modality of primary trust—namely a status of the fundamental trust that defines us as beings-in-the-world—in the pragmatic presuppositions of argumentation. The idealizing presuppositions of linguistic

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<sup>40</sup> In his theory of the contextuality of the human being, Hunyadi envisions the context as something that has different layers, namely original context, primary context, practical context, causal context, and objective context. See *L’Homme en contexte*, Chapter 1.

<sup>41</sup> Mark Hunyadi, *L’Homme en contexte*, p. 61.

<sup>42</sup> *Ibid.*, p. 62.

communication constitute a particular mode of primary trust. The operation of pragmatic presuppositions of interlocutory communication is a mode of the fundamental trust that underlies our linguistic being-in-the-world. It is an attitude of our relation to the world that is not articulated. Primary trust always involves certain idealizing presuppositions. When I walk on the pavement—even if I know that I can twist my ankle, that there could be an earthquake, or that the concrete could crack—I presuppose that I will reach the end of the pavement. This is an idealization that constitutes practical trust in our relation to the world. Similarly, idealizations of argumentative practice constitute a mode of primary trust that we could call ‘illocutionary trust.’ Just as the act of walking on pavement relies on practical trust, so too does the act of uttering an expression or of making a sentence in a communicative situation rely on illocutionary trust. When I say ‘Good morning!’ to my colleagues, this speech act relies on a fiduciary presupposition that they will respond to my greeting. In everyday communication, I formulate a proposition with a counterfactual and fiduciary assumption based on past experience that my interlocutors will agree to what I tell them. It is this attitude of trust that makes lies possible.

The pragmatic presuppositions from which Habermas claims to derive the principle (U) are, in my opinion, of such a *fiduciary* nature. In reflexive communication, such as the argumentation in view of establishing the moral validity of norms, the four pragmatic presuppositions that Habermas singles out as most important are essentially fiduciary. Entering into argumentation presupposes such trust, without which no argumentation can take place. In their fiduciary nature, these universal presuppositions of argumentation are unconscious, performative, and spontaneous, whereas the transcendental reflection on them is deliberate, analytic, and inferential. (See Figure 1.)

While Habermas suggests that argumentation performativity and justification are simultaneous, I doubt whether performative justification exists. In discourse, to justify is to provide reasons for one’s actions or for one’s beliefs. It is a normative notion, for it concerns rules involved in human practice, and pragmatic presuppositions of argumentation as such are rules.<sup>43</sup> Normative justification requires a gap between ‘is’ and ‘ought.’ In the case of the justification of (U), it involves a shift from the factuality of rules—that is, rules as they exist—to their normativity, their ‘oughtness.’<sup>44</sup> The normativity already existing becomes an object of deliberation. There is a shift from the first order normativity to the second order normativity, that is, from *factual* normativity

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<sup>43</sup> Habermas, *Moral Consciousness and Communicative Action*, pp. 86-87.

<sup>44</sup> It is this gap between ‘is’ and ‘ought’ that makes Christoph Lumer reject the recourse to the argument of performative self-contradiction in the process of the justification of (U). “Diese Argumentationsfigur beweist nicht das, was sie beweisen soll.” Christoph Lumer, “Habermas’ Diskursethik,” *Zeitschrift für philosophische Forschung* 51(1), p. 43.

Participant	Unconscious	Performative	Spontaneous
Theorist	Deliberate	Analytical	Inferential

**Figure 1** Disjunction of Participant's and Theorist's Attitudes

to *normative* normativity. This involves a change in attitude of participants in argumentation, a change from an unconscious attitude to a deliberate attitude. While involved in discourse, in a justificatory process, participants are unaware of the necessary pragmatic presuppositions therein. They may become aware of them when a reflection on argumentative practice takes place. As soon as participants in a discourse activate normativity—for instance, when they denounce a non-observance of some argumentative rules, by claiming that this or that rule should be followed—they shift from a pragmatic operation to a reflective activity. This involves an attitudinal change from factuality to normativity, from a fiduciary to a reflective attitude, which is inevitably theoretical.

I believe that Habermas and other scholars, particularly Konrad Ott,<sup>45</sup> who claim that some argumentative presuppositions pragmatically imply (U), fail to distinguish between the first person attitude of the participant in argumentation from the adoption and the use of this attitude by the theorist. Certainly, when we talk of derivation of (U) from the pragmatic presuppositions of argumentation, it is not a derivation in the sense of a classical logical deduction. It is rather a self-referential inference. But it is a kind of inference that the participants engaged in the discourse, in their fiduciary attitude, do not and cannot make. The derivation of (U) is a *reflective and intentional act*—in the phenomenological sense—whereas the operation of the pragmatic idealizing presuppositions is a *fiduciary and unconscious act*.

According to Edmund Husserl's phenomenology, consciousness, in its very nature as activity, is intentional. It is always conscious of something. It transcends itself and attends to the world by a multitude of intentional acts, such as perceiving, remembering, imagining, willing, judging, etc. For a participant engaged in argumentation, the correlation of consciousness is different from that of a theorist working out the formal properties of argumentation as such, because the participant and the theorist cannot have the same temporal flow of consciousness.<sup>46</sup> Their intentional experience, what Husserl terms the "currently actual *cogitationes*,"<sup>47</sup> is different. While the correlation of the theorist's

<sup>45</sup> Konrad Ott, *Vom Begründen zum Handeln: Aufsätze zur angewandten Ethik*, pp. 42-46.

<sup>46</sup> Our consciousness life presents itself as a succession of thoughts that form a kind of flow in the mind.

<sup>47</sup> Edmund Husserl, *Ideas for a Pure Phenomenology and Phenomenological Philosophy: First Book: General Introduction to Pure Phenomenology*, p. 63.

consciousness is the logical structure of argumentation or the speech acts, the correlation of the participant's consciousness is the topic of discussion, for instance, the legality of homosexual marriage, the United Kingdom's exit from the European Union or the social integration of converted Islamic combatants.

From this point of view on the disjunction of the object of consciousness, one may endorse Christoph Lumer's statement that, in contradiction to Habermas's claim, (U) is not a rule of argumentation.<sup>48</sup> It is for the moral theorist that (U) is implicit in the presuppositions of argumentation. Its derivation from pragmatic presuppositions is an act of the philosopher, to which agents can only have access after the enlightenment by the philosopher. To access the principle (U) as a rule, the actors engaged in argumentation must convert their fiduciary and spontaneous attitudes into deliberative and inferential attitudes, like that of a theorist, and thereby changing their intentional object.

*b. Perspectival and Comprehensive Universalization in Argumentative Practice*

I believe that Habermas's failure to consider the fiduciary nature of the universal pragmatic presuppositions of argumentation led him to confuse perspectival universalization with comprehensive universalization. It seems undeniable, as Habermas upholds, that within argumentation every claim of validity is accompanied by a claim to universal validity: "A valid proposition lays claim to universal validity, that is, recognition not merely in local, but in all contexts."<sup>49</sup> It is so by virtue of universal pragmatic presuppositions, particularly, the presupposition of unlimited inclusiveness, that is, the implicit rule of argumentation according to which every subject with the competence to speak and act is allowed to take part in discourse. Obviously, in a discussion I cannot presuppose or claim that each subject who possesses the competence to act and speak should be able to take part in discourse, should be allowed to take a position on my claim of validity, and at the same time presuppose or claim that the statement in question can only be recognized in my local context. As long as one recognizes the universal pragmatic presuppositions of argumentation, one must also admit that any claim of validity to a proposition is always associated with a claim to universal recognition. Since the presuppositions of argumentation are necessary and universal conditions of argumentative practice, from the moment I enter into argumentation with good faith, I performatively enter into a sphere that is not mine alone, but that equally belongs to every person engaged or who may engage in the

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<sup>48</sup> Lumer, "Habermas' Diskursethik," *Zeitschrift für philosophische Forschung* 51(1), p. 43.

<sup>49</sup> Jürgen Habermas, *Truth and Justification*, p. 259.

discussion. To enter into discourse is to automatically go over the limits of the given situation.<sup>50</sup>

However, I distinguish two possible understandings of the *claim to universal recognition* involved in every validity claim. A claim of validity can be *perspectival* or *comprehensive*. One must distinguish between the addressees of the claim and the beneficiaries of the claim. Although the addressees of both perspectival and comprehensive validity claims are the same—namely, all speaking and acting subjects—the beneficiaries of a validity claim are different. In the perspectival validity claim, the intended beneficiaries are the people directly concerned; whereas in a comprehensive validity claim, the intended beneficiaries are the same as the addressees, in the sense that no speaking and acting subject is excluded from being a beneficiary of the claim. On one hand, in the perspectival claim, every subject capable of speaking and acting is implicitly invited to recognize the validity of a claim for a particular group of people in a particular context who may benefit from it. On the other hand, in a comprehensive claim, every speaking and acting subject is implicitly invited to recognize the validity claim not only for a particular group, in a particular context, but more broadly for all people, in all contexts. Everyone everywhere is assumed to be the beneficiary of the validity claim's recognition. In the first case, the claim is perspectival in the sense that the implicit request for recognition, though addressed to every subject capable of speaking and acting, concerns only particular people in a particular context. Only they are assumed to be the beneficiaries of the validity claim's recognition. (See Figure 2.) With respect to moral discourse, a validity claim arises from a normative experience that can only be contextual. In this case, when one makes a validity claim, one implicitly assumes that all subjects who have the capacity to take part in argumentation could attest to the legitimacy, as far as one's normative experience is concerned, of this claim.

Take the example of a claim of a legal recognition for gay marriage. A homosexual association can claim a legal recognition of gay marriage *in its own country*, say in Uganda, by appealing to each speaking and acting subject to recognize this right within Uganda. In this case, while the addressees of the

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<sup>50</sup> This is what Habermas means when he calls pragmatic presuppositions of argumentation “counterfactual.” To say that the presuppositions are counterfactual does not mean that they are false or invalid as Steinhoff claims. See Steinhoff, *The Philosophy of Jürgen Habermas: A Critical Introduction*, p. 134. For Habermas, “as idealizing suppositions we cannot avoid making while engaged in processes of mutual understanding, they are *actually effective* in organizing communication and at the same time *counterfactual* in ways that point beyond the limits of actual situations. As a result, social-practical ideas of reason are both ‘immanent’ and ‘transcendent’ to practices constitutive of forms of life.” See Jürgen Habermas, *Kommunikatives Handeln und detranszendentalisierte Vernunft*, p. 11.



Universalization	Perspectival	Comprehensive
Addressees	All	All
Beneficiaries	Particular	All

**Figure 2** Perspectival and Comprehensive Universalization

claim of recognition are all speaking and acting subjects all over the world, the intended beneficiaries of this claim are only Ugandans. But, the same homosexual association can claim recognition not only for homosexuals in Uganda, but also for all homosexuals *wherever they may be in the world*, with the argument, for instance, that we all share the same humanity and that all homosexuals all over the world should have the same (human) rights as heterosexuals in terms of sexual expression. Here, the claim of recognition attempts to take effect not only in Uganda, but also in all countries in the world, where gay marriage is not yet legally recognized. No speaking and acting subject is, in principle, excluded from being the beneficiary of this validity claim.

Perspectival universalization could be seen in Michael Walzer's interpretation of the march through Prague in 1989. The marchers carried signs that read 'Truth' and 'Justice.' Walzer observes that, when they

waved their signs, they were not relativists: they would have said, rightly, ... *that everyone in the world should support their cause*—should join them in defence of 'truth' and 'justice.' But when they turn to the business of designing a health care system or an educational system for Czechs and Slovaks or arguing about politics of their union or separation, they will not be universalists: they will aim at what is best for themselves, what fits their history and culture, and won't insist that all the rest of us endorse or reiterate their decisions.<sup>51</sup>

Walzer cites this incident while illustrating his distinction between minimalism and maximalism in morality. What is of interest for my argument here is the idea of an *implicit appeal for vicarious endorsement* of marchers' claims. The appeal is addressed to everyone in the world who could hear on the radio or watch on the television or read in the newspaper about this march. The validity claim of the marchers is universal, in the sense that it is addressed to everyone in the world, and at the same time it is perspectival in the sense that the intended beneficiaries are people in the former Czechoslovakia.

It is my contention that such a perspectival universalization is implicit in every validity claim, and hence immanent in every type of argumentation. It is in this respect that we can understand the fundamental intuition of every moral agent according to which "a thing that is good from a moral standpoint must be

<sup>51</sup> Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, p. 3, emphasis mine.

a good for everyone under the same conditions.”<sup>52</sup> Saying “under the same conditions” implies that the conditions wherein moral agents find themselves are always different. But, it seems to me, the statement also indicates that, in whatever condition, the validity claim of an agent entails an implicit appeal to an unlimited vicarious endorsement.

While such a claim to universal validity is inherent in every argumentation, I doubt whether it can constitute a moral point of view in the way Habermas understands it. Nor is this claim of the kind of universalization that Habermas has in mind when he derives (U) from the pragmatic presuppositions of argumentation as such. For, as seen above, according to discourse ethics, a valid proposition lays a claim to recognition not merely in the local context but also *in all contexts*. According to Habermas, for a proposition to be recognized in all contexts, it must have unconditional validity.<sup>53</sup> Only in this sense may the claim for universal recognition, which is associated with every validity claim, be labelled ‘comprehensive.’ For it is comprehensive in the sense that I claim that my proposition is justifiable even outside the particular context in which it is formulated, that it is rationally acceptable to every speaking and acting subject, and that no speaking and acting subject anywhere may be excluded from being a beneficiary of such a proposition. (See Figure 2.) This comprehensive universalization is in the formulation of (U) according to which the moral validity of a norm is to be tested against the acceptability of the side effects that may result from its universal observance (*allgemeine Befolgung*).

But comprehensive universalization, which characterizes (U), is a deliberate and analytic claim, and for this reason participants cannot performatively make it in argumentation. Claiming that my proposition is rationally acceptable in all contexts presupposes analyzing all contexts and acknowledging that the agent in each of them has the same reasons as I do for redeeming my claim. Such an exercise prescind from the participants’ fiduciary attitude in argumentation. It prescind from the unconscious and spontaneous nature of the pragmatic presuppositions of argumentative practice and from the universalization that they entail. It seems to me, therefore, that there can be no immanent performative justification of (U). This principle is proposed to moral agents from outside of their argumentative practice in the same way that the utilitarian maxim is proposed to them.<sup>54</sup>

<sup>52</sup> Jürgen Habermas, *The Theory of Communicative Action*, Vol. II, 93. It is from this intuition that Kant and utilitarians developed their respective moral principles. This intuition seems to show that we can be morally relativists only in theory; in practice, we are absolutists.

<sup>53</sup> Habermas, *Truth and Justification*, p. 260.

<sup>54</sup> Hunyadi, « L’idée d’une contrefactualité contextuelle ou : comment ne pas devoir transcender tous les contextes possibles, comme le veut Habermas? », *Revue philosophique de Louvain* 107(2), p. 329.

### 3. Concluding Remarks

Habermas defends the universal validity of the moral principle (U) by arguing that it is immanent in the practice of argumentation in general. In this paper, I have argued that Habermas's derivation of (U) from the universal pragmatic presuppositions of argumentation suffers two problems, as an argument that demonstrates that there can be no immanent transcendental-performative justification of his moral principle. First, due to the fiduciary nature of the argumentative presuppositions, the participants in discourse, in their performative attitude, cannot have the same intentionality correlation that a theorist could have because of the participants' perspective. The participants in argumentation can only access the pragmatic presuppositions of argumentative practice, which Habermas reconstructs, by changing the temporal flow of their consciousness and by adopting an analytic-theoretical attitude. Second, in a discourse, universalization can be comprehensive or perspectival: comprehensive, if a validity claim is addressed to and concerns every speaking and acting subject everywhere; perspectival, if a validity claim is addressed to every speaking and acting subject, but only concerns particular persons or a particular community, or particular communities. In a comprehensive universalization, the intended beneficiaries of the validity claim are the same as the addressees, namely every speaking and acting subject, whereas in a perspectival universalization, the intended beneficiaries of the validity claim are only the people concerned. In his justification of (U), Habermas does not distinguish the two. Consequently, he fails to consider that, as a comprehensive universalization, (U) is analytical and inferential, and that for this reason it prescind from the fiduciary and performative universalization that every argumentative practice involves.

If my arguments that Habermas has failed pragmatically and immanently to justify (U) are correct, one is permitted to wonder whether the justification of universal validity of a universalistic moral principle is possible. This may be a relevant question, for Immanuel Kant has not convincingly justified the universal validity of the categorical imperative either. Where he does not simply appeal to a fact of reason, "Kant bases his justification on the substantive normative concepts of autonomy and free will; by doing so he makes himself vulnerable to the objection that he has committed a *petitio principii*."<sup>55</sup> Furthermore, the failure to justify the principle (U) raises the question of the universal significance of discourse ethics, since its distinguishing mark as a universalistic moral theory is the claim to possess universal validity. Therefore, beyond the exegesis of Habermas's work, in this paper, I suggest that some forms of moral contextualism are legitimate.

Habermas embarks on immanent-transcendental justification of (U) in order to refute the objection that it represents a hasty generalization of moral intuitions

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<sup>55</sup> Habermas, *Moral Consciousness and Communicative Action*, p. 78.

peculiar to Western culture.<sup>56</sup> He responds to the claim of Paul Taylor, according to which Kurt Baier's universalistic moral theory is both socially and culturally biased. Taylor believes that Baier's moral point of view is fallacious, and that it reflects the tacit moral assumptions of Western liberal society, a moral code itself in need of justification.<sup>57</sup> Many other scholars suspect that the claim to universality, raised by Habermas for the moral principle he proposes, is based on an ethnocentric prejudice.<sup>58</sup> It is in order to dispel such a suspicion, and in so doing to contest moral contextualism, that Habermas seeks to provide a transcendental-performative justification of the universal validity of the principle (U). If my arguments regarding the failure of this enterprise are correct, then this paper constitutes an endorsement of different forms of moral contextualism that do not involve a performatively self-contradictory relativism. For instance, this article represents a backing for Alasdair MacIntyre's claim that there is no such a thing as a context-transcendent rationality, as according to him all forms of rationality are rooted in tradition.<sup>59</sup> The argument that it is impossible to performatively justify the universal validity of the principle (U) legitimates, to give another example, Joseph Heath's claim that (U) can be discarded and a fully contextual conception of practical discourse adopted, the discourse in which a transcendental justification for a principle would be replaced by an analysis of participants' systems of rights.<sup>60</sup>

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<sup>56</sup> *Ibid.*, p. 76.

<sup>57</sup> Paul Taylor, "The Ethnocentric Fallacy," *The Monist* 47, p. 570; Jürgen Habermas, *Moral Consciousness and Communicative Action*, p. 78.

<sup>58</sup> Jürgen Habermas, *Moral Consciousness and Communicative Action*, p. 78.

<sup>59</sup> Alasdair MacIntyre, *Whose Justice? Which Rationality?* Notre Dame, Indiana: University of Notre Dame Press.

<sup>60</sup> Heath, "The Problem of Foundationalism in Habermas's Discourse Ethics," *Philosophy & Social Criticism* 21(1): pp. 94-95.

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